STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

IT IS HEREBY ORDERED that a hearing be had before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on September 21, 2004 at 1:30 p.m., to consider the final report by the Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch. The committee has proposed amendments to the Rules of Public Access to Records of the Judicial Branch. A copy of the report is annexed to this order.

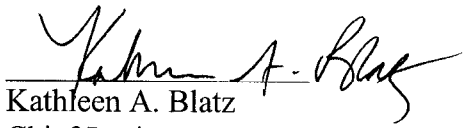
IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before September 10, 2004, and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before September 10, 2004.

Dated: July 8, 2004

BY THE COURT:



Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

No. C4-85-1848

In re: Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch

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Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch

FINAL REPORT

June 28, 2004

Hon. Paul H. Anderson, chair

Mark R. Anfinson, Mpls.
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Susan J. Larson, Esq., Milbank, South Dakota
Consultant

SJI This report was developed in part under grant number SJI-03-T-063 from the State Justice Institute. The points of view expressed are those of the committee and do not necessarily represent the official position or policies of the State Justice Institute.

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Acknowledgements

The advisory committee would like to thank the many individuals who participated in this project and assisted in our efforts to broadly reach out to all who may be affected by court record access policy. In particular the committee thanks those who submitted written and oral comments in response to the committee's preliminary recommendations. All of these contributions were crucial to the committee's work and will also benefit the Supreme Court as it reviews the committee's recommendations.

The committee would also like to thank the State Justice Institute for its generous support through a technical assistance grant that helped to provide the type of staff support necessary to this project. The committee is also grateful to Alan Carlson of the Justice Management Institute and Martha Wade Steketee of the National Center for State Courts for providing the committee with extensive insight into the development of the report entitled *Public Access to Court Records: Guidelines for Policy Development by State Courts*, prepared by the Conference of Chief Justices and Conference of State Court Administrators.

Finally, the committee would like to thank its dedicated staff, including Michael Johnson and Susan Larson for their research and writing, and Kristina Ford and Kathy Zajac for their administrative and editorial assistance. The committee is also grateful for the assistance of the information technology staff who provided technical expertise and assistance, including Darrel Austin, Nancy Crandal, Dale Good, Robert Hanson, Pete McNair, Eric Stumne, and Jim Wehri.

Recommendations on Rules of Public Access to Records of the Judicial Branch

Introduction

By order dated January 23, 2003, the Minnesota Supreme Court established an advisory committee to review, and make recommendations concerning, the RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH ("ACCESS RULES"). The Supreme Court directed the advisory committee to consider, among other things, the report entitled *Public Access to Court Records: Guidelines for Policy Development by State Courts*, prepared by the Conference of Chief Justices and Conference of State Court Administrators ("*CCJ/COSCA Guidelines*").[1]

The *CCJ/COSCA Guidelines* reflect a growing national debate[2] over whether and to what extent court records should be accessible electronically. Among the many issues that the *CCJ/COSCA Guidelines* were designed to address were: which records should be published on the Internet and what privacy protections are necessary; what databases should be accessible in whole or in part to the public; and what fees, if any, should be charged.

The *CCJ/COSCA Guidelines* provide a starting point and framework for analysis; they do NOT establish a single, proposed national standard on electronic access issues. The advisory committee used this framework to assist in its review of the ACCESS RULES. Consistent with both the *CCJ/COSCA Guidelines* and the Court's practice when it appointed the predecessor committee in 1986, the advisory committee includes representatives from several areas affected by access policy.[3]

The advisory committee met sixteen times after its establishment. In addition to discussing the information access experiences and interests of its members, the committee received presentations from:

- the *CCJ/COSCA Guidelines* staff and co-chair regarding development of the *CCJ/COSCA Guidelines* and issues addressed therein;
- a commercial data broker (West, a Thomson company) regarding its use of court records;

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[1] The *CCJ/COSCA Guidelines* are posted at http://www.courtaccess.org/modelpolicy/.

[2] *See, e.g.,* Jennifer Lee, *Dirty Laundry, Online for All to See,* N.Y. Times, September 5, 2002.

[3] A detailed roster is attached as Exhibit F to this report.

- the director of the Privacy Rights Clearinghouse regarding identity theft and other privacy interests; and
- the leading executive branch data access expert (Donald Gemberling) regarding executive branch data access law and policies, and the fair information principles[4] incorporated in those laws and policies.

The advisory committee was also fortunate to obtain a small grant from the State Justice Institute to assist the committee in collecting, organizing and reviewing materials, especially the developments in other state and federal courts regarding electronic access to court records.[5] The committee also solicited the advice of the Supreme Court Implementation Committee on Multicultural Diversity and Fairness in the Courts, and the Supreme Court Technology Planning Committee's Data Policy Subcommittee, which subcommittee has been reviewing the *CCJ/COSCA Guidelines* and addressing access to records issues in the court technology area.

The advisory committee also solicited general public comment in response to a preliminary report that was posted on the main state court web page, and invited commentators to address the committee at a public hearing. Many witnesses testified at the hearing, including representatives of the clergy, the print and electronic media, various community groups, citizens, public defenders, court reporters, and judges. A complete list of the hearing witnesses is attached in Exhibit O, appended to this report. A summary of the testimony and other written comments received is attached as Exhibits P and Q. The full comments are posted under the Public Notices section of the main state court web page (www.courts.state.mn.us).

The advisory committee reviewed its recommendations in response to the comments received at the public hearing. Attached as exhibits to this report are

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[4] See http://privacy.med.miami.edu/glossary/xd_fair_info_principles.htm; see also Gemberling, Weissman, *Data Practices at the Cusp of the Millennium*, 22 WM. MITCHELL L. REV. 767 (1996). The fair information principles are also discussed in Exhibit H: Minority Report: Fair Information Principles, attached to this report. The minority report ignores the fundamental differences between executive branch and judicial branch functions, and fails to recognize that court procedure already incorporates fundamental fairness.

[5] Websites tracking these developments are maintained by the National Center for State Courts at http://www.courtaccess.org, the Reporters Committee for Freedom of the Press at http://rcfp.org/courtaccess/viewstates.cgi, and the Center for Democracy and Technology at http://www.cdt.org/publications/020821courtrecords.shtml#mn.

final proposed changes to the ACCESS RULES and various other court rules addressing public access to court records. The text of this report and the advisory committee comments to the attached rules describe the proposed changes.

The report also contains minority and plurality reports on several issues. Although advisory committee members did not have an opportunity to articulate responses to all of these reports, committee members were advised that they may submit additional comments at the hearing before the Supreme Court.

Internet Access

Introduction.

Historically, court records in paper format have been broadly accessible to any member of the public willing to travel to the courthouse. The policy reasons for such access include promoting public trust and confidence in the courts and providing public information and education about the results of cases and the evidence supporting them. Access to court records is becoming easier and much broader now that an electronic format replaces or augments the traditional paper format. The Internet's capacity to consolidate information into easily searchable databases means that the trip to the courthouse is a virtual journey accomplished with the click of a computer mouse. These changes have eroded the practical obscurity[6] that individuals identified in court records once enjoyed, and requires a

[6] Before the transition to electronic court records began, it was impractical for anyone to build significant dossiers on individuals from publicly accessible paper records because the number of potential sources was too great and the volume of information was unwieldy. This became known as "practical obscurity." *See,* e.g., *U.S. Dept. of Justice v. Reporters Committee for the Freedom of the Press*, 489 U.S. 749, 109 S.Ct. 1568 (1989) (public access to the Federal Bureau of Investigation's national clearinghouse of arrest and conviction information was an unwarranted invasion of personal privacy under public access exceptions to the Federal Freedom of Information Act). Despite the Supreme Court's recognition of this privacy interest in compiled government information, some advisory committee members believe that practical obscurity is an illusion or at the least it is eroding, and that private data brokers will continue to collect court information in paper if remote access is not available, and then resell the data on the Internet. Some commentators believe that practical obscurity is a problem to be solved, not a virtue (public hearing written comments of John Borger, Star Tribune), that it does not apply to primary source records such as court records, and that many people who weigh in on the issue are not fully aware of the level of access that exists now (public hearing comments of Prof. Jane Kirtley, Silha Center for Study of Media Ethics and Law, School of Journalism & Mass Communication, University of Minnesota).

Some advisory committee members counter that there is a difference between using private sector resources to compile and resell public information and using taxpayer dollars to do the same thing. Some commentators believe that the court's imprimatur, its tremendous power and trust, give its records commercial value (public hearing comments of John Stuart, State Public Defender), and that this

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review of access policies to ensure that a proper balance is maintained between many competing and often conflicting interests including, but not limited to, protection against unsubstantiated allegations, identity theft protection, accuracy, public safety, accountability of courts and government agencies, victim protection and efficiency.

For example, solutions designed to avoid discriminatory impact on persons of color make it more difficult for society to become aware of certain root problems. Publishing unproven criminal accusations on the Internet, discussed in more detail in another section of this report, can result in the denial of housing and job opportunities especially for persons of color who are disproportionately represented in cases where such accusations are ultimately dismissed. Not making the information available on the Internet, however, makes it more difficult for society to become aware of the disproportionate number of dismissals and its root causes, and to address them.

Similar conflicting interests affect crime victims. Most crime victims prefer to minimize Internet access to victim identifiers and locators (e.g., name, address, etc.), because such access has the potential of leading to more victimization and

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distinguishes court records from other government records such as law enforcement records (public hearing comments of Don Samuels, Minneapolis City Council Member). Other committee members also point out that the Minnesota Legislature also sought to protect personal privacy in statewide compilations, and such protections continue, for example, to prohibit public access to executive branch statewide compilations of arrest and corrections monitoring information. Although in 1993 the legislature began to allow public access to statewide adult felony, gross misdemeanor and targeted misdemeanor conviction information maintained by the Minnesota Bureau of Criminal Apprehension ("BCA") for a period of 15 years following discharge of the sentence (1993 MINN. LAWS ch. 171, § 2; codified as MINN. STAT. § 13.87, subd. 1), statewide arrest information maintained by the BCA continues to be private (Minn. Stat. § 13.87, subd. 1 (2002)), while arrest data in the hands of the originating law enforcement agency remains public. MINN. STAT. § 13.82 (2002). Portions of the Department of Corrections' Statewide Supervision System ("SSS") involving the monitoring and enforcing of conditions of release remain off limits to the public under MINN. STAT. §§ 241.065; 299C.147 (2002), while portions of the SSS relating to statewide booking and detention, which were formerly maintained in the Department's separate Detention Information System, remain accessible to the public despite being merged with the SSS. MINN. DEPT. ADMIN. ADVISORY OPINION 03-041 (Oct. 1, 2003).

revictimization through intimidation and embarrassment, while nothing positive is gained from publishing victim identifiers and locators on the Internet. Victims may also benefit from some public access to location information, however, such as being able to document that a particular neighborhood has a high incidence of crimes.

Similarly, solutions supporting the prevention of identity theft[7] conflict with the goal of accuracy. One approach to counter identity theft is to minimize the amount of personal identifying information about individuals, such as social security numbers, dates of birth, addresses, telephone numbers, etc., that is conveniently accessible to the public from electronic court records. The less identifying information that is available, however, the greater the likelihood that individuals will be misidentified as having been the subject of certain court records such as money judgments or criminal convictions.[8] Such inaccuracies can have far reaching consequences.

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[7] The advisory committee sought the advice of privacy experts and was advised that identity theft is a crime of opportunity, wide-open remote access to court records provides significant opportunity for such theft to occur, and identity theft makes life miserable for its victims. Presentation by Beth Givens, Director, Privacy Rights Clearinghouse, to Advisory Committee (July 27, 2003; power point). Some committee members disagree and believe that privacy concerns are exaggerated and are based on speculation and anecdotes, and that privacy invasions resulting from court record disclosures are rare. The Dissenting Statement set forth in Exhibit L, for example, argues that the 2003 Federal Trade Commission report, *Identity Theft Survey Report*, suggests that electronic access to public records is not a major contributor to this crime. Similar industry surveys also show that, of the victims who know how the perpetrator obtained their personal information, only a very small amount say the source was public records. *See, e.g.,* Privacy and American Business Survey Finds 33.4 Million Americans Victims of ID Theft (July 30, 2003; press release). In the Privacy and American Business Survey, however, the vast majority of the respondents (approximately 80%) did not know how their personal information was obtained, and in the FTC Survey half of the victims did not know how their information was obtained.

[8] The Consumer Data Industry Association submitted written comments to the committee indicating that access to the full social security number is the only way to correctly match records with the correct consumer. Letter from Eric Ellman, Director and Counsel, Government Relations, Consumer Data Industry Association, to Michael Johnson, advisory committee staff, undated. See also the Dissenting Statement set forth in Exhibit L.

Some uses of court records may cause harm. It is impossible to distinguish between valid requests for information and those requests that may cause harm. Some potential harm can be minimized by legislative activity, such as fair credit reporting laws[9] that require consumer reporting agencies and their data suppliers to verify and correct public record information. In addition, potential harm must be balanced with potential benefits, such as the ability to screen potential employees/workers and keep government accountable.

Many times in emotional proceedings such as family court matters, domestic abuse matters and other civil suits very personal and private information is disclosed. Allegations are made in these proceedings through affidavits which many times relay abusive, inappropriate or dysfunctional behavior between the parties and their children. For example, it is necessary for a domestic abuse victim to give specific facts regarding the abusive actions of his or her[10] partner. A parent must also be specific regarding abuse and neglect when making a motion for a change in custody. Access to this information by anyone at any time can create further embarrassment, harassment and victimization of the parties. Unsubstantiated allegations of abusive or inappropriate behavior also raise significant concerns. The overwhelming majority of petitioners in domestic abuse Order For Protection[11] and other Harassment restraining order[12] proceedings are representing themselves. A growing number of family court motions are also being handled without an attorney. Unrepresented litigants do not have the same ethical duties as a lawyer in such situations.[13] Internet publication of nonmeritorious allegations can harm a person's reputation even if a final court order finds that the allegations are without merit. Those who really need access

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[9] Federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*., as amended by the Fair Accurate Credit Transactions Act of 2003, Pub. L. 108-159, and the Minnesota consumer reports law, MINN. STAT. § 13C.001 *et seq.* (2003).

[10] Studies indicate that the majority of abuse victims are women. *See, e.g.*, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003) (1,247 women and 440 men were killed by an intimate partner in 2001).

[11] MINN. STAT. § 518B.01 (2002).

[12] MINN. STAT. § 609.748 (Supp. 2003).

[13] *Compare* MINN. R. CIV. P. 11.02 (requires objective reasonableness under the circumstances; applicable to both attorneys and unrepresented parties; sanctions cannot be imposed until after notice and a reasonable opportunity to respond) *with* MINN. R. PROF. CONDUCT 3.1, 3.3 (lawyer's duties regarding meritorious claims and candor towards the tribunal). Historically, courts have been more reluctant to award sanctions against unrepresented litigants. *Liedtke v. Fillenworth*, 372 N.W.2d 50, 52 (Minn. App. 1985).

for a legitimate purpose (such as the media reporting on the development of a case) can obtain the information from the courthouse. Internet publication of allegations made in these types of actions can harm a person's reputation even if a final court order finds that the allegations are without merit.[14]

Alternative Approaches.

The advisory committee looked at several approaches in its attempt to resolve these policy issues: One approach is to simply allow Internet access to all court records that are accessible to the public in paper format, and make any necessary adjustments to both paper and Internet records. Another approach is to try to retain the same level of public access to paper records and publish only a limited number of those records on the Internet.

Proponents of the first approach believe that: (1) requiring a person to come to the courthouse to get information that is available to the public is not meaningful access but is a restriction of the public's legitimate use of information that is otherwise easily available in electronic format, and thus the second approach is on shaky legal ground; (2) if there is a valid public use for a certain record in paper format, it should be available on the Internet as well; (3) it is unrealistic to conclude that in the future the courts can have all their files in electronic format but only provide paper-based access at the courthouse; (4) where access is limited to the courthouse, commercial data brokers will harvest the information anyway and will make it available, and it will only be available to those who can afford to pay a broker's fee; (5) accuracy will only be improved by putting the records on the Internet and exposing problems; (6) there are enormous benefits to remote access to court records, including reducing burdens on court staff, improving the accuracy and timeliness of news reporting, ensuring public safety and national security, and minimizing risks to financial institutions; (7) redacting is feasible using current technology; (8) trying to solve social problems by keeping information off of the Internet is not good public policy; (9) the solution for misuse is for the legislature to prohibit the misuse and for the executive branch to vigorously enforce those laws; and (10) courts in Maryland, New York, and the federal system have adopted wide open Internet access policies and no

[14] Internet publication of allegations prior to a decision on the merits by a court compounds the injury that a false allegation can cause. As discussed over the next several sections of the report, advisory committee members have conflicting views on whether such publication serves valid public policy.

demonstrable harm has come from it, just like Minnesota's experience with recent changes that opened child protection court records to public access.[15]

Those favoring limited Internet publication of records believe that: (1) there is a difference between "public" records and "publishing" records on the Internet; (2) publication of only certain records on the Internet is an expansion of existing public access at the courthouse and not a limitation on public access at all; (3) limited information should be placed on the Internet only after procedures and rules are in place to protect privacy interests; (4) just because technology enabling Internet access is available does not mean that it should be used for all matters; (5) if the first approach is taken (i.e., allowing all public, paper records to be published on the Internet), there will be a backlash of public opinion that will likely sweep broad categories of information completely out of public view; (6) relying on legislation prohibiting misuse and vigorous enforcement of those laws is itself illusory; (7) the public currently has a good understanding of what is going on in the courts without adding more Internet access; and (8) similar data accessible through commercial data brokers and even other government entities, such as law enforcement) does not carry the imprimatur of the court.[16]

Those favoring limited Internet publication of records also cite that: (1) after 18 months of study, the *CCJ/COSCA Guidelines* Committee concluded that there is a difference between "public" and "publishing" court records on the Internet; and (2) some courts that have broadly published records on the Internet have had to pull back and reconsider their policy in light of privacy concerns raised by persons identified in the records.[17]

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[15] *See, e.g.*, public hearing comments of Lucy Dalglish, Reporters Committee for Freedom of the Press, et al,; public hearing comments of Chris Ison and John Borger, Star Tribune; public hearing comments of Prof. Jane Kirtley, Silha Center for Study of Media Ethics and Law, School of Journalism & Mass Communication, University of Minnesota; public hearing comments of Gary Hill, KSTP-TV et al.; and written comments of Eric Ellman, Consumer Data Industry Association. *See also* attached Exhibits K and L (minority reports discussing benefits of full Internet access and balancing of interests).

[16] *See, e.g.*, public hearing comments of John Stuart, State Public Defender; public hearing comments of Kizzy Johnson, Communities Against Police Brutality; public hearing comments of Scott Benson and Don Samuels, Minneapolis City Council Members.

[17] For example, the clerk of court in Butler County, Ohio, was ordered to turn off Internet access to court records until domestic relations cases could be removed due to concerns over disclosure of social security numbers, bank account numbers and other personal information. See Janice Morse, *Separating Court Records for*

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Some proponents of full Internet publication indicate that they could support limited Internet publication primarily because it is likely there will be a backlash to the first approach. Thus, the committee is proceeding with the approach of attempting to retain the same level of public access to paper records and publish only a limited number of those records on the Internet.

Deciding What to Publish on the Internet.

Several advisory committee members believe that the courts should publish information on the Internet only for a variety of public purposes, including: the most effective use of court and court staff; customer service; supporting the role of, and public trust and confidence in, the judiciary; promoting government accountability; contributing to public safety; and minimizing risk of injury to individuals (including protecting privacy rights and proprietary business information).

The advisory committee also believes it is important to consider the fiscal impact that access policies have. Redacting sensitive information from often voluminous documents prepared and filed by the parties to a case creates administrative burdens and liability exposure for court staff, although immunity and technology such as XML tagging may eventually minimize this burden. Making some information available on the Internet will save court administration staff time, but staff and possibly judge time spent responding to complaints may also increase depending on what is published on the Internet. If the underlying information is public on paper, the information likely will be available from private sector data brokers. Currently much information is available for a fee through a commercial data broker service. Those persons without funds, however, may not have such access.

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Net Access May Be Costly, Cincinnati Enquirer, July 24, 2003. The clerk of court in Loudon County, Virginia, unplugged his subscription-based remote access service after concerns over disclosure of personal information caused the county board to formally request the action and the creation of a task force to study the issue. See *Clemens Unplugs Online Remote Access System*, Leesburg2Day, 7/24/03. Even the federal judicial conference had to back away from its initial Internet access for criminal records. See *Federal Judges, Agencies Block Online Access to Public Records*, Associated Press, 10/12/01 (citing access by inmates who harassed or beat other inmates, and access to presentence investigation reports which contain sensitive material).

Personal Identifiers

There was nearly unanimous agreement by the advisory committee that some information deserves privacy protection, such as social security numbers, financial account numbers, telephone numbers, and street addresses of litigants, jurors, witnesses and victims of criminal and delinquent acts. To achieve this kind of protection, the judicial system needs a process for redacting private information before publishing the records on the Internet. The committee believes that this result is practical only if remote access is limited to documents that the courts themselves generate, such as the register of actions, calendars, judgment dockets, and judgments, orders, appellate opinions, and notices prepared by the court.[18] The committee's recommendation on Internet access to case records is set forth in proposed ACCESS RULE 8, subd. 2 (set forth in Exhibit A attached to this report).

The advisory committee believes, however, that there should be an exception to this recommendation to allow for the type of high volume public access requests that come with high profile cases. The Fourth Judicial District, for example, recently posted all trial exhibits from the *Gordon et al v. Microsoft* case on its web site. When as in this case there are hundreds of exhibits, such posting clearly reduces an otherwise significant administrative burden of responding to requests for copies of the documents. The committee believes that it should trust the discretion of the presiding judge to decide on a case-by-case basis whether Internet posting of exhibits and/or other documents prepared or submitted by the parties is appropriate. Existing procedure, including appellate review, provides parties with the opportunity to be heard in the decision making process. The exception is included in the proposed rule.

Some judicial districts already publish court calendars on the Internet. Internet access to the register of actions (i.e., name, index, list of activities occurring on the case) would provide greater access and would eliminate the need for individuals

[18] Some commentators argue that: (1) while SSN and financial identifiers may implicate legitimate privacy concerns, home addresses and telephone numbers do not; (2) precluding Internet access to witness, juror, and victim identifiers is excessive; (3) access to identifiers is critical to allow reporters to track down and interview participants and report stories of clear interest to the public; and party-filed documents contain the most useful information for understanding a case and that limiting access to these because of concerns over social security numbers is excessive. Public hearing comments of Prof. Jane Kirtley, Silha Center for Study of Media Ethics and Law, School of Journalism & Mass Communication, University of Minnesota; public hearing comments of Lucy Dalglish, Reporters Committee for Freedom of the Press, et al..

and certain companies to travel to the courthouse and use courthouse space and equipment to obtain information.

Judgments, orders, and notices prepared by the court have integrity in that they are the product of an adjudicatory process. The same may not be true of other documents. For example, while an affidavit filed by a party may truthfully reflect that a particular allegation has been made, the affidavit does not have the same integrity.[19] In addition, the courts control the issuance of judgments, orders and notices. The burden of not including certain items for Internet publication should not unduly interfere with the preparation of these items. If a social security number or victim's name needs to be included in a particular judgment or order, the court has the opportunity to prepare a publicly accessible paper version and an Internet accessible version without too much additional effort. The advisory committee realizes that its proposal to allow Internet access to all case records that the courts themselves generate will require education of judges, attorneys and court staff in order to avoid exposing the judicial branch to significant liability or the type of criticism that undermines the public trust and confidence in the courts.

Several advisory committee members reminded the committee that it needs to consider all perspectives, including that of the poor, minorities,[20] victims, jurors and witnesses. The committee learned that most victims of crime prefer that all victim identifiers (name, address, telephone numbers, etc.) not be published on the Internet because such access will lead to more victimization and re-victimization. Some committee members believe that if the courts have to sacrifice protection of victims, jurors and witnesses in order to implement Internet access, then the courts simply should not implement Internet access. A majority of the committee agreed that victim, juror and witness identifiers should not be accessible through the limited, court-generated records that the committee believes should be accessible on the Internet.

Unproven Criminal Allegations

The issue that received the most attention during the public hearing was whether the courts should publish unproven criminal allegations on the Internet. There are racial and social implications that pull at both sides of the issue.

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[19] Author and Yale Law Professor Stephen L. Carter draws a distinction between truth and integrity in his article, *The Insufficiency of Honesty* (Atlantic Monthly, Feb. 1996, p.74-76) (reproduced at http://www.csun.edu/~hfmgt001/honesty.doc).

[20] Some court records now are not accessible to all citizens due to language barriers, but they are available with the help of an interpreter.

Impact on Communities of Color

Over a decade ago the Minnesota Supreme Court Racial Bias Task Force found that people of color were arrested more often, charged more often, required to post higher bails, and given longer sentences, than whites.[21] Unfortunately, these trends appear to continue.

According to the results of a study conducted in 2001 by the Minneapolis-based Council on Crime and Justice, African American drivers are stopped by police at a rate much greater than their presence in the population.[22] Once stopped, African Americans generally are more likely to be arrested than white people.[23] And once they have made it through the court system, the ratio of African Americans to whites in state prison is about 25 to 1. This is the highest ratio of all states.[24] In 2000, 37.2% of the state's prisoners were African American. By comparison only 3.5% of the population of Minnesota was African American.[25]

Charges against African Americans also result in a disproportionate number of dismissals. In 2001 the Council on Crime and Justice studied 2600 arrests in the city of Minneapolis for six low level offenses: driving after revocation, driving after suspension, driving without a license, loitering with intent to commit prostitution or to sell narcotics, and lurking with intent to commit a crime.[26] The study found that 78% of defendants arrested and booked were also charged (i.e., ended up in court records), but only 20% were convicted. Of those charged, 33% had no criminal history, and 10% had been arrested at least once before without

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[21] *Minnesota Supreme Court Task Force on Racial Bias on the Court System Final Report*, May 1993, at S-5, S-9, and S-19. Some judges and attorneys surveyed by the task force felt that the race of the defendant and victim play a role in sentencing in Minnesota. *Id*., at S-12. The task force also found that persons of color often chose not to go to trial because of the perception that they would not receive a fair trial. *Id*. At S-15.

[22] In a study of Minneapolis police stops, African American drivers accounted for 37% of vehicle stops despite comprising only 18% of the population. Thomas L. Johnson, Cheryl Widder Heilman, *An Embarrassment to All Minnesotans: Racial Disparity in the Criminal Justice System*, Bench & Bar of Minnesota (May/June 2001).

[23] *Id*. In Minneapolis, African Americans were found to be about two and one half times more likely to be arrested and booked than whites following a traffic stop; Native Americans about three times more likely.

[24] *See*: http://www.crimeandjustice.org/Pages/Projects/RDI/RDI%20Reports.htm

[25] *Id*.

[26] Public hearing comments of Tom Johnson, Council on Crime and Justice.

any conviction ever having been obtained. A disproportionate percentage of those arrested (74%) and those charged (79%) were African American, but only 18% were convicted. Many more African Americans had multiple previous arrests without convictions than whites; 86% of those having more than five arrests without convictions were African American.

Other sources corroborate the high number of dismissals. For example, the state public defender's office handles approximately 175,000 cases annually, and 15,000 of these result in outright dismissals (i.e., they are not the result of plea bargains or not guilty verdicts).[27] Minneapolis accounted for 11,000 of the dismissals, with 10,000 dismissed by the prosecutor. In the vast majority of these dismissals (95%), the charges were not screened by a prosecutor before they were filed with the court (either as tickets or tab charges). Once filed with the court, however, the defendant's name and charge appear on the courts' records including court calendars.

Based on these statistics and anecdotal information the advisory committee received comments from many community leaders and groups who propose that no preconviction court records be published via the Internet. These proponents are deeply concerned that making preconviction court records available to anyone at any time and in virtual perpetuity over the Internet will have a permanent, disproportionate impact on the housing and employment of persons of color, especially young men of color.[28] Proponents of keeping preconviction records off the Internet point out that while judges and lawyers can distinguish between a charge and a conviction, such important distinctions are not made by the general public or in the world of housing and employment.[29]

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[27] Public hearing comments of John Stuart, State Public Defender.

[28] Public hearing comments of Archbishop Harry J. Flynn, Archdiocese of St. Paul and Minneapolis; public hearing comments of public hearing comments of Tom Johnson, Council on Crime and Justice; Pastor Albert Gallmon, Jr. Fellowship Missionary Baptist Church, Minneapolis; public hearing comments of Hon. George Stephenson, District Court, Second Judicial District; public hearing comments of Roger Banks, State Council on Black Minnesotans; public hearing comments of Kizzy Johnson, Communities Against Police Brutality; public hearing comments of Don Samuels, Minneapolis City Council Member; public hearing testimony of Bishop Craig E. Johnson, Evangelical Lutheran Church in America, Minneapolis Area Synod.

[29] Public hearing comments of Archbishop Harry J. Flynn, Archdiocese of St. Paul and Minneapolis; public hearing comments of Gordon Stewart, Legal Rights Center.

Proponents of keeping preconviction records off the Internet also argue that publishing preconviction court records on the Internet: (1) will undermine the efforts of the Court's Implementation Committee on Multicultural Diversity and Fairness in the Courts;[30] (2) will degrade the presumption of innocence which the courts have a constitutional duty to protect; (3) will shame and marginalize the innocent instead of protecting them; (4) will increase our racial and class divide rather then narrow it; (5) will make the court a part of the wider web of injustices that it seeks to eliminate; (6) is both immoral and un-American; and (7) is unnecessary for public interest research purposes as many data sources currently exist to support public interest research.[31]

When it was pointed out by advisory committee members that cities currently sell arrest information in bulk to commercial data brokers who in turn sell the information through subscription services, and that some jails post their current list of detainees on the Internet, these proponents countered that: (1) two wrongs do not make a right; (2) law enforcement data lacks the imprimatur of the court; (3) law enforcement data is only available from local offices while statewide compilations of such records are accorded privacy by statute; (4) aside from jail detainees and special projects, cities are not posting arrest information on the Internet.[32]

While recognizing that relatively few overall criminal cases involve the falsely or mistakenly accused, proponents of keeping preconviction records off the Internet stress the impact that Internet publication can have, particularly for people of

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[30] The Implementation Committee unanimously supports the proposal that no preconviction court records be published via the Internet. See March 17, 2004, Minutes, Implementation Committee on Multicultural Diversity and Fairness in the Courts, at p. 1.

[31] Public hearing comments of Archbishop Harry J. Flynn, Archdiocese of St. Paul and Minneapolis; public hearing comments of Pastor Albert Gallmon, Jr. Fellowship Missionary Baptist Church, Minneapolis; public hearing comments of Hon. George Stephenson, District Court, Second Judicial District; public hearing comments of Gordon Stewart, Legal Rights Center; public hearing comments of Roger Banks, State Council on Black Minnesotans; public hearing comments of Kizzy Johnson, Communities Against Police Brutality; public hearing comments of Don Samuels, Minneapolis City Council Member; public hearing comments of Scott Benson, Minneapolis City Council Member; public hearing testimony of Bishop Craig E. Johnson, Evangelical Lutheran Church in America, Minneapolis Area Synod.

[32] Public hearing comments of John Stuart, State Public Defender; public hearing comments of Don Samuels, Minneapolis City Council Member.

color. One commentator remarked "it is easy for some in our society to say 'If you really wanted to work, you could find a job,' or 'that's what happens when you commit a crime.' Those who have said so are less likely to have found themselves unemployed and/or homeless lately."[33]

Response to Impact on Communities of Color

The advisory committee also heard from various groups, mostly media representatives, opposed to any limits on Internet publication of preconviction court records. These opponents point out that: (1) even where there are demonstrable cases of Internet access to court records causing injury to reputation, this is not sufficient to overcome the presumption of public access;[34] (2) the high number of dismissals is a problem that should be reported;[35] (3) trying to solve social problems by keeping information off of the Internet is poor public policy, our system of government operates best when it is open to public scrutiny;[36] (4) if misuse of records is a genuine threat, then it is the legislature's job, not the court's, to define and take steps to prevent illegal acts;[37] (5) the less access there is to court records, the less accurate, fair and timely news reporting will be because news is a 24 hour business and courthouses have limited hours;[38] (6) dire predictions about the awful consequences of public access were made to the Minnesota Supreme Court prior to its recent decision to allow more public access to child protection cases, but a lengthy experimental period produced no evidence showing that those predictions were warranted;[39] and (7) by keeping court records off the Internet, the public will know less about the courts and public perception of the courts will suffer.[40]

A few advisory committee members noted that Internet access to unproven criminal charges through the court's registers of actions will also serve the goal of holding law enforcement accountable for the use of its arrest and detention

[33] Public hearing comments of the Hon. George Stephenson, District Court, Second Judicial District.
[34] Public hearing comments of Lucy Dalglish, Reporters Committee for Freedom of the Press, et al.
[35] *Id.*
[36] Public hearing comments of Prof. Jane Kirtley, Silha Center for Study of Media Ethics and Law, School of Journalism & Mass Communication, University of Minnesota.
[37] *Id*.
[38] Public hearing comments of Chris Ison, Editor, Star Tribune.
[39] Public hearing comments of Gary Hill, KSTP-TV et al.
[40] *Id.*

authority, and also the goals of holding the prosecutor and the courts accountable for their role in such matters. Such access can benefit defendants by providing the information necessary to expose shortcomings in the criminal justice system. Public safety is also served by knowledge of who has been charged with a crime. The relatively few overall criminal cases involving the falsely or mistakenly charged simply do not outweigh the significant benefits of Internet access.[41]

Using Technology to Minimize Automated Harvesting

Some advisory committee members see a distinction between an individualized need for public access to court records over the Internet and a commercial need for such access. Thus, the committee considered technology that would attempt to make preconviction court records accessible in some way via the Internet, but less susceptible to automated harvesting by commercial data brokers. This approach attempts to preserve some level of practical obscurity for preconviction records and yet provide a means for some convenient public access.

Many of Minnesota's judicial districts post calendars on the Internet, and these calendars contain both preconviction and postconviction records. These calendars permit the public to see what is transpiring in their courts. A combination of random, non-predictable file names for the calendars plus nontext, image only format, plus a "prove-you-are-human log-in procedure" between each calendar file request theoretically can prevent automated searching devices from simply harvesting preconviction records by name from these calendars displayed on the Internet while permitting individual public access.

An example of the prove-you-are-human log-in procedure is referred to as a "Turing test" named after British mathematician Alan Touring. The "test" consists of a small distorted picture of a word and if the viewer can correctly type in the word, access or log in to the system is granted. Right now, software programs do not read clearly enough to identify such pictures. Theoretically, this will separate the human reader from the automated software program that is designed to simply harvest data on a particular individual.

The format of court calendars is also important. Most calendars are produced in a PDF format readable through common and freely available software (Adobe Acrobat Reader). The PDF format can be either a text searchable format or an

[41] See attached Exhibits K and L (minority reports discussing benefits of full Internet access).

image only graphic format. The effort required to search an image-only format by name is certainly greater than that for text-based format.

Use of random and nonpredictable file names is necessary to reduce the possibility of avoiding the log-in process and jumping directly to the calendar file. Otherwise, if the Monday calendar file is always titled "Mondaycalendar," then software programs will know what file to look for.

Names indexes present a particular problem in the preconviction context. Most court case management systems include both name and case number indexes to locate the cases. Removing the name index completely is one option, but that also removes the name index from postconviction matters as well. Another option is to remove the preconviction cases from the reach of the name index search.

The advisory committee was concerned about the potential ramifications of these measures, both in terms of effectiveness and overall costs and in terms of impact on the courts' current technology efforts, including the roll out of its new case management system known as MNCIS. Also of concern was the impact on current customers of electronic records in the Fourth Judicial District, which publishes conciliation court, housing court, and high-profile case records over the Internet, and has in excess of 200 paid subscribers to its electronic access service that includes all of its civil and criminal case records. The committee appointed a special fact-finding subcommittee to investigate the potential ramifications, and the results of that subcommittee's work is attached as Exhibit N to this report.

The fact-finding subcommittee found that these measures would not significantly affect the budget or time frame for the MNCIS project. The advisory committee will have to define "preconviction" with enough detail to allow IT staff to correctly implement any policy.

The impact on the Fourth Judicial District is less clear, although its separate SIP system will eventually be replaced by MNCIS within the next year, which may obviate most of the problem. Taking away preconviction records from subscription customers may add staff and terminal equipment and operation costs as it is anticipated that current subscribers will continue to obtain preconviction records by coming to the courthouse.

Regarding continued effectiveness, court technology staff has advised the advisory committee that there is no real yardstick. Technological advances may eventually obviate any of these measures, but advances and vigilance may also provide new measures and continued effectiveness. It is anticipated that keeping ahead of technical advances will be a constant struggle.

Recommendation on Unproven Criminal Accusations

By a close vote of 9 to 7, a majority of the advisory committee agreed that Internet publication of preconviction court records should, to the extent feasible, be posted on the Internet in a format that is not searchable by defendant name by automated tools. This means that preconviction cases can appear on court calendars posted on the Internet if measures are taken to prevent automated searching, such as using prove-you-are-human log-ins, random file names, and image-only file format. This also means that a criminal case in preconviction status will not show up on a name index search conducted via the Internet but will show up on a name index search conducted at the courthouse public access terminal. This recommendation is codified in proposed Rule 8, subd. 3(c).

The recommendation defines "preconviction" criminal case records as records for which there is no conviction as defined in MINN. STAT. § 609.02, subd. 5 (2003), which states:

> "Conviction" means any of the following accepted and recorded by the court:
>
> (1) a plea of guilty; or
> (2) a verdict of guilty by a jury or a finding of guilty by the court.

The Minnesota Supreme Court has ruled that the general practice to be followed is to have a conviction "recorded" in a judgment entered in the file in accordance with MINN. R. CRIM. P. 27.03, subd. 7.[42] That rule states:

> "Subd. 7. Judgment. The clerk's record of a judgment of conviction shall contain the plea, the verdict of findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The sentence or stay of imposition of sentence is an adjudication of guilt

Thus, a continuance for dismissal under MINN. STAT. § 609.132 that occurs before any guilty plea is accepted and "recorded" by the court as provided above would not be a conviction. Similarly, any diversion that occurs before a guilty plea is accepted and "recorded" by the court as set forth above would not be a conviction. A stay of imposition or execution of sentence, on the other hand, constitutes an

[42] *State v. Hoelzel*, 639 N.W.2d 605 (Minn. 2002).

adjudication under MINN. R. CRIM. P. 27.03, subd. 7, quoted above, and a conviction would be considered "recorded" once the record of a judgment has been entered in the file.[43] Other situations that would not result in a "recorded" conviction include the retention of unadjudicated offenses under MINN. STAT § 609.04 (2003) or issuing a stay of adjudication under *State v. Krotzer*, 548 N.W.2d 252 (Minn. 1996).[44]

Attorney Records

Information on licensed and registered attorneys is maintained by the Clerk of the Appellate Courts in the attorney registration database. Rule 9 of the Rules of the Supreme Court for Registration of Attorneys limits public access to attorney information both over the Internet and in bulk record disclosures:

> Rule 9. ACCESS TO ATTORNEY REGISTRATION RECORDS Attorney registration records shall be accessible only as provided in this rule.
>
> A. Public Inquiry Concerning Specific Attorney. Upon inquiry, the Clerk of the Appellate Courts may disclose to the public the name, address, admission date, continuing legal education category, current status, and license number of a registered attorney, provided that each inquiry and disclosure is limited to a single registered attorney.
> B. Publicly Available List. The Clerk may also disclose to the public a complete list of the name, city, and zip code of all registered attorneys.
> C. Lists Available to Continuing Legal Education Providers and the Courts. Upon written request and payment of the required fee, the Clerk may disclose to a bona fide continuing legal education business a complete list of the name, address, admission date, continuing legal education category, current status, and license number of all registered attorneys. The Clerk may also disclose the same information to a court or judicial district solely for use in updating mailing addresses of attorneys to be included in a judicial evaluation program.

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[43] The fact that a person may eventually complete probation without the sentence being imposed or executed merely affects the level of conviction rendered. *See* MINN. STAT. §§ 609.13, .135 (2003).

[44] *State v. Hoelzel, supra.*

D. Trust Account Information. Trust account information submitted by attorneys as part of the attorney registration process is not accessible to the public except as provided in the Rules of Lawyer Trust Account Board. Rules of the Supreme Court for Registration of Attorneys

This rule was developed after consultation with members of the bar and attorney information is now available on the main court web site (www.courts.state.mn.us). The attorney registration database feeds information into court case record management systems at all levels. Thus, the same limitations on access to attorney information will apply to the attorney registration information imported into case management systems.

Conviction Records

One advisory committee member believes that there is no need for the courts to "publish" criminal conviction information on the Internet in light of the publication of conviction information by the Minnesota Bureau of Criminal Apprehension ("BCA"),[45] and in light of the fact that the court is bound to ensure that dissemination of conviction information does not obviate the rehabilitative goals of the criminal justice system. Other committee members noted, however, that the BCA makes publicly accessible only felony, gross misdemeanor, and targeted misdemeanor conviction information for a period of 15 years after discharge from sentence,[46] and that records that the BCA cannot match with fingerprint files are not publicly accessible. These committee members also pointed out that conviction information is necessary for background checks on all potential tenants and employees (not just those for whom statutes mandate a background check). Thus, there is a need for court publication of conviction records.

Family Law Records

A small number of the advisory committee believes that: (1) the details of marriage dissolution (except the fact that marriage dissolution occurred and the dissolution's impact on real estate) are "nobody's business" and that the requirement for court intervention to rescind a marriage contract should not

[45] The BCA is required to provide Internet access to this information by July 1, 2004, and may charge a fee for such access. MINN. STAT. § 13.87, subd. 3 (Supp. 2003).
[46] MINN. STAT. § 13.87, subd. 1 (2002).

change what is essentially private business into a public matter; (2) traditional appellate remedies and freedom of speech are sufficient means to keep judges accountable so further accountability through public access is not necessary; and (3) access to Internet and paper records of marriage dissolution cases should be limited to a certificate of dissolution and a summary real estate title document.[47] Most other committee members, however, believe that limiting Internet access to court-controlled records, coupled with expanded closure of financial source documents discussed above, removes a significant amount of troublesome information from public access and that some public access is necessary to hold the court system accountable in marriage dissolution cases.

Go Slow Approach Recommended

The advisory committee's recommendations on Internet access[48] should be viewed as the first step in a go-slow approach to providing more remote access to information. As indicated above, some courts that have simply begun posting all public records on the Internet have encountered numerous problems and have had to pull back and reconsider their policy in light of privacy concerns raised by persons identified in the records. The committee agreed that the potential for damage to individuals necessitates a careful approach.

Bulk Records

Bulk records refer to compiled records such as a database containing some or all of the elements of an online computer system. The courts have historically maintained such databases for analytical purposes, and the advent of data warehouse technology makes the data more accessible.

Deciding What Records to Release in Bulk

In its January 2004 preliminary report for public comment, the advisory committee recommended that only those court records that are accessible to the public on the Internet (discussed above) should be accessible to the public in bulk format.[49]

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[47] See Minority Report-Family Law Records, set forth in Exhibit G attached to this report.

[48] See proposed ACCESS RULE 8, subd. 2, set forth in Exhibit A attached to this report.

[49] Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch, *Preliminary Recommendations of the Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch, Report for Public Comment,* Jan. 21, 2004, p. 12. The report also (footnote continued next page)

Near the end of its deliberations, the committee adopted this recommendation by a vote of 11-3. At the final meeting, a proposal to modify the recommendation was presented. After it was pointed out that a member of the minority could not make a motion to reconsider the issue, the proposal failed because no motion was made. All committee votes, however, were taken subject to review of the final draft of the report, which was to include all minority reports members desired to submit. At the end of the review period, a minority report recommending the modified bulk data proposal was submitted together with information indicating that a number of committee members now supported the modified bulk data proposal. Not all members had an opportunity to review or comment on the modified bulk data report before the end of the review period. In order to maintain the integrity of the committee process and allow clear expression of the level of committee support for the various alternative proposals, the alternative proposals on bulk data access are set forth in the proposed rule as alternative drafts of ACCESS RULE 8, subd. 3. Each alternative and its level of committee support is explained in a separate exhibit attached to the report (see Exhibits I, J and K). Exhibit L also addresses the alternatives. The committee believes that it is appropriate and sufficient to note that the recommendation regarding what court records should be released in bulk format is contested and that the committee is closely divided on the issue.

Fees for Bulk Records

The advisory committee also discussed the fees to be charged for bulk data. Section 6.0 of the *CCJ/COSCA Guidelines* suggests that "reasonable fees" should be charged for bulk data. ACCESS RULE 8, subd. 3, currently allows a commercially reasonable fee for data with commercial value.[50] The State Court

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included a minority recommendation that all court records publicly accessible in any format at the courthouse should be accessible in bulk format. *Id.* at p. 67.

[50] The current charge of 2.81 cents per-kilobyte is based on fees paid by on-line users in a pilot project that involves agency access to the state courts' TCIS® system from which the database is extracted. Each TCIS® screen contains between 1,000 and 2,000 characters, and in 1993 when the rate was first set there were approximately 33 million transactions. With an operating budget of approximately $5.5 million dollars for that year, users paid on the average 16.9 cents per 1.5 kilobyte of data. If it is assumed that there are four potential customers of the extract data (two newspapers, one TV station, and at least one commercial firm), the allocated costs would be 2.81 cents per kilobyte of data.
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Administrator's Office currently charges by the kilobyte for bulk data, and waives all but the copy costs for media and educational and noncommercial scientific institutions whose primary purpose is scholarly or scientific research, as long as the recipients agree to sign a fee waiver agreement that restricts the use of the data to noncommercial purposes.

Some advisory committee members believe that the courts should sell bulk data at high fees and use the proceeds to balance budgets and pay for public defenders and computer system development. Other members, however, believe that: (1) bulk data will only be accessible to sophisticated, capital-backed groups and that the average person will not have any meaningful access to bulk data; (2) the implementation of new data warehouse tools might eventually allow the public to obtain reports online; and (3) commercial data brokers will continue to harvest case records on a case-by-case basis and market their own bulk and online systems.

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Given that transactions and budgets have increased slightly since then, the 2.81 cents per kilobyte remains an appropriate fee.

The above charge is more than consistent with other state agency charges for data. The Department of Administration Print Communication Division charges $60.00 per 1,000 names and addresses for computer disk versions of mailing lists for licensed professionals (see htttp://www.comm.media.state.mn.us/bookstore/files/2003mlscatalog.pdf). A typical address contains approximately 100 to 200 characters or bytes. This yields a cost of between $.60 and $.30 per kilobyte (plus a flat $25 copy preparation cost). Moreover, most of these lists are maintained using off-the-shelf software, not sophisticated information systems like TCIS®.

The secretary of state offers numerous database tapes containing business registration information (names, addresses, tradenames, agent names, etc.). In 1993, when the court's 2.81 cents per kilobyte charge was established, the secretary of state's office "licensed" a complete set of 11 nine-track tapes containing all business records for $11,840. The tapes held a maximum of 18 megabytes each, which yielded a charge of $.05979 or $.06 per kilobyte. The license precludes the user from sublicensing the data and limits use to the normal course of the licensee's business. A license for the entire set now sells for $13,500, although the size has grown somewhat (pricing is not available online but only by calling 651-296-2803).

A majority of the advisory committee believes that bulk data should not be put on the Internet, but should be sold for commercial (i.e., revenue generating) fees. This fee recommendation is currently a part of the ACCESS RULES and is being renumbered as proposed ACCESS RULE 8, subd. 3 (see Exhibit A attached to this report). A minority of the committee believes that bulk data should be accessible on the Internet and that fees should be limited to actual costs of providing the data.[51]

Correcting Inaccuracies in Court Records

Another issue highlighted in the CCJ/COSCA Guidelines is the development of a policy on correction of inaccuracies in court records. Although inaccuracies have occurred from time to time in paper-format court records, the advent of Internet publication will significantly magnify the potential for harm that such errors can cause. Procedures have long existed for correcting paper-format records, and the advisory committee has recommended practical approaches to properly correct clerical errors in case records (see proposed ACCESS RULE 7, subd. 5).

There are some clerical or data entry-type errors that a court administrator can correct without the need for a court order. These include changes to the calendars and indexes. Changes to orders and judgments and other parts of the record, however, require formal legal action to correct.[52] The advisory committee is

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[51] *See* Exhibit J.

[52] *See, e.g.*, MINN. GEN. R. PRAC. 375 (expedited child support process; clerical mistakes, typographical errors, and errors in mathematical calculations in orders …arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of a party after notice to all parties); MINN. R. CIV. P. 60.01 (civil cases; clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party, and after such notice, if any, as the court orders); MINN. R. CRIM. P. 27.03, subds. 8, 9 (criminal cases: clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders; the court may at any time correct a sentence not authorized by law); MINN. R. JUV. PROT. P. 41.01 (juvenile protection cases; clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders; during the pendency of an appeal, such mistakes can be corrected with leave of the appellate court); MINN. R. CIV. APP. P. 11.05
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aware of errors such as the wrong address or even the wrong name recited in a criminal complaint. Such errors may surface during preliminary court hearings where corrections are conveniently made or authorized by the court. Such errors can also surface informally in a telephone call to court administrative staff who in turn may either point out the requirements for obtaining relief by motion or refer the matter to the source of the record (e.g., the prosecutor) who then takes appropriate steps to rectify the situation (e.g., a motion or corrected filing).

The advisory committee recommends a rule that allows a party to submit to the court administrator a written request for correction of court records along with evidence that the request has been served on all parties. The rule places a duty on court administrative staff to respond to a correction request by correcting the records when correction does not require an order, by forwarding a request for correction to the appropriate place (i.e., judge or a party), or by returning the request and allowing the individual to request other appropriate, formal relief from the court (e.g., in the form of a motion). The committee believes that a written request is not a significant barrier to non-English speaking individuals as it is no more difficult than filling out an application to proceed *in forma pauperis* (i.e., without payment of filing fees). Although service on parties is normally not involved in the *in forma pauperis* application situation (because the other party is often not involved in the litigation at that point), in many circumstances due process arguably requires notice to opposing parties when modifications to court records are sought.

It is still not clear what remedy is available when the individual affected by an inaccurate court case record is not (or was not) a party to the case. Only parties or others with standing (e.g., a guardian ad litem) can make motions to the court. The Minnesota Supreme Court has determined that intervention[53] is an appropriate process for nonparties to contest the closure of civil case records.[54] It is not clear whether intervention would be available for the purpose of correction of a civil case record,[55] and even if it were, it is not a very practical solution. It is also not

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(differences as to whether the transcript or other parts of the record on appeal truly disclose what occurred in the trial court are to be submitted to and determined by the trial court; material omissions or misstatements may be resolved by the trial court, stipulation of the parties, or on motion to the appellate court).

[53] MINN. R. CIV. P. 24.

[54] *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986) (contesting closure of minor settlement records).

[55] MINN. R. CIV. P. 24.01 permits intervention as a matter of right when "the applicant claims an interest relating to the property or transaction which is the
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clear how often the need for nonparty correction of court records will arise. The advisory committee's recommendations do not address this issue.

Changes Regarding Access to Case Records

The foregoing recommendations on Internet access, bulk access, and record correction represent the core of the advisory committee's work. The committee also considered whether there are court case records that should not be accessible to the public regardless of the format (i.e., paper or electronic). The commentary to Section 4.6 of the *CCJ/COSCA Guidelines* lists records that courts should consider making confidential whether in paper or electronic (i.e., Internet) format. The committee compared the items on this list with Minnesota law[56] and the law of several other jurisdictions, and considered comments and information received by the advisory committee. The committee is recommending only a few changes to existing law regarding public access to case record information in all formats.

Race Information

At the request of the Minnesota Supreme Court Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts ("Implementation Committee"), the state trial courts have recently begun to collect race data from litigants in criminal, traffic, and all juvenile court matters. The litigants in these cases are asked to fill out a race census form[57] and the court staff then enters the race information into the trial courts' online computer systems.[58] The paper forms

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subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." MINN. R. CIV. P. 24.02 provides permissive intervention when "the applicant's claim or defense and the main action have a common question of law or fact."

[56] The State Court Administrator maintains tables of these laws and rules. The committee recommends that the periodically updated tables posted on the state court web site replace Appendices B, C and D under the current ACCESS RULES (see proposed Rules 4, 5 and 6 attached in Exhibit A to this report).

[57] The main census form is attached as Exhibit E to this report. A Spanish translation is also available.

[58] This is not the only type of race data contained in trial court computer systems. Other race data fields capture race data from other sources such as pleadings and reports filed in the cases. Some of these source documents are not accessible to the public, such as presentence investigation reports. MINN. STAT. §§ 609.115, (footnote continued next page)

are not retained in the court files related to the case and are destroyed after the data is entered. Currently, race census data are not displayed on public access terminals attached to these online systems, but the race census data are included in the bulk data databases[59] that are provided to the public.[60]

The advisory committee solicited the opinion of the Implementation Committee as to whether public access to race census data should be: (1) completely prohibited expect by court order (which presumably would mean that some researchers might be permitted access by court order); (2) prohibited only when access is sought via the Internet; (3) wide open including Internet publication; or (4) some other variation.[61] The Implementation Committee unanimously believes that access to race census data should be completely prohibited in any form, whether via the Internet, courthouse terminal, or paper documents, except that the court may allow access for research purposes pursuant to court order that limits ultimate public disclosure of the research to aggregate statistics that do not identify individuals by their race.[62]

The Implementation Committee's rationale includes that:

- Public disclosure of race census data undermines public trust and confidence in the courts because it takes advantage of a litigant's vulnerability; most are willing to disclose their race status for use in obtaining fair results, but not for resale to others.
- The fact that race information may be accessible in some form in a court file (e.g., in a charging instrument or a police report), does not justify

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subds. 4, 6; 609.2244 (2002). Once entered into the system, however, there is no means of determining which source document was used, and this commingling of inaccessible with potentially accessible information results in no public access to the race data entered in these other race data fields. The race data would, however, be accessible to the public through the source document when that document itself is accessible to the public.

[59] Data is extracted from the online systems and maintained in extract databases or data warehouses.

[60] Juvenile delinquency databases, for example, are not accessible to the public. MINN. STAT. §§ 260B.163, subd. 1; 260B.171, subd. 4 (2002); MINN. R. JUV. DEL. P. 30.

[61] The implementation committee also provided an opinion concerning remote access to preconviction criminal records, discussed earlier in the report.

[62] See March 17, 2004, Minutes, Implementation Committee on Multicultural Diversity and Fairness in the Courts, at p. 1

making all race data more accessible; this changes the court's role from adjudicator to compiler.

- Access to race census data for legitimate research purposes can be authorized pursuant to court order; the Minnesota Supreme Court has a longstanding tradition of making non-publicly accessible juvenile court records available for legitimate research purposes pursuant to a court order and accompanying nondisclosure agreement.[63]

The advisory committee learned that public access to other statewide repositories of race data varies. The Department of Public Safety's Criminal Justice Statistics Center (formerly known as Minnesota Planning), for example, provides the public with only aggregate statistical information that does not link race/ethnicity with an individual defendant.[64] The Minnesota Sentencing Guidelines Commission, however, regards its monitoring data as public and the data includes links between offender and his or her race/ethnicity.[65]

Some advisory committee members believe that public access to race census records must be limited in order to continue to obtain a sufficiently high response rate for the race census forms. In contrast, other committee members believe that public access should be unlimited because complete public scrutiny of race-related issues is necessary to maintain a fair system.[66] These committee members point out that the race census records currently are accessible to the public and that this has not deterred voluntary responses.[67] Opponents counter that the current race census form (set forth as Exhibit E to this report) provides no notice of potential public disclosure of an individual's race status, and implies that the information will only be used for ensuring a fair system.

By a one vote margin, the advisory committee recommends that race census records should not be accessible to the public in any form subject to one exception. The exception is that the records may be disclosed in bulk format pursuant to a nondisclosure agreement in which the recipient of the information agrees to disclose only aggregate statistical information that does not identify the

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[63] *Id.*

[64] Email correspondence between Gail Carlson, Department of Public Safety, to Michael Johnson, advisory committee staff, dated March 18, 2004.

[65] Email correspondence from Jill Payne, Minnesota Sentencing Guidelines Commission, to Michael Johnson, advisory committee staff, dated March 18, 2004.

[66] *See, e.g.,* the minority attached as Exhibit M.

[67] *Id.*

race of any individual, and the custodian of the records reasonably determines that such access will not compromise the confidentiality of any individual's race. This is similar to what occurs now in regard to disclosure of juvenile court records for research purposes[68] except that only the nondisclosure agreement is required; the committee believes that there should be no need for a court order as long as an appropriate nondisclosure agreement is in place and the custodian of the records reasonably determines that such disclosure will not compromise the confidentiality of any individual's race status. The custodian's duty to make a reasonable determination that disclosure will not compromise the confidentiality of any individual's race status is taken from the "summary data" provisions of the executive branch Data Practices Act.[69] This recommendation is set forth in ACCESS RULE 4, subd. 1(e).

Juror Supplemental Questionnaires

In December 2001 the Minnesota Supreme Court Jury Task Force recommended that juror questionnaires used to supplement oral examination of jurors in civil

[68] Annual disclosures of juvenile delinquency records to the National Center for Juvenile Justice, for example, currently require a nondisclosure agreement between the Center and state court administration in which the Center agrees to limit disclosures to aggregate statistics, subject to attorney fees and injunctive relief for violations. Once the Agreement is signed, a request for disclosure is presented to the Supreme Court, which then issues an order authorizing disclosure of the records pursuant to the terms of the nondisclosure agreement. *See, e.g., Order Authorizing Disclosure of Juvenile Court Database for Research Purposes*, No. C4-85-1848 (Minn. S. Ct. filed May 14, 2001).

[69] MINN. STAT. §§ 13.02, subd. 19; 13.05, subd.7 (2003). The minority report set forth in Exhibit L criticizes this approach in part on the basis that the person making the request must disclose their identity when they may wish to remain anonymous. The minority report then argues that preservation of anonymity is the reason the legislature expressly prohibits executive branch officials from demanding an identity as a condition of permitting access. MINN. STAT. § 13.03, subd. 12 (2002). What the minority left out is the fact that this applies only when the records are publicly accessible; a requestor's identity must be disclosed to an executive branch agency if the agency is going to allow the requestor access to confidential or private data for purposes of preparing "summary data." *See* MINN. STAT. § 13.05, subd. 7 (2002) (requestor must agree not to disclose and agency must reasonably determine that access by requestor will not compromise private or confidential data).

cases be sealed.[70] The advisory committee agrees with this recommendation (see proposed changes to MINN. R. CIV. P. 47.01, [71] attached as Exhibit B to this report). These supplemental questionnaires can contain highly personal information. Although the same issue exists in criminal cases, there are constitutional issues involved. The Minnesota Supreme Court has recently determined that individual answers to supplemental juror questionnaires in criminal cases may be sealed only after there has been a balancing of the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. There must also be a finding that there is a substantial likelihood that conducting the voir dire in public would interfere with an overriding interest, including the defendant's interest in a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public.[72]

Juror Qualification Questionnaires and Social Security Numbers

A qualification questionnaire is forwarded to all individuals being called for jury service to obtain certain qualification information. Public access to the qualification information is governed by MINN. GEN. R. PRAC. 814, which delays unlimited public access until one year has elapsed since preparation of the list of jurors selected to serve and all persons selected to serve have been discharged. Prior to the expiration of the one-year period, the public may obtain access by submitting a written request with a supporting affidavit setting forth reasons for the request, and the court must grant the request unless the court determines that access should be limited in the interests of justice.

Although a few advisory committee members questioned the rationale for the one-year period in MINN. GEN. R. PRAC. 814, the committee concluded that no substantive change was needed at least in regard to civil cases. In regard to criminal cases, as the discussion above on supplemental questionnaires indicates, there are constitutional limitations. The criminal rules advisory committee has recommended that the "interests of justice" standard for closure of qualification questionnaire information during the one-year period be replaced with the standard and procedure applicable to supplemental juror questionnaires discussed above. In other words, public access to qualification questionnaires of jurors assigned to a

[70] *Minnesota Supreme Court Jury Task Force Final Report*, December 20, 2001, No. C7-00-100, at 32.
[71] MINN. GEN. R. PRAC. 814 governs qualification questionnaires that are mailed to jurors before they are summoned for jury service; but that rule does not apply to "supplemental" questionnaires which judges distribute to potential jurors.
[72] MINN. R. CRIM. P. 26.02, subd. 4(4) (effective 2-1-04).

criminal case could be limited only after there has been a balancing of the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. Before limiting public access, the court must also make a finding that there is a substantial likelihood that conducting the voir dire in public would interfere with an overriding interest, including the defendant's interest in a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. The access to records advisory committee agrees with this recommendation and the proposed changes to MINN. GEN. R. PRAC. 814 are set forth in Exhibit C along with other editorial and grammatical changes.

Another advisory committee recommendation affecting juror qualification information is to make explicit the requirement that juror social security numbers not be disclosed to the public or the parties in a case. This recommendation is also included in the proposed changes to MINN. GEN. R. PRAC. 814 attached as Exhibit C to this report. Social security numbers are required in order to pay juror fees in excess of a certain amount and there is no valid reason for disclosing the social security numbers beyond those involved in the fee payment process. Although current federal law combined with state requirements protects juror social security numbers, the federal law is difficult to understand[73] and jurors deserve a clear directive, particularly in light of recent criminal procedure modifications regarding access to juror information discussed in the preceding section of this report.

MINN. GEN. R. PRAC. 814 also addresses retention of juror records, and both the Minnesota Supreme Court Jury Task Force[74] and the Minnesota Supreme Court Advisory Committee on the rules of Criminal Procedure have made recommendations about the appropriate retention period. The Minnesota Supreme Court has assigned the issue of retention of jury records (along with other related administrative matters) to the to the Advisory Committee on the General Rules of

[73] 42 U.S.C. § 405(c)(2)(C)(viii) (2003).

[74] *Minnesota Supreme Court Jury Task Force Final Report*, December 20, 2001, No. C7-00-100, at 30; Supreme Court Advisory Committee on the Rules of Criminal Procedure, *Report and Proposed Amendments to the Rules of Criminal Procedure Concerning the Supreme Court Jury Task Force's Recommendations*, September 29, 2003, No. C1-84-2137, at pp. 6 and 7; Letter from Hon. Robert H. Lynn, Chair of the Criminal Rules Advisory Committee, to the Advisory Committee on Rules of Public Access, undated (clarifying position on retention issue).

Practice,[75] and the Access to Records Advisory Committee has not made a recommendation on this issue. Any comments received on the retention issue will be forwarded to the Advisory Committee on the General Rules of Practice for its consideration.

Party Social Security Numbers and Financial Documents

The advisory committee also recommended a change with respect to the treatment of social security numbers and financial information submitted in marriage dissolution cases. Current law and court rules direct parties to submit the social security number on a separate, confidential information sheet, and to submit tax returns in a confidential envelope. The ultimate responsibility for failure to redact the social security numbers currently lies with the court administrator. Such redaction is time consuming, and, in a file with numerous documents, the possibility of missing the redacting of just one social security number is great. The committee believes that it is appropriate to place the redaction burden on the persons who submit the documents to the court.[76] With the increasing number of unrepresented litigants in family law cases, however, the committee understands and recommends that this burden must be accompanied by clear education of litigants involved in these cases. The committee also agreed that financial account numbers and other financial source documents such as wage stubs, credit card statements and check registers should also be protected. The recommended procedures are set forth in proposed MINN. GEN. R. PRAC. 103, 313, and 355.05 and accompanying forms (attached as Exhibit D to this report).

Employer Identification Number

Closely related to the social security number of individuals is the federal employer identification number assigned to business entities. Although the executive branch

[75] *See Promulgation of Amendments to the Rules of Criminal Procedure*, No. C1-84-2137 (Minn. S.Ct. filed Dec. 10, 2003) (order promulgating rules and assigning issues).

[76] Federal law imposes the confidentiality of SSN whenever submission of the SSN is "required" by state or federal law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii) (2003). The committee proposes a rule whereby submission of SSN by the parties is only "required" when done in conformity with the rule. This approach has been successfully operating in the State of Washington. WASH. R. GEN. GR 22 (2003).

has a universal confidentiality requirement for social security numbers,[77] there is no similar blanket confidentiality for employer identification numbers. The employer identification number is confidential as part of tax return information in the hands of the state revenue and tax department,[78] and as part of independent contractor identification and payment information when vendors contract with executive branch agencies.[79] Although widespread access to a business' employer identification number may not raise the same identity theft risks as access to an individual's social security number, there is still some potential for mischief. The advisory committee has included in its recommendation some optional language that would protect the employer identification number from public access in case records to the same extent that the social security number is protected. The committee is particularly interested in obtaining feedback on this element of its proposals.

Witness Identifiers

A minority of the advisory committee believes that some witness identifiers such as addresses and telephone numbers should be kept out of public view entirely. Public access to witness identities does promote accountability. The majority of the committee believes that existing procedures for closing individual records remains an appropriate solution to address certain individual situations. Historically, dating back to the English tradition, the identity of witnesses assisted the community in determining the honesty of a witness. This may be particularly important in the case of expert witnesses whose opinions can be important to the outcome of cases.

Court Reporter Notes and Tapes

The Minnesota Association of Verbatim Reporters & Captioners ("MAVRC") association asked the advisory committee to consider modifying ACCESS RULE 3, subd. 5, as follows (additions indicated by underlined text):

> Subd. 5. "Records" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court

[77] MINN. STAT. § 13.49 (2002) (does not apply to social security numbers filed in documents or records filed or recorded with the county recorder or registrar of titles, other than documents filed under section 600.13).
[78] MINN. STAT. § 270B.02, subd. 1 (2002).
[79] MINN. STAT. § 13.43 (2002); see also MINN. STAT. § 270.66, subd. 3 (2002) (requiring all persons doing business with the state of Minnesota to provide their social security number or employer identification number).

> administrator, regardless of physical form or method of storage. A "record" does not necessarily constitute an entire file, as a file may contain several "records." Court reporters' notes shall be available to the court for the preparation of a transcript when the court reporter is unavailable to produce a transcript in a timely manner. Court reporter's notes shall be defined as, in the case of stenographic court reporters, the court reporter's paper notes, and in the case of electronic reporters, the electronic reporter's tape recordings and logs.[80]

The purpose for the recommended change is to avoid public access to a stenographic reporter's backup tapes, which MAVRC believes are not a reliable method for capturing the record by themselves, and to ensure that the reporter who prepared the notes has an opportunity to transcribe them before the court turns them over to another reporter for transcription.[81] The Minnesota Supreme Court has recently modified the requirements for mandatory transcripts in both criminal and juvenile cases and, in doing so, has assigned to the General Rules of Practice Advisory Committee the responsibility for rule drafting regarding the availability of notes, tapes and personal dictionaries to the court for preparation of a transcript. The Access to Records Advisory Committee agrees that the ACCESS RULES should be limited to public access issues and that access by the court is appropriately the subject of some other set of rules, such as the general rules of practice for the district court.

Regarding public access to backup tapes, the proposed language would not achieve the result desired by MAVRC, i.e., precluding public access. The existing language in ACCESS RULE 3, subd. 5, regarding availability of notes to the court was clearly not intended to create any limitation on public access.[82] Thus, notes

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[80] Letter from Barbara Nelson, President, Minnesota Association of Verbatim Court Reporters & Captioners, to Hon. Paul Anderson, advisory committee chair, dated February 9, 2004.

[81] *Id.*

[82] The predecessor advisory committee explained in its 1987 report that: (1) the term "record" would include a court reporter's stenographic notes that have been filed with a court administrator; (2) that freelance reporters often claimed that they own stenographic notes and refused to file them with the court notwithstanding the directive in Minn. Stat. § 486.03 for such filing; and (3) the committee concluded that it could not resolve the ownership issue within the ACCESS RULES but felt that it would be useful to clarify a court reporter's responsibility to make the notes available for preparation of a transcript. *Report to the Minnesota Supreme Court*
(footnote continued next page)

and backup tapes are subject to the general presumption of public access in ACCESS RULE 2 unless some other provision of law requires otherwise.

The state court administrator's office has consistently taken the position that: (1) conciliation court audio tapes are not accessible to the public under to ACCESS RULE 4, subd.1 (c) because the tapes only serve as the judge's notes as no official transcript can be made for these proceedings; (2) videotaped records of court proceedings are not accessible to the public under Minnesota Supreme Court order;[83] and (3) other tapes and notes are presumptively accessible to public provided the proceeding itself is accessible to the public, but the public may not have a copy of the tapes unless public audio or video coverage of the proceeding was authorized by court order.[84]

A few committee members are concerned that public access to backup tapes may result in no backup tapes being made. Beyond this, however, there was no support for a change to make all such tapes off limits to the public.

Administrative Records

The ACCESS RULES also address administrative records. These are records not related to specific cases, including employee records, law library records, and competitive bidding records. The advisory committee recommends changes designed to bring some of these provisions more in line with their executive branch counterparts, where appropriate (see proposed ACCESS RULE 5 set forth in Exhibit A to this report). Proposed committee comments following each rule explain the nature of the changes.

(footnote continued from previous page)
From the Advisory Committee on the Rules Governing Access to Records of the Judiciary, Aug. 17, 1987, at page 7 (Minn.S.Ct. file #C4-85-1848).

[83] *Videotaped Records of Court Proceedings in the Third, Fifth, and Seventh Judicial Districts*, No. C4-89-2099 (Minn. S. Ct. filed Nov. 17, 1989).

[84] MINN. CODE JUD. COND. § 3A(10); *In Re Modification of Section 3A(10) of the Minnesota Code of Judicial Conduct*, (Minn. S. Ct. filed Jan. 11, 1996); *Audio and Video Coverage of Trial Court Proceedings* (Minn. S. Ct. filed April 18, 1983); *Decree amending Supreme Court Case Dispositional Procedures* (Minn. S. Ct. filed Dec. 11, 1998).

Vital Statistics Records

Most courts have transferred responsibility for handling vital statistics records to local, executive branch agencies. It is expected that this statewide transition will be completed by the end of next year. The advisory committee recommends that, at the end of the transition, ACCESS RULE 6 and its related table be deleted and simply reserved for future use. The state court administrator's office should keep the Minnesota Supreme Court aware of the status of the transition.

Contracts With Vendors for Information Technology Services

Independent contractors performing information technology services for the judicial branch have access to records that are not accessible to the public. A proposed new ACCESS RULE 10 (set forth in Exhibit A) reflects the current practice of the courts in utilizing nondisclosure agreements for such contractors.

Appendices and Tables in the Rules

The ACCESS RULES originally included several appendices that identified then-existing statutes, court rules and other legal authority governing access to a particular case, administrative and vital statistics records. These appendices are in constant need of revision to keep up with new laws, rules and decisions. The advisory committee concluded that modifying the appendices via rule amendment is impractical. The state court administrator maintains updated lists of statutes, court rules and other legal authority governing access to case, administrative and vital statistics records. The current set of lists are set forth in Exhibits R, S and T attached to this report. The committee recommends that regular publication of these lists on the Minnesota Supreme Court's web site take the place of the appendices so that current information is more readily available.

Remedies and Liability for Violations

The advisory committee considered what remedies, if any, are available when a court record custodian fails to comply with the ACCESS RULES. Although court employees can be disciplined for such violations, disciplinary action may not compensate for any resulting damages. For example, the committee considered what remedy is available to a business owner whose trade secret information is improperly disclosed by a court administrator contrary to a protective order? What remedy lies for a person who has had criminal charges dismissed and expunged, but who later loses a job opportunity because court staff improperly

disclosed the expunged record? What would be the basis for a damages claim in such situations, and what, if any, immunity would apply?

The possibility of official liability exposure against the government entity (as opposed to an individual court employee) exists under the state tort claims act, which authorizes claims for "injury to or loss of property or personal injury or death caused by an act or omission of an employee of the state while acting within the scope of office or employment."[85] Statutory exceptions to this liability, also referred to as statutory immunity, exist where an employee is exercising due care in the execution of a valid or invalid statute or rule, or is performing a discretionary duty, whether the discretion is abused.[86] Although judges certainly have authority to exercise discretion in making decisions about access to records, court administrators typically do not. Thus, in the absence of due care, a claim for damages under the state tort claims act for a court administrator's improper disclosure of records would likely not be shielded by statutory immunity.

Similarly, the common-law doctrine of official immunity insulates discretionary action of a public employee at the operational level (as opposed to the planning level), but the discretion exercised must be more than a ministerial act.[87] To be ministerial, the duty must be absolute, certain and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.[88] As discussed above, judges have discretionary authority in regard to record access issues, but court administrators typically do not. Thus, a claim for damages under the state tort claims act for a court administrator's improper disclosure of records would likely not be shielded by common-law official immunity.[89]

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[85] MINN. STAT. § 3.736, subd. 1 (2002). The total liability is $300,000 for a single claimant and $1,000,000 for any number of claims arising out of a single occurrence. MINN. STAT. § 3.736, subd. 4 (2002).

[86] MINN. STAT. § 3.736, subd. 3 (a), (b) (2002).

[87] *S.W. v. Spring Lake Park School Dist. No. 16*, 580 N.W.2d 19 (Minn. 1998).

[88] *Id*.

[89] Even if the individual employees are held immune, there is no automatic extension of such immunity to the employer. *S.W. v. Spring Lake Park School Dist. No. 16*, 592 N.W.2d 870 (Minn. App. 1999) (refusing to extend vicarious immunity to employer where employees were held immune on basis that extending immunity would reward public body for failure to develop and implement a basic security policy); *affirmed without opinion*, 606 N.W.2d 61 (Minn. 2000).

The possibility of individual liability exposure exists under the federal deprivation of rights statute.[90] Although the state and its employees cannot be sued in their official capacity under this federal statute,[91] state officials may be sued in their individual capacity under this federal statute,[92] subject to available common-law immunities.[93] The United States Supreme Court has granted absolute immunity from personal liability to a very limited class of officials whose special functions or constitutional status requires complete protection from suit, including the President, legislators carrying out their legislative functions, and judges carrying out their judicial (i.e., adjudicatory) functions.[94] These same officials receive at best only a reduced or qualified immunity from personal liability for administrative employment decisions.[95] Lower courts have issued conflicting decisions on whether court administrative staff is clothed with this same immunity when performing a duty that is part of a judicial process.[96] Given the ministerial

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[90] 42 U.S.C. § 1983 (2003).

[91] *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) (suits against state officials acting in their official capacity are suits against the state, and the state is not a "person" who is subject to § 1983).

[92] 42 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[93] *Hafer v. Maleo*, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991).

[94] *Id.*

[95] *Id*., citing *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988) (dismissal of court employee by judge).

[96] *Compare Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir. 1979) (immunity from claim that plaintiff failed to receive notice of an order) *with McCray v. State of Maryland*, 456 F.2d 1 (4th Cir. 1972) (no immunity where alleged negligence of clerk in failing to file document had impeded postconviction review).

nature of the duty of court administrative staff to protect certain records from public disclosure, it is unlikely that the federal courts would extend immunity to a wrongful disclosure situation.[97]

Liability may also arise under the invasion of privacy tort recently recognized by the Minnesota Supreme Court.[98] The tort of invasion of privacy recognized in Minnesota takes on three forms: (1) intrusion upon seclusion; (2) publication of private facts; and (3) appropriation. Publication of private facts is the most likely form of the tort to be used for an improper disclosure claim.

Publication of private facts requires: (1) public disclosure; (2) of a private fact; (3) which would be offensive and objectionable to a reasonable person; (4) which is not of legitimate public concern; and (5) which proximately caused damages to plaintiff.[99] Although newsworthiness precludes the recovery of damages, this preclusion may apply only when the facts at issue were contained in a record that is accessible to the public.[100] The tort may not be recognized when the private facts are communicated only to a single person or small group of people.[101] Thus, if the recipients of wrongfully disclosed court records do not further disclose the records, there may be no liability. If the recipients redisclose or publish the records, the claim would appear to be viable.

The advisory committee is also aware of the liability for executive branch agencies for violations of the Data Practices Act; such liability includes: (1) civil action against the governmental unit for damages, including costs and attorney fees, plus exemplary damages of up to $10,000 if the violation is willful; (2) injunctive relief; and (3) action to compel compliance including attorney fees and a civil penalty of up to $300 if the court compels compliance.[102] Willful violations also

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[97] *Id.*

[98] *Lake v. Wal-Mart*, 582 N.W.2d 231 (Minn. 1998).

[99] *Id.*, citing Restatement (Second) of Torts § 652D (1977).

[100] *See, e.g., Cox Broadcasting v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975).

[101] *Bodah v. Lakeville Motor Express*, 663 N.W.2d 550 (Minn. 2003) (privacy tort for publication of private facts; insufficient publication where social security numbers were distributed to 16 terminal managers); *Robbinsdale Clinic, P.A. v. Pro-Life Action Ministries*, 515 N.W.2d 88, 92 (Minn. App. 1994).

[102] MINN. STAT. § 13.08 (2002) (in determining whether to impose the $300 civil penalty, the court must consider whether the entity has substantially complied with requirements such as designating a responsible authority to receive access requests, designating a compliance official, preparing public documents that identify the responsible authority and the classification of records held by the

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create personal exposure for individuals in the form of misdemeanor criminal charges and just cause for suspension or dismissal from employment.[103]

The advisory committee vigorously discussed five options to address liability: (1) insert in the ACCESS RULES the same penalty provisions that are provided in the Data Practices Act.; (2) retain the status quo and simply rely on existing law without any reference to the issue in the ACCESS RULES; (3) retain status quo and state, without providing or imposing immunity, that the ACCESS RULES do not create any new cause of action; (4) insert a clause in the ACCESS RULES indicating that, absent willful or malicious violations, the ACCESS RULES do not create any new cause of action; (5) insert a clause in the ACCESS RULES indicating that, absent willful or malicious violations, there shall be no liability for violations of the ACCESS RULES.

Some advisory committee members believe that it is not fair to impose the executive branch Data Practices Act liability on a court because the scope of the court's role is so much broader than the typical executive branch entity, a court cannot reasonably control every piece of information that makes its way into the court's files, and the fear of such liability will stifle public access and result in denials of hundreds of daily access requests that are now routinely granted. For example, if a judge fails to keep all social security numbers or victim identifying information out of a judgment or order and then files it with the court administrator, who then provides public access to the judgment or order, it is the court administrator who will be sued for the violation, not the judge. The next time a request for similar documents arises, the court administrator will seek legal counsel who will advise the administrator to disclose it only if the recipient agrees to indemnify the administrator or the court issues an order authorizing the disclosure. The time and cost associated with obtaining such an agreement or order has the potential to bring effective public access to a halt. Such problems are not present if liability is limited to willful or malicious disclosures only.

Other advisory committee members favor liability for inadvertent disclosures, citing recent case law (invasion of privacy tort discussed above) that allows a damages claim for disclosure of social security numbers by a private entity, and the absence of a complete shutdown of access under the current exposure to liability. These members also question whether the court can in essence trump the state tort claims statute by declaring that there can be no liability for anything

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entity, developing access procedures, requesting and following advisory opinions from the department of administration, and training entity personnel).

[103] MINN. STAT. § 13.09 (2002).

other than willful or malicious violations of the ACCESS RULES. Other members explain that establishing the limits of liability is a part of establishing the duty to protect certain court records. The court has established immunity by court rule in other contexts that include record access duties.[104]

A majority of the committee determined that the ACCESS RULES should expressly state that, absent willful or malicious violations, there shall be immunity from liability for violations of the ACCESS RULES. This position is set forth in proposed ACCESS RULE 11 (see Exhibit A to this report).

Expungement

Expungement is a process where a party can request that a case, record or conviction be made to effectively 'disappear' from the court's records either completely or partially. Two types of criminal court record[105] expungement are available in Minnesota. One is a statutory procedure that is available only in limited circumstances[106] and results in sealing of the record and prohibiting its

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[104] *See, e.g.,* MINN. R. BD. JUD. STDS. 3 (members of the Board on Judicial Standards are absolutely immune from suit for all conduct in the course of their official duties); MINN. R. LAWYERS PROF. RESP. 21(b) (Lawyers Professional Responsibility Board members, other panel members, District Committee members, the Director, and the Director's staff, and those entering agreements with the Director's office to supervise probation are immune from suit for any conduct in the course of their official duties); MINN. R. ADMISSION TO THE BAR 12.A. (The Board of Law Examiners and its members, employees and agents are immune from civil liability for conduct and communications relating to their duties under the Rules of Admission to the Bar or the Board's policies and procedures); MINN. R. BD. LEGAL CERT. 120 (the Board of Legal Certification and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties); MINN. R. CLIENT SEC. BD. 1.05 (the Client Security Board and its staff are absolutely immune from civil liability for all acts in the course of their official capacity).

[105] If there is no criminal complaint, indictment, traffic ticket or tab charge filed in court (e.g., the prosecutor diverted the case or determined not to file charges), and the individual has a clean record for the past 10 years, a petition to the court is not necessary to expunge an arrest record. There is a statutory procedure that the individual can invoke directly through the executive branch department(s) that maintain arrest records such as the arresting agency and/or the Minnesota Bureau of Criminal Apprehension. MINN. STAT. § 299C.11(b) (2003).

[106] To qualify for expungment, an individual must have: (1) been charged with possession of a controlled substance under sections 152.18, subd. 1, 152.024, 152.052, or 152.027 and the proceedings were dismissed and discharged; or (2)

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disclosure except under certain conditions;[107] this procedure also applies to criminal records held by certain executive branch agencies such as law enforcement and the Bureau of Criminal Apprehension.[108] The other is derived from the constitution and affects only court records; it generally would not reach any records held by state or local executive branch agencies such as law enforcement or the BCA.[109]

Forms and instructions for requesting statutory expungement are available from the state court website,[110] and overall these documents provide clear direction to litigants. The advisory committee believes, however, that litigants should also be educated about the limitations of expungements such as the fact that expungement of a court record does not automatically require a private sector enterprise to delete the information from its records,[111] or that statutory expungement will not

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been a juvenile prosecuted as an adult and finally discharged by the commissioner of corrections or placed on probation and then discharged from probation; or (3) all pending actions or proceedings resolved in the individual's favor (e.g., charges were dismissed, found not guilty, or case did not otherwise result in a conviction. MINN. STAT. § 609A.02, subds. 1 - 4. (2003) (records of conviction for an offense for which registration is required under section 243.166 may not be expunged).

[107] Law enforcement agencies, prosecution or correctional authorities may seek an order to re-open a sealed record for the purpose of a criminal investigation, prosecution or sentencing, and the record may be opened without a court order for the purposes of evaluating a prospective employee of a criminal justice agency. MINN. STAT. § 609A.03, subd. 7 (2003).

[108] MINN. STAT. § 609A.01 (2003). DNA samples and DNA records held by the Bureau of Criminal Apprehension, that are related to a charge supported by probable cause, are not subject to sealing under the expungement statute. MINN. STAT. § 609A.03, subd. 7 (2003).

[109] *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981) (inherent authority of the court to seal its own records where necessary to prevent serious infringement of constitutional rights); *State v. Ambaye*, 616 N.W.2d 256 (Minn. 2000) (same); see State v. T.M.B., 590 N.W.2d 809 (Minn. Ct. App. 1999) (court lacks inherent authority to seal records maintained by executive branch unless there is a showing that the executive agents abused their discretion in the performance of a governmental function).

[110] At www.courts.state.mn.us, click on "Clerks Office" then click on "Court Forms," then select "Criminal," then scroll down to "Expungement."

[111] Some private enterprises may be required by laws such as the Fair Credit Reporting Act to refrain from reporting certain information that is no longer verifiable through court records, but a litigant may have to take steps in addition to
(footnote continued next page)

remove a firearms restriction imposed for a crime of violence.[112] Litigants should be aware of such limitations before beginning the expungement process, which can be both complex and costly.[113]

Effective Date

The advisory committee believes that while these recommendations may require a few months lead time to allow the courts and litigants to prepare for their implementation, it should be feasible to adopt them in late 2004 and have them take effect on January 1, 2005. The remote access provisions have built into them a practicality standard that requires Internet posting to the extent that the court has the technical capacity and resources to do so. The Minnesota Supreme Court has established a Technology Planning Committee that oversees the state funded technical resources and capacity for the court system. Through the TPC, for example, the transition of the trial courts to their new, statewide case management computer system (MNCIS) will involve a conversion of the majority of pending cases from the previous systems (minus those no longer retained through longstanding record retention schedules). As the remainder of the districts become state funded, this review will centralize, although some local ability may remain to post calendars and similar items that are currently found on some of the individual judicial district websites. Thus, it is anticipated that Internet access to court generated documents such as judgments and orders will be addressed on a statewide, or project-wide, basis, with due consideration given to technical capacity and resources.

(footnote continued from previous page)
obtaining the expungement to make this happen. *See, e.g.*, 15 U.S.C. § 1681i(a)(5) (2004) (if aconsumer disputes information in his credit file by filing a dispute with the consumer reporting agency, and the consumer reporting agency can no longer verify the information, it must be removed from the credit report).

[112] MINN. STAT. § 609A.03, subd. 5a (Supp. 2003).

[113] The procedure requires a detailed petition, service on the prosecutor and all entities whose records would be subject to the order, a hearing at which the judge determines whether the benefits of expungement outweigh the disadvantages to the public and public safety, an automatic stay of any order for 60 days plus the time period of an appeal, and a filing fee of $235 (no fees required if pauper status is granted or all pending proceedings were resolved in favor of the individual). MINN. STAT. §§ 609A.03; (2003).

Follow Up

The advisory committee's go-slow recommendation for Internet access to court records contemplates a follow up review. The committee believes that a one-time review should be conducted within six to twelve months after Internet access to court records has been implemented, and that continuity in committee membership is important to the thoroughness and efficiency of such a review process. The advisory committee recommends that an order reinstituting the committee should be made at the appropriate time.

EXHIBITS

Exhibit A: Proposed Changes To The Rules Of Public Access To Records Of The Judicial Branch

Key: Additions to the rules are indicted by underlined text and deletions indicated by strikeout text.

Rule 1. Scope of Rules.

These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. They do not govern access to records of the Tax Court or the Workers' Compensation Court of Appeals, which are part of the executive branch of the state. In addition, these rules do not govern access to records of the various Boards or Commissions of the Supreme Court as they are governed by independent rules promulgated or approved by the Supreme Court. A partial list of Boards and Commissions is set forth in Appendix A.

Finally, except as provided in Rule 4, subdivision 1(b) with respect to case records, these rules do not govern access to records of court services departments or probation authorities. Access to these records is governed by other applicable court rules and statutes, including ~~Minnesota Statutes, section~~ MINN. STAT. § 13.84 and its successor.

Nothing in these rules shall affect the disposition of records pursuant to ~~Minnesota Statutes, section~~ MINN. STAT. § 138.17 or its successor or prevent the return of documents or physical objects to any person or party pursuant to a court rule or order.

Rule 2. General Policy.

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the office having custody of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, ~~and~~ 6, and 8.

Rule 3. Definitions.

Subd. 1. Custodian. The custodian is the person responsible for the safekeeping of any records held by any court or court administrator's or clerk of court's office. In the absence of the person usually responsible, the person who is temporarily responsible for the records is the custodian. For purposes of remote and bulk electronic access under Rule 8, the state court administrator shall be the custodian for case records that are maintained in computer systems administered by the state court administrator's office.

Subd. 2. Judge. "Judge" means any justice, judge, judicial officer, referee, court-appointed arbitrator or other person exercising adjudicatory powers.

Subd. 3. Court. "Court" means the Supreme Court, the Court of Appeals, District, Juvenile, Family, Conciliation, County and Probate Court, and any other court established as part of the judicial branch of the state.

Subd. 4. Court Administrator. "Court administrator" means a person employed or appointed for the purpose of administering the operations of any court or court system, including the offices of judicial district administrator, court administrators of the respective counties, and state-wide court administrative agencies.

Subd. 5. Records. "Records" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage. A "record" does not necessarily constitute an entire file, as a file may contain several "records." Court reporters' notes shall be available to the court for the preparation of a transcript.

(a) Case Records. "Case records" means all records of a particular case or controversy.

(b) Administrative Records. "Administrative records" means all records pertaining to the administration of the courts or court systems.

(c) Vital Statistics Records. "Vital statistics records" means all certificates or reports of birth, death, fetal death, induced abortion, marriage, dissolution and annulment, and related records.

Rule 4. Accessibility to Case Records.

Subd. 1. Accessibility. All case records are accessible to the public except the following:

(a) *Domestic Abuse Records*. Records maintained by a court administrator pursuant to the domestic abuse act, ~~Minnesota Statutes, section~~ MINN. STAT. § 518B.01, until a ~~temporary~~ court order made pursuant to subdivision 5 or 7 of section 518B.01 is executed or served upon the record subject who is the respondent to the action;

(b) *Court Services Records.* Records on individuals maintained by a court, other than records that have been admitted into evidence, that are gathered at the request of a court:

(1) to determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts,

(2) to assist in assigning an appropriate sentence or other disposition in a case,

(3) to provide the court with a recommendation regarding the custody of minor children, and

(4) to provide the court with a psychological evaluation of an individual.

Provided, however, that the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

(c) *Judicial Work Product and Drafts*. All notes, memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared pursuant to ~~Minnesota Statutes, sections~~ MINN. STAT. §§ 546.24-.25.

(d) ~~*Criminal Cases;*~~ *Juvenile Appeal Cases*. ~~Case records that are made inaccessible to the public pursuant to the rules of criminal procedure or the rules of procedure for the juvenile courts.~~ Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the written opinion resulting from the appeal, are inaccessible to the public unless otherwise provided by rule or order of the appellate court.

(e) *Race Census Records.* The contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters, except that the records may be disclosed in bulk format if the recipient of the records:

(1) executes a nondisclosure agreement in a form approved by the state court administrator in which the recipient of the records agrees not to disclose to any third party any information in the records from which the identity of any participant or other characteristic that could uniquely identify any participant is ascertainable; and

(2) the custodian of the records reasonably determines that disclosure to the recipient will not compromise the confidentiality of any participant's race status.

(f) *Other*~~*Records Controlled by Statute*~~. Case records that are made inaccessible to the public pursuant to:

(1) state statutes, other than Minnesota Statutes, chapter 13;

(2) court rules or orders; or

(3) other applicable law.

~~A~~The state court administrator shall maintain, publish and periodically update a partial list of case records that are not accessible to the public~~is set forth in Appendix B~~.

~~(f) *Civil Cases*. Case records made inaccessible to the public by protective or other order of the court.~~

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules~~ of civil and criminal procedure~~.

Advisory Committee Comment~~Note~~ 2004

The 2004 deletion of the word "temporary" in Rule 4, subd. 1(a), reflects statutory changes that allow the initial, ex parte order to be the permanent order of the court if no hearing is requested. See 1995 MINN. LAWS ch. 142, §§ 4, 5 (amending MINN. STAT. § 518B.01, subds. 5, 7).

The 2004 reorganization of Rule 4, subd. 1, parts (d) and (f) is not substantive in nature. Documents admitted into evidence are also addressed in Rule 8, subd. 4. The substitution of a periodically updated list of inaccessible case records for Appendix B in Rule 4, subd. 1(e) recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify case records that are not accessible to the public. The list is updated as necessary, whereas Appendix B quickly became obsolete soon after it was first published. It is contemplated that the list would be posted on the Court's website for access by the general public.

The 2004 addition of race census records in Rule 4, subd. 1(e) is based on the understanding that race and ethnicity information is not solicited from participants for the purpose of reselling race status of individuals to commercial enterprises. The goal is to ensure fair resolution of cases, and the rule attempts to provide a limited right of public access consistent with that goal. Access to race census records, e.g., for research purposes, can be obtained pursuant to a nondisclosure agreement that limits ultimate public disclosure to aggregate statistics that do not identify individual participants. The court has a longstanding tradition of authorizing disclosure of juvenile court records for scholarly research using nondisclosure agreements. *See, e.g., Order Authorizing*

Disclosure of Juvenile Court Database for Research Purposes, No. C4-85-1848 (Minn. S. Ct. filed May 14, 2001). The custodian's duty to make a reasonable determination that disclosure will not compromise the identity of individuals is taken from the "summary data" provisions of the executive branch Data Practices Act. MINN. STAT. §§ 13.02, subd. 19; 13.05, subd.7, (2003).

The 2004 changes to Rule 4, subd. 2, recognize that a variety of rules address restrictive orders. The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see Rule 26.03, Rules of Civil Procedure and *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For child in need of protective services cases, see Rule 44.07, Rules of Juvenile Procedure. For juvenile delinquency cases, see Rule 10.05, subd. 5, Rules of Juvenile Procedure.

Rule 5. Accessibility to Administrative Records.

All administrative records are accessible to the public except the following:

Subd. 1. ~~Employee~~Personnel Records. Records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is accessible to the public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer-paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title and bargaining unit; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation, excluding information that would identify confidential sources who are employees of the judicial branch; the terms of any agreement settling any dispute arising out of an employment relationship; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public; and ~~city and~~ county of residence~~;~~.

(a) For purposes of this subdivision, a final disposition occurs when the person or group that is authorized to take the disciplinary action makes its final decision about the disciplinary action, regardless of the possibility of any later court proceedings or other proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation

occurs after the final decision of the person or group that is authorized to take disciplinary action, or arbitrator.

(b) Notwithstanding contrary provisions in these rules, a photograph of a current or former employee may be displayed to a prospective witness as part of an investigation of any complaint or charge against the employee.

(c) Notwithstanding contrary provisions in these rules, if an appointed officer resigns or is terminated from employment while the complaint or charge is pending, all information relating to the complaint or charge is public, unless access to the information would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "appointed officer" means the clerk of the appellate courts, the state court administrator, a judicial district administrator, and a court administrator of district court.

(d) Records under subdivision 1 may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, volunteer or independent contractor, or for the purpose of assisting law enforcement in the investigation of a crime committed or allegedly committed by an employee, volunteer, or independent contractor.

(e) Records under subdivision 1 must be disclosed to the department of employment and economic development for the purpose of administration of an unemployment benefits program under state law.

(f) Records under subdivision 1 may be disseminated to labor organizations to the extent that the custodian determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of Minnesota Statutes, section 179 and 179A. Records under subdivision 1 shall be disseminated to labor organizations and to the bureau of mediation services to the extent the dissemination is ordered or authorized by the Commissioner of the Bureau of Mediation Services.

(g) If the custodian determines that the release of records under subdivision 1 is necessary to protect an employee, volunteer or independent contractor from harm to self or to protect another person who may be harmed by the employee, volunteer, or independent contractor, records that are relevant to the concerns for safety may be released to: the person who may be harmed and to the person's attorney when the records are relevant to obtaining a restraining order; to a prepetition screening team conducting an investigation under section 253B.07, subdivision 1; or to a court, law enforcement agency, or prosecuting authority. If the person who may be harmed or the person's attorney receives records under this subdivision, the records may be used or released further only to the extent necessary to protect the person from harm.

Subd. 2. Applicant Records. Records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant~~;~~.

Subd. 3. Correspondence. Correspondence between individuals and judges; but such correspondence may be made accessible to the public by the sender or the recipient.

Subd. 4. Schedules and Assignments. The identity of appellate judges or justices assigned to or participating in the preparation of a written decision or opinion, until the decision or opinion is released~~;~~.

Subd. 5. Security Records. Records that would be likely to substantially jeopardize the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass, or physical injury such as security plans or codes~~;~~.

Subd. 6. State Owned or Licensed Trade Secrets. Records revealing a common law trade secret or a trade secret as defined in M.S.A. 325C.01 that is the property of the state and is maintained by a court or court administrator; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.~~;~~

Subd. 7. Copyrighted Material. Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired or is in the process of acquiring, including through licensing in whole or in part, a patent or copyright; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.~~;~~

Subd. 8. Competitive Bidding Records.

(a) Sealed Bids. Sealed bids and responses to judicial branch bid or procurement requests or solicitations, including the number of bids or responses received, shall be inaccessible to the public prior to the opening of the bids or responses at the time specified in the judicial branch ~~bid~~ request or solicitation.

(b) Submission of Trade Secret. Except as provided in subparagraph (c) of this rule, a common law trade secret or a trade secret as defined in ~~Minn. Stat.~~ MINN. STAT. § 325C.01~~,~~ that is required to be submitted pursuant to a judicial branch bid or procurement request~~,~~ shall be inaccessible to the public provided that:

(1) the ~~bidder~~ submitting party marks the document(s) containing the trade secret "CONFIDENTIAL;"

(2) the ~~bidder~~ submitting party submits as part of the bid or response a written request to maintain confidentiality; and

(3) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

(c) Contract. The following are accessible to the public: the existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 9. Compliance Records. Records and reports and drafts thereof maintained by the State Judicial Information Systems and the Trial Court Information Systems for purposes of compliance with ~~Minnesota Statutes, section~~ MINN. STAT. § 546.27~~;~~.

Subd. 10. Library Records. Records maintained by the state law library which: (a) link a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials; or (b) are submitted by a person applying for a borrower's card, other than the name of the person to whom a borrower's card has been issued.~~;~~

Subd. 11. Passport Records. Passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Office~~;~~.

Subd. 12. Attorney Work Product. The work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

Subd. 13. Other. Matters that are made inaccessible to the public pursuant to:

(a) state statute, other than Minnesota Statutes, chapter 13, or
(b) federal law; or
(c) rule or order of the Supreme Court.

~~A~~The state court administrator shall maintain, publish and periodically update a partial list of administrative records that are not accessible to the public~~is set forth in Appendix C~~.

Advisory Committee Comment-2004

The 2004 changes to Rule 5, subd. 1, are based on policy applicable to employee records held by the executive branch. MINN. STAT. § 13.43 (2002). There are some subtle differences from executive branch policy, however, including the fact that judicial discipline is governed by a separate set of procedures and access provisions. RULES OF THE BOARD ON JUDICIAL STANDARDS. In addition, judicial branch email addresses are not accessible to the public unless individual employees authorize disclosure. This helps minimize potential for ex parte contact prohibited by law. CODE JUD. CONDUCT § 3.A(7).

The 2004 changes to Rule 5, subds. 6, 7 and 8, reflect the existing practice. Trade secrets and copyrights are subject to state and federal law, and the specifics are generally clarified in procurement documents, from requests for bids to contracts, in the manner set forth in the rule. Once a vendor enters into a contract, the basic parameters of the contract relationship become accessible under Rule 5, subd. 1. These revisions provide notice to potential vendors of what to expect and ensure consistent results.

The 2004 changes to Rule 5, subd. 10, regarding library records provides consistent protection to information held by the library.

The 2004 substitution of a periodically updated list for Appendix C in Rule 5, subd. 13 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify administrative records that are not accessible to the public. The list is updated as necessary, whereas Appendix C became obsolete soon after it was first published. It is contemplated that the list would be posted on the Court's website for access by the general public.

Rule 6. Vital Statistics Records.

Vital statistics records held by any court or court administrator shall be accessible to the public except as provided by statute. ~~A~~The state court administrator shall maintain, publish and periodically update a partial list of vital statistics records that are not accessible to the public~~is set forth in Appendix D~~.

Advisory Committee Comment –2004

The 2004 substitution of a periodically updated list for Appendix D in Rule 6 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify vital statistics records that are not accessible to the public. The list is updated as necessary, whereas Appendix D became obsolete soon after it was first published. It is contemplated that the list would be posted on the Court's website for access by the general public.

Rule 7. Procedure for Requesting Access or Correction.

Subd. 1. To Whom Request is Made. A request to inspect or obtain copies of records that are accessible to the public shall be made to the custodian and may be made orally or in writing. The custodian may insist on a written request only if the complexity of the request or the volume of records requested would jeopardize the efficiency and accuracy of the response to an oral request. All requests must include sufficient information to reasonably identify the data being sought, but the requesting person shall not be required to have detailed knowledge of the agency's filing system or procedures, nor shall the requesting person be required to disclose the purpose of the request.

Subd. 2. Response. The custodian shall respond to the request as promptly as practical.

Subd. 3. Delay or Denial; Explanation. If a request cannot be granted promptly, or at all, an explanation shall be given to the requesting person as soon as possible. The requesting person has the right to at least the following information: the nature of any problem preventing access, and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation shall be in writing if desired by the requesting person. Appeals are governed by Rule 9 of these rules.

Subd. 4. Referral in Certain Cases. If the custodian is uncertain of the status of the record, the custodian may ask for a determination from the office of the state court administrator. The state court administrator shall promptly make a determination and forward it either orally or in writing~~by phone or by mail~~ to the custodian.

Subd. 5. Correction of Case Records. An individual who believes that a case record contains clerical errors may submit a written request for correction, no longer than two pages, to the court administrator of the court that maintains the record, with a copy served on all parties to the case. The court administrator shall promptly do one of the following: (a) correct a clerical error for which no court order is required; (b) forward the request to the court to be considered informally; or (c) forward the request to the party or participant who submitted the record containing the alleged clerical error who in turn may seek appropriate relief from the court. Upon forwarding under clause (b), the court may either correct the error on its own initiative or direct that the request will only be considered pursuant to a motion requesting correction. The court's directive may also establish appropriate notice requirements for a motion. This procedure need not be exhausted before other relief is requested.

Advisory Committee Comment-2004

The 2004 addition in Rule 7, subd. 3, of a cross reference to appeals under Rule 9 is added as a convenience to counterbalance the growing complexity of these rules. The 2004 deletion of the term "mail" in Rule 7, subd. 4, recognizes that a determination is often issued in electronic format, such as email or facsimile transmission.

The 2004 addition of subdivision 5 regarding correction of records is based in part on MINN. GEN. R. PRAC. 115.11 (motion to reconsider). In the context of Internet publication of court records, a streamlined process is particularly appropriate for clerical-type errors, and should allow for prompt resolution of oversights and omissions. For example, to the extent that the register of actions, court calendar, or index in a court's case management system incorrectly incorporates provisions of a court order, judgment, or pleading, such data entry inaccuracies are typically corrected without a court order by court administration staff promptly upon learning of the inaccuracy.

A party is not required to utilize the procedure set forth in subdivision 5 before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with procedures established for that purpose. Clerical errors in judgments and orders typically can be addressed by motion. *See, e.g.*, MINN. GEN. R. PRAC. 375 (expedited child support process; clerical mistakes, typographical errors, and errors in mathematical calculations in orders …arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of a party after notice to all parties); MINN. R. CIV. P. 60.01 (civil cases; clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party after such notice, if any, the court orders); MINN. R. CRIM. P. 27.03, subds. 8, 9 (criminal cases: clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders; the court may at any time correct a sentence not authorized by law); MINN. R. JUV. PROT. P. 41.01 (juvenile protection cases; clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders; during the pendency of an appeal, such mistakes can be corrected with leave of the appellate court); MINN. R. CIV. APP. P. 11.05 (differences as to whether the transcript or other parts of the record on appeal truly disclose what occurred in the trial court are to be submitted to and determined by the trial court; material omissions or misstatements may be resolved by the trial court, stipulation of the parties, or on motion to the appellate court).

Alleged inaccuracies in the records submitted by the parties and other participants in the litigation must also be brought to the attention of the court through existing procedures for introducing and challenging evidence. These procedures typically have deadlines associated with the progress of the case and failure to act in a timely fashion may preclude relief.

Rule 8. Inspection, ~~and Photoe~~Copying, Bulk Distribution and Remote Access.

Subd. 1. Access to Original Records. Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, if access to the original records would result in disclosure of information to which access is not permitted, provide remote or bulk access that is not permitted under this Rule 8, jeopardize the security of the records, or prove otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Remote Access to Electronic Records.

(a) **Remotely Accessible Electronic Records**. Except as otherwise provided in Rule 4 and parts (b) and (c) of this subdivision 2, a court administrative office that maintains the following electronic case records must provide remote electronic access to those records to the extent that the office has the resources and technical capacity to do so.

(1) **register of actions** (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);
(2) **calendars** (lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [MINN. STAT. § 485.11]);
(3) **indexes** (alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [MINN. STAT. § 485.08]);
(4) **judgment docket** (alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [MINN. STAT. § 485.073)]);
(5) **judgments, orders, appellate opinions, and notices prepared by the court**.

All other electronic case records that are accessible to the public under Rule 4 shall not be made remotely accessible but shall be made accessible in either electronic or in paper form at the courthouse.

(b) **Certain Data Elements Not To Be Disclosed**. Notwithstanding Rule 8, subd. 2 (a), the public shall not have remote access to the following data elements in an electronic case record with regard to parties or their family members, jurors, witnesses, or victims of a criminal or delinquent act:

(1) social security numbers [and employer identification numbers];
(2) street addresses;
(3) telephone numbers;
(4) financial account numbers; and
(5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that specifically identifies the individual or from which the identity of the individual could be ascertained.

(c) **Preconviction Criminal Records**. Preconviction criminal records shall be made remotely accessible only by using technology which, to the extent feasible, ensures that records are not searchable by defendant name using automated tools. A "preconviction criminal record" is a record for which

there is no "conviction" as defined in Minnesota Statutes, section 609.02, subd. 5 (2003).

(d) "**Remotely Accessible" Defined**. "Remotely accessible" means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility.

(e) **Exception.** After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic access to records of a particular case that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

[Bulk Data Alternative 1: **Subd. 3. Bulk Distribution of Electronic Case Records**. A court administrative office shall provide bulk distribution of only its electronic case records that are remotely accessible to the public pursuant to subdivision 2 of this rule, to the extent that office has the resources and technical capacity to do so. "Bulk distribution" means distribution of all, or a significant subset, of the court's electronic case records.]

[Bulk Data Alternative 2: **Subd. 3. Bulk Distribution of Electronic Case Records**. "Bulk distribution" means distribution of all, or a significant subset, of the court's electronic case records.

(a) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under Rules 4 and 5.

(b) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information pursuant to this subsection the requestor must comply with the provisions of Rule 8, subd. 3(c).

(c) Bulk distribution that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.

(1) The request shall: identify what information is sought, describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

(2) The court may grant the request if it determines that doing so meets criteria established by the court and is consistent with the purposes of the access policy, the resources are available to

compile the information, and that it is an appropriate use of public resources.]

[Bulk Data Alternative 3: **Subd. 3. Bulk Distribution of Court Records.** A court administrative office shall, to the extent that office has the resources and technical capacity to do so provide bulk distribution of its electronic case records as follows:

(a) Preconviction criminal records shall be provided only to an individual or entity which enters into an agreement in the form approved by the state court administrator providing that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data. If the state court administrator determines that a bulk data recipient has utilized data in a manner inconsistent with such agreement, the state court administrator shall not allow further release of bulk data to that individual or entity except upon order of a court.

(b) All other electronic case records that are remotely accessible to the public under Rule 8, Subd. 3 shall be provided to any individual or entity.]

Subd. 4. Criminal Justice and Other Agencies. Criminal justice agencies, including public defense agencies, and other state or local government agencies may obtain remote and bulk case record access where access to the records in any format by such agency is authorized by law.

Subd. ~~2~~5. Access to Certain Evidence. Except where access is restricted by court order or the evidence is no longer retained by the court pursuant to court rule, order or retention schedule, documents and p~~P~~hysical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.

Subd. ~~3~~6. Fees. When copies are requested, the custodian may charge the copy fee established pursuant to statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person's receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

Advisory Committee Comment-2004

The 2004 addition of a new Rule 8, subd. 2, on remote access establishes a distinction between public access at a courthouse and remote access over the Internet. Subdivision 2 attempts to take a measured step into Internet access that provides the best chance of successful

implementation given current technology and competing interests at stake. The rule limits Internet access to records that are created by the courts themselves as this is the only practical method of ensuring that necessary redaction will occur. Redaction is necessary to prevent Internet access to clear identity theft risks such as social security numbers and financial account numbers. The rule recognizes a privacy concern with respect to remote access to telephone and street addresses, or the identities of witnesses or jurors or crime victims. The identity of victims of a criminal or delinquent act are already accorded confidentiality in certain contexts [MINN. STAT. § 609.3471 (2002) (victims of criminal sexual conduct)], and the difficulty of distinguishing such contexts from all others even in a data warehouse environment may establish practical barriers to Internet access.

Internet access to preconviction criminal records may have significant racial and social implications, and the requirements of Rule 8, subd. 2(c) are intended to minimize the potential impact on persons of color who are disproportionately represented in criminal cases, including in dismissals. The rule contemplates the use of log-ins and other technology that require human interaction to prevent automated information harvesting by software programs. One such technology is referred to as a "Turing test" named after British mathematician Alan Turing. The "test" consists of a small distorted picture of a word and if the viewer can correctly type in the word, access or log in to the system is granted. Right now, software programs do not read clearly enough to identify such pictures. The rule contemplates that the courts will commit resources to staying ahead of technology developments and implementing necessary new barriers to data harvesting off the courts' web site, where feasible.

Some trial courts currently allow public access to records of other courts within their district through any public access terminal located at a court facility in that district. The definition of "remote access" has been drafted to accommodate this practice. The scope of the definition is broad enough to allow statewide access to the records in Rule 8, subd. 2, from any single courthouse terminal in the state, which is the current design of the new trial court computer system referred to as MNCIS.

The exception in Rule 8, subd. 2(e) for allowing remote access to additional documents is intended for individual cases where Internet access to documents will significantly reduce the administrative burdens associated with responding to multiple or voluminous access requests. Examples include high-volume or high-profile cases. The exception is limited to a specific case and does not authorize a standing order that would otherwise swallow the rule.

[Bulk Data Alterntative 1: The 2004 addition of a new Rule 8, subd. 3, on bulk distribution complements the remote access established under the preceding subdivision. The courts have been providing this type of bulk data to the public for the past ten years although its distribution has mainly been limited to noncommercial entities and the media. The bulk data would not include the data elements set forth in Rule 8, subd. 2(b), or any case records that are not accessible to the

public. The bulk data accessible to the public would, however, include preconviction criminal records as Rule 8, subd. 2(c), merely affects the courts' web site display of such records. Concerns over misuse of such information are the province of the legislative branch, which has enacted some measures of protection. *See, e.g.*, the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, and the Minnesota consumer reports law, MINN. STAT. § 13C.001 *et seq.* (2003).]

[Bulk Data Alterntative 2: The 2004 addition of a new Rule 8, subd. 3, on bulk distribution complements the remote access established under the preceding subdivision. The courts have been providing this type of bulk data to the public for the past ten years although its distribution has mainly been limited to noncommercial entities and the media. The bulk data would include the data elements set forth in Rule 8, subd. 2(b) on any case records that are accessible to the public, including preconviction criminal records. Concerns over misuse of such information are the province of the legislative branch, which has enacted some measures of protection. *See, e.g.*, the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, and the Minnesota consumer reports law, MINN. STAT. § 13C.001 *et seq.* (2003).]

[Bulk Data Alterntative 3: The 2004 addition of a new Rule 8, subd. 3, on bulk distribution complements the remote access established under the preceding subdivision. The courts have been providing this type of bulk data to the public for the past ten years although its distribution has mainly been limited to noncommercial entities and the media. The bulk data would not include the data elements set forth in Rule 8, subd. 2(b), or any case records that are not accessible to the public. The bulk data accessible to the public would, however, include preconviction criminal records as long as the individual or entity requesting the data enters into an agreement in the form approved by the state court administrator providing that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data.]

The 2004 addition of new Rule 8, subd. 4, regarding criminal justice and other governmental agencies recognizes that the courts are required to report certain information to other agencies and that the courts are participating in integration efforts (e.g., CriMNet) with other agencies. The access is provided remotely or via regular (e.g., nightly or even annually) bulk data exchanges. The provisions on remote and bulk record access are not intended to affect these interagency disclosures.

The 2004 changes to Rule 8, subd. 5, regarding access to certain evidence is intended to address the situation in which provisions appear to completely cut off public access to a particular document or parts of it even where the item is formally admitted into evidence (i.e., marked as an exhibit and the record indicates that its admission was approved by the court) in a publicly accessible court proceeding. *See, e.g.*, MINN. STAT. § 518.146 (2002) (prohibiting public access to, among other things, tax returns submitted in dissolution cases). The process for formally admitting

evidence provides the opportunity to address privacy interests affected by an evidentiary item. Formal admission into evidence has been the standard for determining when most court services records become accessible to the public under Rule 4, subd. 1(b), and this should apply across the board to documents that are received.

The changes also recognize that evidentiary items may be subject to protective orders or retention schedules or orders. As indicated in Rule 4, subd. 2, and its accompanying advisory committee comment, the procedures for obtaining a protective order are addressed in other rules. Similarly, as indicated in Rule 1, the disposition, retention and return of records and objects is addressed elsewhere.

Rule 9. Appeal from Denial of Access.

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the office of the state court administrator. The state court administrator shall promptly make a determination and forward it ~~by mail~~ in writing to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

Advisory Committee Comment-2004

The 2004 deletion of the term "mail" in Rule 9 recognizes that a determination is often issued in electronic format, such as email or facsimile transmission.

Rule 10. Contracting With Vendors for Information Technology Services.

If a court or court administrator contracts with a vendor to perform information technology related services for the judicial branch: (a) "court records" shall include all recorded information collected, created, received, maintained or disseminated by the vendor in the performance of such services, regardless of physical form or method of storage, excluding any vendor-owned or third-party-licensed intellectual property (trade secrets or copyrighted or patented materials) expressly identified as such in the contract; (b) the vendor shall not, unless expressly authorized in the contract, disclose to any third party court records that are inaccessible to the public under these rules; (c) unless assigned in the contract to the vendor in whole or in part, the court shall remain the custodian of all court records for the purpose of providing public access to publicly accessible court records in accordance with these rules, and the vendor shall provide the court with access to such records for the purpose of complying with the public access requirements of these rules.

Advisory Committee Comment-2004

The 2004 addition of Rule 10 is necessary to ensure the proper protection and use of court records when independent contractors are used to perform information technology related services for the courts. Where the service

involves coding, designing, or developing software or managing a software development project for a court or court administrator, the court or court administrator would typically retain all record custodian responsibilities under these rules and the contract would, among other things: (a) require the vendor to immediately notify the court or court administrator if the vendor receives a request for release of, or access to, court records; (b) prohibit the disclosure of court records that are inaccessible to the public under these rules; (c) specify the uses the vendor may make of the court records; (d) require the vendor to take all reasonable steps to ensure the confidentiality of the court records that are not accessible to the public, including advising all vendor employees who are permitted access to the records of the limitations on use and disclosure; (e) require the vendor, other than a state agency, to indemnify and hold the court or court administrator and its agents harmless from all violations of the contract; (f) provide the court or court administrator with an explicit right to injunctive relief without the necessity of showing actual harm for any violation or threatened violation of the contract; (g) be governed by Minnesota law, without regard to its choice of law provisions; (h) include the consent of the vendor to the personal jurisdiction of the state and federal courts within Minnesota; and (i) require all disputes to be venued in a state or federal court situated within the state of Minnesota.

Rule 11. Immunity.

Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for conduct relating to the custodian's duties of providing access under these rules.

Advisory Committee Comment-2004

The 2004 addition of Rule 11 is intended to allow record custodians to promptly and effectively discharge their obligations under these rules without undue concern over liability for even one inadvertent error. The burden of redacting each and every reference to specific pieces of information from voluminous records is a daunting task, and the looming threat of liability could turn even the more routine, daily access requests into lengthy processes involving nondisclosure/indemnity agreements. The court has established immunity for records custodians in other contexts. *See, e.g.*, R. BD. JUD. STDS. 3 (members of the board on judicial standards are absolutely immune from suit for all conduct in the course of their official duties); R. LAWYERS PROF. RESP. 21(b) (lawyers professional responsibility board members, other panel members, District Committee members, the Director, and the Director's staff, and those entering agreements with the Director's office to supervise probation are immune from suit for any conduct in the course of their official duties); MINN R. ADMISSION TO THE BAR 12.A. (the Board of Law Examiners and its members, employees and agents are immune from civil liability for conduct and communications relating to their duties under the Rules of Admission to the Bar or the Board's policies and procedures); MINN. R. BD. LEGAL CERT. 120 (the Board of Legal Certification and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties); MINN. R. CLIENT SEC. BD. 1.05 (the Client Security Board and its

staff are absolutely immune from civil liability for all acts in the course of their official capacity). Rule 11 does not, however, avoid an administrative appeal of a denial of access under Rule 9, declaratory judgment, writ of mandamus, or other similar relief that may otherwise be available for a violation of these rules.

APPENDIX A

Boards and Commissions that are governed by independent rules promulgated by the Supreme Court include, but are not limited to, the following:

Lawyers Professional Responsibility Board
Lawyer Trust Account Board
Client Security Fund Board
State Board of Legal Certification
Board of Continuing Education
State Board of Law Examiners
State Bar Advisory Council
Board on Judicial Standards
Standing Committee on No Fault Arbitration
Legal Services Advisory Committee

~~APPENDIX B~~

~~Statutes making certain case records inaccessible to the public include, but are not limited to, the following:~~

~~Minnesota Statute~~	~~Type of Record or Proceeding~~
~~144.343, subd. 6~~	~~Abortion notification proceedings~~
~~144.218, subd. 2; 259.27; 259.31; 259.49; 260.161~~	~~Adoption proceedings~~
~~257.56~~	~~Artificial insemination~~
~~253B.23, subd. 9~~	~~Commitments~~
~~254.09~~	~~Compulsory treatment~~
~~626A.06, subd. 9~~	~~Wiretap warrants~~
~~609.3471~~	~~Identity of juvenile victims of sexual assault~~
~~609.115~~	~~Presentence investigation report~~
~~169.126~~	~~Alcohol problem assessment report~~
~~638.02~~	~~Pardon~~
~~242.31; 152.18 subds. 1,2,3~~	~~Expunged records~~

~~518.168(d) Custody proceedings~~
~~260.161 Juvenile court records~~
~~257.70 Paternity proceedings~~
~~525.22 Wills deposited for safekeeping~~

APPENDIX C

State and federal laws making certain administrative records inaccessible to the public include, but are not limited to, the following:

Citation*	Type of Record
M.S. §§ 593.42, subd. 5; 593.47	Jury data
22 C.F.R. § 51.33	Passport records
M.S. § 260.195, subd. 6	Juvenile placements
M.S. §§ 626A.06, subd. 9; 626A.17	Report of wiretap warrants
Rule 9, R. Reg. Attorneys	Registered Attorneys Mailing List
Rule 5, R. Jud. Ed.	Supreme Court Continuing Education Office records

*M.S. denotes Minnesota Statutes; C.F.R. denotes the Code of Federal Regulations; R. Reg. Attorneys denotes Rules of the Supreme Court for Registration of Attorneys, amended by Supreme Court Order dated Feb. 13, 1986; R. Jud. Ed. denotes Rules of the Supreme Court for Judicial Education of Members of the Judiciary, promulgated pursuant to Supreme Court Order dated Oct. 11, 1979.

APPENDIX D

The following statutes and regulations issued pursuant to statute, govern the accessibility of vital statistics records:

Citation*	Type of Record
M.S. §§ 144.218; 144.1761; 144.216; 257.73	Original birth certificate prior to: adoption of child; marriage of natural parents; acknowledgement or adjudication of paternity; and filing of corrected certificate.
M.S. § 144.225; M.R. 4600.6000	Birth certificates and marriage license applications disclosing child born out ofwedlock
M.R. 4600.5800	Birth and death certificates; commercial use.

*M.S. denotes Minnesota Statutes; M.R. denotes Minnesota Rules, which is a compilation of rules promulgated by agencies in the executive branch.

Exhibit B: Proposed Amendments to Rules of Civil Procedure

Rule 47.01 Examination of Jurors

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper. Supplemental juror questionnaires completed by jurors shall not be accessible to the public unless formally admitted into evidence in a publicly accessible hearing or trial.

Advisory Committee Comment-2004 Amendments

The addition of the last sentence in Rule 47.01 precluding public access to completed supplemental juror questionnaires recognizes both the legitimate privacy interests of jurors and the interests of the public in otherwise publicly accessible court proceedings. This rule does not apply to juror qualification questionnaires submitted by jurors pursuant to MINN GEN. R. PRAC. 807; public access to completed qualification questionnaires is governed by MINN. GEN. R. PRAC. 814.

Exhibit C: Proposed Amendments to General Rules of Practice, Rule 814

RULE 814. RECORDS

The names of qualified prospective jurors drawn and the contents of completed juror qualification questionnaires shall not be disclosed except as provided by this rule or as required by Rule 813.

(a) **Qualified public access.** Prior to the expiration of the time period in part (d) of this rule, t~~T~~he names of qualified prospective jurors drawn and the contents of juror qualification questionnaires, except social security numbers, completed by those prospective jurors must be made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request, unless the court determines:

(1) in a criminal case~~any instance~~ that access to any such information should be restricted pursuant to Minn. R. Crim. P. 26.02, subd. 2(2);

(2) in all other cases that in the interest of justice this information should be kept confidential or its use limited in whole or in part.

(b) **Limits on Access by Parties**. The contents of completed juror qualification questionnaires except juror social security numbers must be made available to lawyers upon request in advance of voir dire. The court in a criminal case may restrict access to names, telephone numbers, addresses and other identifying information of the ~~prospective~~ jurors only as permitted by Minn. R. Crim. P. 26.02, subd. 2(2). In a civil case the court may restrict access to the names, addresses, telephone numbers and other identifying information of the jurors in the interests of justice.

(c) **Retention.** The jury commissioner shall make sure that all records and lists are preserved for the length of time ordered by the court.

(d) **Unqualified Public Access.** After ~~The contents of any records or lists not made public shall not be disclosed until~~ one year has elapsed since preparation of the list and all persons selected to serve have been discharged, the contents of any records or lists, except identifying information to which access is restricted by court order and social security numbers, shall be accessible to the public. ~~unless a motion is brought under Rule 813.~~

Advisory Committee Comment—2004 Amendment

Rule 814 has been modified in 2004 to ensure the privacy of juror social security numbers and to reflect the constitutional limits on closure of criminal case records. Juror qualification records on a particular juror will be subject to those constitutional limits only to the extent that the juror has participated in voir dire in a criminal case. Access to completed supplemental juror questionnaires used in specific cases is governed by separate rules. *See* MINN. R. CIV. P. 47.01; MINN. R. CRIM. P. 26.02, subd. 2(3).

Exhibit D: Proposed Amendments to General Rules of Practice,
Rules 103, 313, 355

RULE 103 SUBMISSION OF CONFIDENTIAL NUMBERS

The requirements set forth in Rule 313.02 of these rules for submitting restricted identifiers, such as social security numbers and financial account numbers, shall apply to all civil cases.

RULE 313. CONFIDENTIAL NUMBERS AND TAX RETURNS

Rule 313.01. Definitions. For purposes of this rule, the following definitions shall apply:

(a) "Restricted identifiers" shall mean the social security number [and/or employer identification number] and financial account numbers of a party or party's child.

(b) "Financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information deemed financial source documents by court order.

Rule 313.01~~1~~2. ~~Social Security Number~~Restricted Identifiers.

(a) **Pleadings and Other Papers Submitted by a Party**. No party shall submit restricted identifiers~~Whenever an individual's social security number is required~~ on any pleading or other paper that is to be filed with the court except:~~, the social security number shall be submitted~~

(i) on a separate form entitled Confidential Information Form (see Form 11 appended to these rules) filed with the pleading or other paper; or

(ii) on Sealed Financial Source Documents under Rule 313.03.

The parties are solely responsible for ensuring that restricted identifiers do ~~and shall~~ not otherwise appear on the pleading or other paper filed with the court. The court administrator will not review each pleading or document filed by a party for compliance with this rule. The Confidential Information Form shall not be accessible to the public.

(b) **Records Generated by the Court**. Restricted identifiers maintained by the court in its register of actions (i.e., activity summary or similar information that lists the title, origination, activities, proceedings and filings in each case), calendars, indexes, and judgment docket shall not be accessible to the public. Courts shall not include

restricted identifiers on their judgments, orders, decisions, and notices except on the Confidential Information Form (Form 11), which form shall not be accessible to the public.~~As an alternative, the filing party may prepare and file an original and one copy of the pleading or other paper if all social security numbers are completely removed or obliterated from the copy.~~

Rule 313.0~~2~~3. Sealing Financial Source Documents~~Tax Returns~~.

~~Copies of tax returns required to be filed with the court shall be submitted in a separate envelope marked "CONFIDENTIAL TAX RETURN OF _____ for YEAR(S)_____."~~ Financial source documents shall be submitted to the court for filing under a cover sheet designated "Sealed Financial Source Documents" and substantially in the form set forth as Form 12 appended to these rules. Financial source documents submitted with the required cover sheet are not accessible to the public except to the extent that they are formally admitted into evidence in a hearing or trial. The cover sheet or copy of it shall be accessible to the public. Financial source documents that are not submitted with the required cover sheet and that contain restricted identifiers are accessible to the public, but the court may, upon motion or on its own initiative, order that any such financial source documents be sealed.

Rule 313.0~~3~~4. Failure to comply.

~~A~~ If a party ~~who~~ fails to comply with the requirements of this rule in regard to another individual's restricted identifiers or financial source documents,~~may be deemed to have waived their right to privacy in their social security number or tax return filed with the court and~~ the court may upon motion or its own initiative impose appropriate sanctions, including costs necessary to prepare an appropriate document for filing ~~redacted copy, for a party's failure to comply with this rule in regard to another individual's social security number or tax return~~.

Rule 313.05 Procedure for Requesting Access to Sealed Financial Source Documents.

(a) Motion. Any person may file a motion, supported by affidavit showing good cause, for access to Sealed Financial Source Documents or portions of the documents. Written notice of the motion shall be required.

(b) Waiver of Notice. If the person seeking access cannot locate a party to provide the notice required under this rule, after making good faith reasonable effort to provide such notice as required by applicable court rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(c) Balancing Test. The court shall allow access to Sealed Financial Source Documents, or relevant portions of the documents, if the court finds that the public interest in granting access or the personal interest of the person seeking access outweighs

the privacy interests of the parties or dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this rule.

* * *

Advisory Committee Comment—2004 Amendment

Rule 313 is completely revised in 2004 based on WASH. R. GEN. GR 22 (2003). Parties are now responsible for protecting the privacy of restricted identifiers (social security numbers [and/or employer identification numbers] and financial account numbers) and financial source documents by submitting them with the proper forms. Failure to do so means that the public will be able to access the numbers and documents from the case file unless the party files a motion to seal them under Rule 313.03 or 313.04. The Confidential Information Form is retained and modified, and a new Sealed Financial Source Document cover sheet has been added. Also retained is the authority of the court to impose sanctions against parties who violate the rule in regard to another individual's restricted identifiers or financial source documents.

New in 2004 is the procedure for obtaining access to restricted identifiers and sealed financial source documents. This process requires the court to balance the competing interest involved. *See, e.g., Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986) (when party seeks to restrict access to settlement documents and transcripts of settlement hearings made part of civil court file by statute, court must balance interests favoring access, along with presumption in favor of access, against those asserted for restricting access).

Rule 355.05. Filing of Pleadings, Motions, Notices and Other Papers.

* * *

Subd. 5. Confidential Numbers and Tax Returns. The requirements of Rule 313 of these rules regarding submission of restricted identifiers (e.g., social security numbers~~,~~ [and/or employer identification numbers,] financial account number) and financial source documents (e.g., tax returns, wage stubs, credit card statements) shall apply to the expedited child support process.

FORM 11. CONFIDENTIAL INFORMATION FORM (Gen. R. Prac. 313.0~~1~~2; 103)

State of Minnesota **District Court**

County of _____ **_____Judicial District**

Case Type:

Case No. _____

_____
Plaintiff/Petitioner

and

CONFIDENTIAL INFORMATION FORM

(Provided Pursuant to Rules 313.0~~1~~2 and 103 of the Minnesota General Rules of Practice)

_____
Defendant/Respondent

The information on this form is confidential and shall not be placed in a publicly accessible portion of a file.

		NAME	SOCIAL SECURITY NUMBER [EMPLOYER IDENTIFICATION NUMBER] AND FINANCIAL ACCOUNT NUMBERS
Plaintiff/Petitioner	1.		
	2.		
	3.		
Defendant/	1.		
Respondent	2.		
	3.		
Other Party (e.g.,	1.		

minor children) _____

2. _____ _____

_____

Information supplied by:

_____

(print or type name of party submitting this form to the court)

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

_____

Date: _____

FORM 12. SEALED FINANCIAL SOURCE DOCUMENTS (Gen. R. Prac. 313.02)

State of Minnesota **District Court**

County of _____ **_____Judicial District**

Case Type:

Case No. _____

_____
Plaintiff/Petitioner

and

SEALED FINANCIAL SOURCE DOCUMENTS (Provided Pursuant to Rule 313.02 of the Minnesota General Rules of Practice)

_____
Defendant/Respondent

THIS LISTING OF SEALED FINANCIAL SOURCE DOCUMENTS IS ACCESSIBLE TO THE PUBLIC BUT THE SOURCE DOCUMENTS SHALL NOT BE ACCESSIBLE TO THE PUBLIC EXCEPT AS AUTHORIZED BY COURT RULE OR ORDER

□ Income tax records
Period covered:

□ Bank statements
Period covered:

□ Pay stubs
Period covered:

□ Credit Card statement
Period covered:

□ Other:

Information supplied by:

_____
(print or type name of party submitting this form to the court)

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

_____

Date: _____

Exhibit E: Race Census Form

Name _____ Case/File number _____

RACE CENSUS FORM

The Minnesota Courts are collecting information on all people who appear in criminal, traffic and juvenile cases. Collecting this information will help the Court ensure that everyone is treated fairly and equally, regardless of his/her race or ethnicity.

Please answer **both** questions 1 and 2 below.

1. What is your race?

Mark an **X** by one or more races to indicate what race you consider yourself to be.

_____ (I). American Indian or Alaska Native

_____ (A). Asian

_____ (B). Black or African American

_____ (H). Native Hawaiian or Other Pacific Islander

_____ (W). White

_____ (O). Other:_____

2. Are you Hispanic or Latino?

Mark the "NO" box if not Hispanic or Latino

_____ (N). **NO**, Not Hispanic or Latino

_____ (Y). **YES,** Hispanic or Latino

Have you answered **both** questions?
For definitions see the back of this form.

Definitions:

Race Categories: *

American Indian or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Hmong, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American: A person having origins in any of the black racial groups of Africa, for example Somalia. Terms such as "Haitian" can be used in addition to "Black or African American."

Native Hawaiian or Other Pacific Islander: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White: A person having origins in any of the original peoples of Europe, the Middle East, North Africa, or Mexico.

Ethnicity: *

Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

* The United States Census Bureau has established these Race and Ethnicity categories

Exhibit F: Members of Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch

Hon. Paul H. Anderson
Minnesota Supreme Court
St. Paul

Mark R. Anfinson
Attorney at Law
Minneapolis

Donna Bergsgaard
Thomson West
Eagan

Van Brostrom
District Court Administrator
Hastings

Sue K. Dosal
State Court Administrator
St. Paul

Hon. Kathleen R. Gearin
Ramsey County District Court
St. Paul

Donald A. Gemberling
Public Information Policy Analysis,
Dept. of Administration
St. Paul

Paul R. Hannah
Attorney at Law
St. Paul

Hon. Natalie Hudson
Minnesota Court of Appeals
St. Paul

Hon. Timothy J. McManus
Dakota County District Court
Hastings

Gene Merriam
Commissioner, Minnesota Department
of Natural Resources
St. Paul

Jane F. Morrow
District Court Administrator
Anoka

Teresa Nelson
Minnesota Civil Liberties Union
St. Paul

Pamela McCabe
Anoka County Attorney's Office
Anoka

Hon. John R. Rodenberg
Brown County District Court
New Ulm

Hon. Warren Sagstuen
Hennepin County District Court
Minneapolis

Robert Sykora
Minnesota Board of Public Defense
Minneapolis

Lolita Ulloa
Office of Hennepin County Attorney
Victim/Witness Assistance Program
Minneapolis

Gary A. Weissman
Weissman Law Office
Minneapolis

Exhibit G: Minority Report - Family Law Records

Adult citizens are free to rescind contracts into which they enter voluntarily, without court supervision. The one exception is a marriage contract whose dissolution the law requires be approved by a judge and recorded in a court file.

That the marriage was dissolved and that the court has awarded real property to one of them should be public information (and there are extant statutes which allow these narrowly drawn items to be filed shorn of other, personal data).[114] Divulging other information about the divorcing couple, their children, and their finances, however, serves no public policy purpose.

Untroubled by the unequal protection afforded to married people (as opposed to unmarried parents, whose battles over paternity, custody, and child support are protected from disclosure by statute),[115] the majority of the advisory committee concluded that the public disclosure of parental access schedules, the incomes of the parties, the amounts of child support and spousal maintenance, and the extent of the parties' investments is a reasonable concomitant of divorce.

Because the advisory committee disavows accountability for documents not generated by the court, technology will soon enable anyone with access to the internet to read the undiluted hyperbole of affidavits filed in marriage dissolutions as well as filed reports from psychologists, custody evaluators, guardians-ad-Litem, parenting time expediters, accountants, vocational evaluators, actuaries, and property appraisers, irrespective of either the veracity of the data or the appropriateness of public disclosure.

Such policies validate gross intrusions on personal privacy and constitute an unwarranted marriage penalty.

Even though the majority supports keeping these records public, the rich, the powerful, and those "in-the-know" already have a privacy remedy, namely, sealing their files. We propose, at a minimum, that court procedures (and these rules) provide

[114] MINN. STAT. § 518.148 (2002) permits the creation of a Certificate of Dissolution, which discloses only that and when the parties were divorced**.** MINN. STAT. § 518.191 authorizes a Summary Real Estate Disposition Judgment to convey real property awarded in a divorce without revealing other personal information.

[115] MINN. STAT. § 257.70 (2002).

notice to all family law litigants of the availability of the right to seal their case records.

-- Gary A. Weissman
-- Donald A. Gemberling

Exhibit H: Minority Report: Fair Information Practices

In focusing most of its attention on electronic access to court records, the advisory committee missed a vital opportunity to institute any of the Fair Information Practices principles:[116]

TOPIC HEADING	PRINCIPLE
1. Anti-secrecy	There must be no personal data record-keeping systems whose very existence is secret.
2. Individual access	There must be a way for individuals to find out what information about them is in a record and how that information is used.
3. Limited secondary disclosure	There must be a way for individuals to prevent information about them obtained for one purpose from being used or made available for other purposes without their consent.
4. Correcting errors	There must be a way for individuals to correct or amend a record of identifiable information about them.
5. Reliability	Any entity creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of those data.

All of these principles inhere in obligations imposed by the Data Practices Act on cities, on counties, on school districts, and on the executive branch of state government; but none will attach to the judicial branch if the Supreme Court adopts the recommendations of the advisory committee.

[116] The 1973 federal task force, the HEW Advisory Committee on Automated Personal Data Systems, *Records, Computers, and the Rights of Citizens*, identified five fair information practice principles. Those five principles informed much of the content of both the Federal Privacy Act and the Minnesota Government Data Practices Act.

The 1986 advisory committee, whose work product comprises the current Rules of Public Access to Records of the Judicial Branch, limited its scope to accessibility and made no mention of the rights of individuals. The 2003 advisory committee, regretfully, proposes rules which ignore individual access, which omit provisions for limiting secondary disclosure, which provide impracticable remedies for correcting errors, and which decline accountability for unreliability.

The committee's recommendations only marginally seek to protect individual privacy, limiting that protection to social security numbers, tax records, and crime victim information. Even that protection is toothless, however, because of a lack of viable redress for its violation.

The federal task force in the early 1970s looked into the future to minimize the adverse impact of automation on individual human beings. Minnesota's advisory committee, unfortunately, frames the problem as how to minimize the impact on court administrators. The proposed rules are a 20th century solution to a 21st century situation, where courts are no longer mere repositories of records but are, for better or worse, purveyors of valuable information.

-- Donald A. Gemberling
-- Gary A. Weissman

Exhibit I: Bulk Data Alternative 1

By a vote of 11 to 3, the advisory committee recommends that any court records that are accessible to the public on the Internet (discussed above) should be accessible to the public in bulk format. This recommendation is set forth in proposed ACCESS RULE 8, subd. 3 Bulk Data Alternative 1 (see Exhibit A, attached to this report). Thus, the recommendation to preclude public access to personal identifiers on the Internet will also preclude public access to personal identifiers in bulk record disclosures. Preconviction criminal records, however, are not completely off limits to the public on the Internet; the committee's recommendation only prohibits these records from being searchable via the Internet by automated means. For example, a calendar containing unproven criminal allegations would be accessible via the Internet if it is presented using certain log-ins, file formats and file names. Thus, a member of the public would still have Internet access to the record under the recommended rule. Therefore, bulk disclosures would include unproven criminal accusations.[117]

At first glance, some may see this as an about face as it appears to render the Internet access limitations moot; commercial data brokers will simply take the bulk preconviction records and make them available online as they do now with paper records. Proponents, however, see a distinction between access by commercial data brokers who will pay fees (discussed on page 23) for bulk data and then sell the data

[117] A subset of the advisory committee believes that bulk preconviction records should only be made accessible to recipients who agree to limit their dissemination of preconviction records to aggregate form (i.e., does not identify individuals associated with a particular preconviction record). *See* Exhibit K supporting Bulk Data Alterntative 3. Those supporting Bulk Data Alternative 3 grossly mischaracterize Bulk Data Alternative 1 when they claim that the supporters of Bulk Data Alternative 1 assert "that the relatively few overall criminal cases involving the falsely or mistakenly charged simply do not outweigh the significant benefit of Internet access." See Exhibit K at page 85 (the mischaracterization is essentially repeated in different words on page 89). As the discussion above indicates, this assertion was made by only a few members of the committee, and it was made by those in the minority on a separate issue (i.e., Internet access, see pages 16-17 of this report). Those supporting Bulk Data Alternative 3 also claim that data entry problems in the Fourth Judicial District result in errors in attorney names in that district's SIP computer system. *See* Exhibit K at pages 86-88. Those supporting Bulk Data Alternative 3 acknowledge that these data quality problems found on the Fourth Judicial District site are not duplicated on the Minnesota Supreme Court attorney registration site. *Id.* What they leave out is that the SIP system is being phased out over the next year and its replacement (i.e., the MNCIS system) uses the attorney registration database as its source for attorney information.

to the public, and access by the general public to all preconviction records from the court's web site. Information provided by commercial data brokers lacks the imprimatur of the court,[118] and commercial enterprises are also more likely to come under one or more laws that regulate use of consumer information.[119]

Bulk Data Alternative 1 will not prevent the Minnesota Supreme Court from authorizing disclosure of a wider range of bulk data by court order when necessary and appropriate (e.g., to educational or research institutions such as the National Center for Juvenile Justice).

[118] This point was made by a number of commentators at the public hearing. *See, e.g.*, public hearing comments of John Stuart, State Public Defender; public hearing comments of Kizzy Johnson, Communities Against Police Brutality; public hearing comments of Scott Benson and Don Samuels, Minneapolis City Council Members.

[119] *See, e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*., the Gramm-Leach- Bliley Act, 15 U.S.C. 6801 *et seq*., and the Minnesota credit reporting law, MINN. STAT. §§ 13C.001-.04 (2003). The Consumer Data Industry Association urged the committee to go even farther and allow bulk data disclosures of the full social security numbers in court records to certain qualified users like consumer reporting agencies and other entities that conform to such laws. Letter from Eric Ellman, Director and Counsel, Government Relations, Consumer Data Industry Association, to Michael Johnson, advisory committee staff, undated. The committee was unable to find a jurisdiction that had implemented such a process.

Exhibit J: Bulk Data Alternative 2

Bulk Data Alternative 1 limits the ability of the public to receive bulk distribution of electronic case records:

> ***Subd. 3. Bulk Distribution of Electronic Case Records.*** *A court administrative office shall provide bulk distribution of only its electronic case records that are remotely accessible to the public pursuant to subdivision 2 of this rule, to the extent that office has the resources and technical capacity to do so. "Bulk distribution" means distribution of all, or a significant subset, of the court's electronic case records.*

This provision is quite different from the recommendation of the Data Policy Subcommittee of the Technology Planning Committee, which states:

> ***Section 4.30 - Requests for Bulk Distribution of Court Records***
>
> *Bulk distribution is defined as the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.*
>
> > *(a) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under section 4.10.*
> >
> > *(b) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information pursuant to this subsection the requestor must comply with the provisions of section 4.40(c).*

The Committee should understand that refusing to grant access to bulk data render those data non-public, as a practical matter. Many publicly beneficial uses of the data cannot be accomplished with access to individual files. Some Committee members believe that this restrictive access rule will keep these data from being disseminated on the internet, but data "harvesters" will still have access, and will still disseminate the data.

Refusing to allow access to bulk data stored in electronic form goes against the common law rule of access to court data. "It is undisputed that a common law right to inspect and copy civil court records exists." *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197, 202 (Minn. 1986), citing, *inter alia*, *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1977). The right to inspect and copy records is considered "fundamental to a democratic state." *United States v. Mitchell*, 551 F.2d 1252, 1258 (D.D.C. 1976).

There is a constitutional dimension to access to court data. *See, e.g. Richmond Newspaper, Inc. v. Virginia*, 448 U.S. 555 (1980); *Gannett Co. v. De Pasquale*, 443 U.S. 368 (1979). Bulk Data Alternative 1's shielding of these data would never survive the strict scrutiny standard which courts apply to such restrictions.

Committee members accepted Bulk Data Alternative 1 because of concerns over the possible "misuse" of those data. However, provisions which restrict access to otherwise public data based on the manner of use of that data would never withstand court applied "strict scrutiny" or "balancing of the interests" tests. For example, a party seeking to restrict the common law right of access to court records must assert "strong countervailing reasons" to overcome the presumption of openness. *Schumacher*, 392 N.W.2d at 205-206. Bulk Data Alternative 1 does not satisfy this test.

While Committee members may believe that Bulk Data Alternative 1 somehow protects personal privacy, that belief is illusory. These data, if valuable, will ultimately be "harvested" in a number of ways by those seeking a financial reward. Ultimately, there is no real privacy protection when the data in question are public.

In fact, while the value of the data will convince data "harvesters" to take measures to gain access to the data, the provision will dramatically limit the use of such data for research purposes, and for public accountability. A rapidly growing area of journalism practice involves computer-assisted reporting. Access to databases allows the media, academics and others to make comparisons and connections to data that would never be available if the researcher were forced to look through the files on an individual basis. While a data "harvester" with a profit incentive may make several trips to the courthouse for the data, journalists or researchers may not have those resources available.

Moreover, the kinds of stories that might be written with access to these databases are never as compelling when they are based only on "summary" data. In fact, many of the stories which are based on comparison of databases improve their impact because they include individual stories, which are possible only when the identity of the data subjects are known.

CONCLUSION

We do not believe Bulk Data Alternative 1 as presently drafted will provide substantial protection to otherwise public data. We do not believe Bulk Data Alternative 1 will prevent the otherwise public data from being "harvested."

If, ultimately, Bulk Data Alternative 1 does not prevent the data from being used by "harvesters," then this Committee is severely limiting beneficial public access without actually providing any substantive privacy protection.

For these reasons, we propose that Section 4.30 "Requests for Bulk Distribution of Court Records" from the Guidelines be substituted for Bulk Data Alternative 1.

- Paul R. Hannah
- Gary A. Weissman

Exhibit K: Report Supporting Restrictions on
Bulk Distribution of Court Data (Bulk Data Alternative 3)

OVERVIEW

After more than a year of thoughtful work, the advisory committee has made a distinction between the court data that is to be disseminated via *the courts' own web sites* and the data *distributed to bulk data harvesters*. The majority correctly recommends to the Minnesota Supreme Court that it restrict accessibility of preconviction criminal data via its own web sites. Bulk Data Alternative 1 also recommends that private data harvesters be allowed to obtain from our court system data about unproven accusations about individuals and disseminate that information in bulk format without restriction. The signers to this report believe Bulk Data Alternative 1 to be a mistake.

Instead, we recommend that the Minnesota Supreme Court adopt a policy allowing bulk distribution of data only to recipients who agree not to disseminate preconviction personal identifying data to third parties.[120] We believe: (1) the unfettered distribution of preconviction criminal data compromises the presumption of innocence; and, (2) the Minnesota Supreme Court should be confident that the data to be distributed have been proven accurate, complete and reliable.

The Minnesota Supreme Court can strike a balance between individual rights and the public's right to know by allowing access to bulk information and restricting downstream dissemination of personal identifying information in preconviction criminal matters.

This report will demonstrate why the data at issue are unreliable, discuss the presumption of innocence and the racially disparate impact of the majority's scheme for data dissemination, and offer an alternative that will protect the rights of individuals who have been charged but not convicted.

THE CONSTITUTION DOES NOT TOLERATE "RELATIVELY FEW" ABROGATIONS OF THE PRESUMPTION OF INNOCENCE

The Committee has been mindful of the Constitutional mandate to preserve the presumption of innocence as it has carefully developed the set of rules it now recommends for Minnesota Supreme Court adoption. Indeed, the committee has been

[120] Bulk Data Alternative 3 set forth in Exhibit A, at Rule 8, subd. 3, contains proposed language which would both allow openness and restrict downstream dissemination of personal identifiers in preconviction criminal matters.

very careful to provide protections that affect how the court's own web site operates, in stark contradiction to the unfettered access to preconviction data that it provides to bulk data harvesters

Those who support Bulk Data Alternative 1 recommend that the court take two seemingly inconsistent actions: on one hand, it recommends that the court's own web site managers take steps to discourage bulk harvesting of data and using names to search preconviction data; on the other hand, it recommends that bulk data be provided to data harvesters who will do exactly that.

This recommendation is predicated on the correct understanding that data harvesters handle data differently than does the general public. For example, a reference-checking service is more likely to disclose its sources to the data subject because of the Fair Credit Reporting Act, unlike a landlord or employer who is much less likely to abide by this principle of fairness.

Rational or not, however, the recommendation is faulty because it does not fully preserve the presumption of innocence.

Those supporting Bulk Data Alternative 1 assert that "[t]he relatively few overall criminal cases involving the falsely or mistakenly charged simply do not outweigh the significant benefit of Internet access" (and, presumably, the unrestrained bulk data dissemination recommended by the majority). But the Constitution has no exception allowing "relatively few" violations of the presumption of innocence. It is not a principle that can be compromised in favor of expediency and convenience. It is a "bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *In re Winship*, 397 U.S. 358, 363 (1970) (internal quotations omitted). (cited with approval by Minnesota Supreme Court in *State vs. Dwane David Peterson*, 673 N.W.2d 482 (Minn. 2004)).

THE COURT SYSTEM SHOULD NOT DISSEMINATE BULK DATA WITHOUT RESTRICTION WHEN THE COURT CANNOT BE REASONABLY CERTAIN THE DATA ARE ACCURATE. CURRENT PRACTICE SUGGESTS THAT THESE DATA WILL NOT BE SUFFICIENTLY ACCURATE

The advisory committee's report only obliquely addresses problems the court system has with the accuracy of its data. The report acknowledges that "the advent of Internet publication will significantly magnify the potential for harm that such errors can cause," and then provides for error correction procedures when mistakes are located. But the committee did not consider the extent of the problem, perhaps

because no one knows just how bad the problem might be. The committee saw no accuracy and completeness audits of courtroom data, if such audits exist.

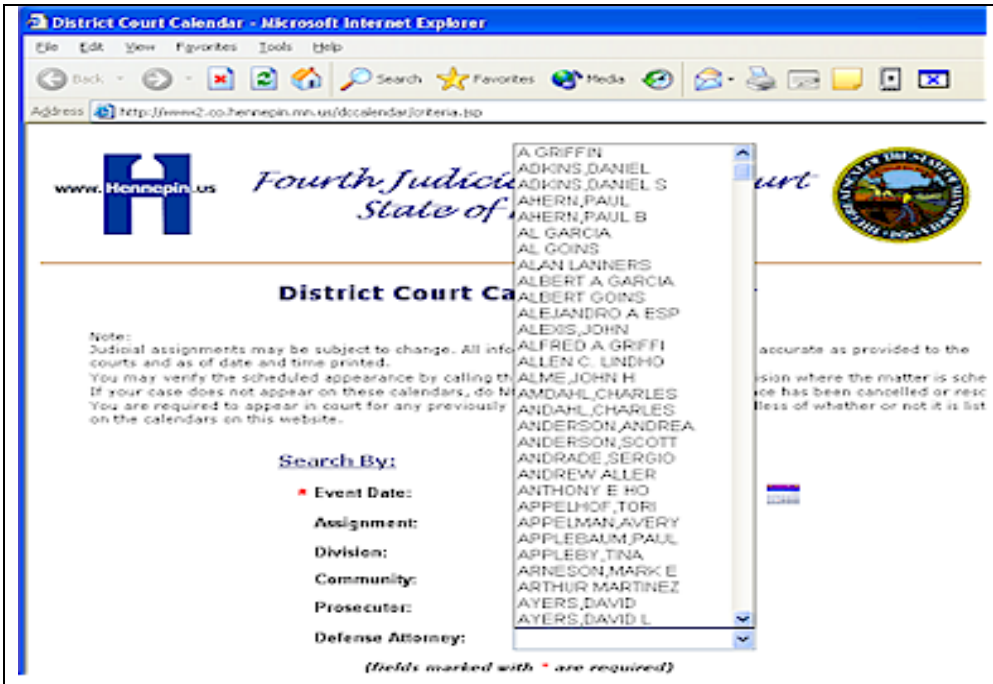
The court's record management system relies on courtroom clerks to enter data. This is one responsibility among many for clerks who each day work under a great amount of pressure. Moreover, in most Minnesota courtrooms, data are not entered in real-time. Instead, most clerks enter the information into the court's records management system later, transcribing from notes taken during the hearing. The committee is aware of no formal assessment or audit of the quality of the data entered by courtroom clerks. In addition, the court is transitioning to a new computer system with the hope that its design will improve accuracy, but no proof yet exists on this point.

In the absence of clear answers to these questions, consider the experience of Hennepin County courts, long the state's leading jurisdiction in the use of computers to capture and manage court-related data, as it attempts to provide accurate court data on the Internet via its Subject in Process (SIP) databases, which are different than those used in other Minnesota courtrooms.

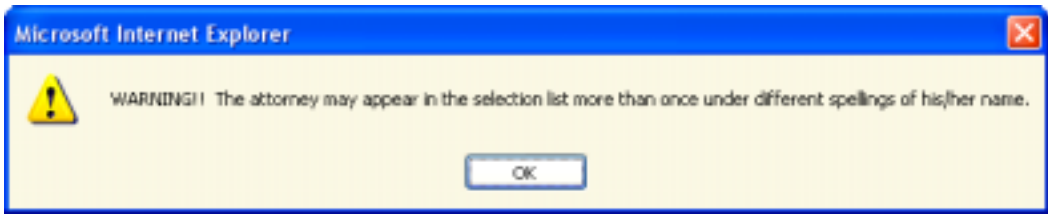
Example of inability to provide reliable court data on the Internet

In May 2004, Hennepin County Courts provided court data at this web address: **http://www2.co.hennepin.mn.us/dccalendar/criteria.jsp**

This online resource is designed to allow court staff, lawyers, and parties Internet access to calendars. The web page has a "drop-down" box which can be used to select the attorney name, and all of the cases in which the selected attorney is appearing as counsel. The screen looks like this:



A quick look at the list of attorneys reveals that it is compromised by severe data integrity problems. There are many near-duplicate names, apparently caused by data entry errors. Also, there are misspellings and apparent confusion about whether the names should be listed last name first or first name first. Hennepin County is aware of the integrity problem, presenting the following warning to users attempting to search by attorney name:



In fact, of the 779 defense attorney names listed in April 2004, 336 names – *half* – showed one of the inaccuracies listed above.

Practically speaking, this means that if you want to see all cases calendared for Kenneth Bottema and Hersch Izek, you must make separate searches under all of the following names:

- Bottema, Kenneth
- Bottema, Ken
- Botema, Ken
- Ken Bottema
- Ken Bottems
- Kenneth Botema
- Kenneth Bottema
- Kenneth M Bottema
- Hersch Izak
- Hersch Izek
- Isaac, Hersch
- Isak, Hersch
- Isaak, Hersch
- Izak, Hersch
- Izak, Hersh
- Izek, Hersch
- Izek, Hersh

Users seeking cases for Anthony Torres will not find them under A or T: Mr. Torres is listed only as J Anthony Torres.

The population of defense attorneys in Hennepin County is a discrete and fairly well known group of individuals. Each one of them is clearly identified by a unique attorney registration number assigned by the Minnesota Supreme Court.[121] **If the Hennepin County courts – after three decades of experience with computer-based court records – cannot keep accurate records of 779 defense attorneys, it is not reasonable for us to expect that the very same data entry clerks will be able to maintain an accurate record of the tens of thousands of defendants appearing in the same court.** Defendants routinely use alias names, confusing recordkeeping tremendously. Only a small subset of defendants, those who have previous convictions for serious offenses, are fingerprinted and assigned a state identification number. Those accused of most misdemeanors, the vast bulk of the court's caseload, are not. Courtrooms are busy places and clerks are overworked.

Data quality problems like this are not unique to the courts. Gartner, Inc., a major provider of research and analysis on the global information technology industry, estimates that more than 25 percent of critical data within Fortune 1,000 businesses is inaccurate or incomplete.[122] Given that data entry inaccuracies prevent a trial court system from reliably tracking a comparatively small number of attorneys, it is unreasonable to expect it to be reliable when recording information about vastly greater numbers of litigants.

DISPROPORTIONATE RACIAL IMPACT

The advisory committee acknowledges disproportionate impact of the criminal justice system upon ethnic and racial minorities, and suggests that Internet posting of preconviction criminal information helps society to become aware of such problems

[121] Note that these data quality problems found on the Hennepin site are not duplicated on the Supreme court attorney registration site, found at http://www.courts.state.mn.us/mars/default.aspx

[122] *Using Business Intelligence to Gain a Competitive Edge: Unleashing the Power of Data Analysis to Boost Corporate Performance*, April 2004, Gartner, Inc. *See* http://www4.gartner.com/5_about/press_releases/asset_74687_11.jsp

and to address them. But the Minnesota Supreme Court could easily make bulk preconviction criminal information available for such laudable public policy purposes while restricting downstream dissemination of personal identifiers. In this way, the Minnesota Supreme Court could both protect the rights of accused people and address the injustices caused by disproportionate impact upon people of color. The best of both worlds is available.

Private data harvesters – those whose business it is to compile government data and sell it to private customers – dismiss as "vague supposition" the committee's concern about heightening disproportionate racial impact by unrestricted Internet dissemination of preconviction criminal court data. They oppose the recommendation in this report to restrict downstream dissemination of personal identifying information. They object to Bulk Data Alternative 1 as well, arguing that the court should provide to them—for unlimited global dissemination on the Internet—information such as litigants' and crime victims' Social Security Numbers, home addresses, and telephone numbers. While the data harvesters correctly state that public record data is central to society's "essential infrastructure," they also suggest that Bulk Data Alternatives 1 and 3 somehow attack that infrastructure by making public record data inaccessible.

This debate is about the correct use of new technologies, technologies that expand access to data in a way never imagined by the Founders, or even by policy makers a decade ago. This debate is not about any obligation by the Minnesota Supreme Court to help private data harvesters do their business in the most cost efficient and convenient manner possible. The Minnesota Supreme Court has no such duty. The Minnesota Supreme Court's duty is to protect the presumption of innocence and to ensure that no social group is stigmatized by the unrestricted dissemination of personal identifiers in preconviction matters.

THE COURT'S POLICY ABOUT DISSEMINATION OF ITS DATA SHOULD BE GUIDED BY ACCEPTED PRIVACY DESIGN PRINCIPLES

The impact of computers on individual privacy rights was the focus of a commission appointed in 1972 by then-Secretary of Health, Education, and Welfare, Elliott Richardson. The commission developed the "bill of rights for the computer age" called the Fair Information Principles (FIPs).[123] The FIPs were adopted by the Organization for Economic Cooperation and Development (OECD) to guide the development of and access to information systems. The FIPs are internationally

[123] U.S. Dept. of Health, Education, and Welfare, Secretary's Advisory Committee on Automated Personal Data Systems: *Records, Computers, and the Rights of Citizens* (July 1973); see http://www.epic.org/privacy/consumer/code_fair_info.html

accepted and acknowledged as a solid foundation upon which to build the sort of policy now being considered by the Minnesota Supreme Court.[124]

The following FIPS are particularly relevant to the bulk data decision faced by the Minnesota Supreme Court:

- **The *Data Quality Principle* requires agencies to verify the accuracy, completeness, and currency of their information.** Internet dissemination of inaccurate information would cause disastrous results. The court system in Minnesota is addressing acknowledged data quality problems with its longtime record-keeping system, TCIS. A new system, MNCIS, is being implemented on a county-by-county basis. It is assumed that the new system will increase accuracy, but the advisory committee has seen no proof that accuracy has begun to increase. The oldest problem and the problem most difficult to overcome with any data system is data entry error, casually referred to as "garbage in, garbage out." An examination of Internet-posted court data from Hennepin County, discussed earlier in this report, suggests that data entry inaccuracies are extensive in that system.

- **The *Purpose Specification, Collection Limitation* and *Use Limitation Principles* require agencies to specify in writing the purpose of their data system and limit use and dissemination to the stated purpose.** Once an agency has collected information, it is responsible for its appropriate downstream use and dissemination. Providing of bulk data to harvesters without any restrictions to its circulation runs afoul of these principles because it is difficult or impossible to control downstream compilation and use unless downstream distribution of these data is limited. Data gathered for legitimate court purposes may in a different context be used for destructive purposes. Consider use by a child searching court data on her parent, or students in a classroom checking out their teacher. Bulk Data Alternative 1 would allow an unsubstantiated accusation to follow an individual for life, forever tainting that individual's career and personal relationships.

Setting forth the argument made in opposition to unrestricted bulk distribution of court data, the National Criminal Justice Association in its *Justice Information Privacy Guideline* offers the following:

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[124] *Justice Information Privacy Guideline: Developing, Drafting, and Assessing Privacy Policy For Justice Information Systems,* National Criminal Justice Association, September 2002, Chapter 3. (see http://www.ncja.org/pdf/privacyguideline.pdf)

"[Release of] large quantities of records at one time increases analysis and unintended use possibilities. Data analysis is not detrimental to personal privacy, per se. It can be used beneficially to show, for example, crime trends, treatment effectiveness, and "at-risk" groups, and to support justice planning and budgets. Analysis can have more personal consequences, however, depending upon who is using the information and for what purpose.

"For instance, the commercial sector can analyze court or corrections data to determine which heads of households have been incarcerated and use this data to market targeted services or products to the offenders' families, such as security systems, credit cards, and home equity loans. In another example, bulk data could be analyzed to isolate names of victims or family members and do targeted marketing on services or products. Picture a rape victim being inundated by junk mail for stress relievers, women's magazines, counseling, self-defense programs, athletic equipment, and even gun stores. Sound a bit unpalatable? Unfortunately, it is not far from reality.[125] Inaccuracies from unanticipated manipulation and analysis of bulk information are also problematic. Secondary users are not always mindful of the original purpose for which the information was collected and the "metadata" [126] that supports the information. Such analysis can result in inaccurate conclusions regarding the persons identified in the bulk data.

"Bulk data also feeds the development of "information profiles" that are being talked about in the context of e-commerce. Generally, the public is resisting the development of e-profiles on their living habits by commercial organizations. Bulk data available from the justice system can be used to supplement what was personal-choice information with criminal or related justice information.

"For example, it may be quite easy for your employer or insurance company to obtain your profile from an electronic information service showing that you shop at a certain discount store, purchase ice cream

[125] To avoid this type of use, some states have statutes prohibiting the use of criminal justice records for the solicitation of business. *See, e.g.*, Colorado's Criminal Justice Records Act, Section 22-72-305.5.

[126] Simply stated, metadata is information that describes the pieces of information – or "information about information" (footnote in original).

> and bacon every week, have three kids, pay child support for two more, like action movies (especially the violent Rambo kind), smoke, vacation at the lake, bought a fishing boat, and were arrested for possession of marijuana 10 years ago. Do you sound like someone who might be a health or employment risk? Does this profile provide an accurate picture about you? Who decides what that picture means in terms of employability or insurability? Even further, commercial information services are used by law enforcement agencies for investigations.[127] The addition of justice information to e-profiles and their use by law enforcement make the discussion even more important in relation to individual rights and liberties.
>
> "Bulk data opponents argue that the majority of bulk data use is driven by profit, not responsible use of justice information. Companies can request one piece of information at a time, but the value added by bulk data is in receiving large quantities of information in a single transaction. The sheer speed and ease in which large quantities of information can be released, manipulated, and re-released compounds the inherent dangers in potentially improper secondary uses of justice information."[128]

Many or all of the destructive effects of bulk dissemination of court data can be avoided by requiring bulk data recipients to sign an agreement not to disseminate personal identifying information (name, date of birth, address, etc.) to downstream sources. Data harvesters would not be able to post personal identifiers on the Internet. E-profilers would be unable to use court data to prepare dossiers for targeted marketing purposes. Yet those seeking to learn about the criminal justice system – students, researchers, journalists – would have full access to court data.

Thus, restricting the downstream dissemination of personal identifying information in preconviction matters is the best way to both ensure openness and accountability of the courts, and to protect Constitutional rights of the accused. Language that would

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[127] The FBI routinely consults on-line databases to obtain public source information regarding individuals, businesses, and organizations that are subjects of investigations. See, Statement of Louis J. Freeh, Director of the Federal Bureau of Investigation before the Senate Commission on Appropriations Subcommittee for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, March 24, 1999 (footnote in original).

[128] *Id*. At 54-55

accomplish this restriction is found in Bulk Data Alternative 3 set forth in Exhibit A at Rule 8, subd. 3.

THE DEPARTMENT OF REVENUE PROVIDES PROTECTIONS MORE EXTENSIVE THAN THOSE PROPOSED BY BULK DATA ALTERNATIVE 1

At least one other data-intensive state agency, the Department of Revenue, has taken a much more careful approach to data dissemination than Bulk Data Alternative 1. The Department of Revenue posts tax debtor names and debt amounts on a web site called DelinqNet.[129] But it takes a lot more than an unproven allegation for a person's name to appear on DelinqNet.

To be posted, the case must involve a severe matter (**more than 6 months delinquency and $5,000 or greater tax debt**); in contrast, those supporting Bulk Data Alternative 1 urge the Court to disseminate information about every adult matter on the court calendar, including the smallest embarrassing misdemeanor and petty misdemeanor. The Revenue Department requires a final determination be made by a neutral magistrate (**a lien or judgment must be recorded**); in contrast, those supporting Bulk Data Alternative 1 suggest just an accusation should be enough for the Minnesota Supreme Court to release data for dissemination. Finally, the Revenue Department gives the data subject 30 days to clear up any mistakes (**notification of data subject by certified mail 30 days prior to posting**); no similar pre-posting protection of criminal court data subjects is contemplated by those supporting Bulk Data Alternative 1.

Finally, note that the main difference between the constituencies affected by the Department of Revenue and the court system is the economic status of the data subjects. The majority urges broad Internet dissemination of sensitive, potentially damaging personal information affecting those accused of crimes, a population of people consisting predominantly of the poor.[130] Revenue Department data subjects are less likely to be poor: that is, they have at one time had an income for which they face tax liability. The Constitution and the presumption of innocence compels the Minnesota Supreme Court to be at least as diligent in protecting the rights of the poor as the Revenue Department is in protecting people with incomes.

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[129] *See* http://www.taxes.state.mn.us/mce/delinqnet/requirements_for_posting.shtml

[130] Eighty to 90 percent of felony defendants, more than 90 percent of juvenile defendants and about half of misdemeanor defendants in Minnesota have so little income that they qualify for public defender appointment, according to State Public Defender John Stuart.

CONCLUSION

The advisory committee left unsolved the problems created by unreliable court data and the Constitutional mandate to protect those individuals accused of crimes but not yet convicted. The committee seems to have relinquished any responsibility for the use of information provided by the courts to bulk data harvesters. Determining the proper course of action is always a struggle in matters that require a balance between individual and public rights. The ethical standards embodied in the Fair Information Principles, which require that the Minnesota Supreme Court be certain of the quality of its data and that the court assume responsibility for the appropriate downstream use and dissemination of its data can and should provide guidance to the Court. The court system should not accomplish by proxy what it declines to do directly.

-- Robert Sykora
-- Van Brostrom
-- Donald A. Gemberling
-- Hon. Natalie Hudson
-- Jane F. Morrow
-- Teresa Nelson
-- Pamela McCabe
-- Hon. John R. Rodenberg
-- Lolita Ulloa (supports all aspects expect those parts based on the argument that court data are unreliable)
-- Gary A. Weissman

Exhibit L: Dissenting Statement on Internet Access to Judicial Records and Supporting Statement on Bulk Data Alternative 2

It has been a privilege to serve as a member of the advisory committee. It is difficult to imagine issues of greater importance in our democracy than those concerning the public's access to the records of its government. I have been honored to consider those issues in the company of such knowledgeable and experienced professionals. It is therefore with great reluctance, and only because of how critical I believe those issues to be, that I must respectfully disagree with the majority report's recommendations concerning Internet access to judicial records and Bulk Data Alternative 1.

The issues surrounding access are so important and complex that I believe more time and thought is necessary to ensure that we pay appropriate attention to the value of public access to judicial records, identify with precision those specific harms that are realistically posed by different forms of access to different types of judicial records, and then recommend precise rules to prevent those harms while facilitating robust public access to judicial records.

Alternatively, the Minnesota Supreme Court could try to correct the greatest shortcomings of the current report, especially as it applies to remote access, through three essential changes: (1) permit bulk access to complete judicial records in Rule 8, Subdivision 2(a) (or, at a minimum, all information about litigants/parties) by eliminating data element restrictions applicable to vital information such as Social Security Numbers, home addresses, and telephone numbers; (2) eliminate the restriction proposed in Rule 8, Subdivision 2(c) that would restrict courts from providing Internet access to searchable criminal docket information; and (3) require the close monitoring of, and regular reporting to the Court about, the way in which redaction and other administrative burdens imposed by the proposed restrictions work in practice to ensure that they do not result in more information than is specified being restricted, that they do not cause delay in making records public, and that they do not result in records or parts of records that should be made public under the proposed rules being withheld.

1. The Importance of Public Access

Public access to government records is critical to the operation of democratic self-government. The intrinsic relationship between self-determination and access has been recognized since the founding of the Republic. "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both," James Madison wrote almost two centuries ago.

"Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."[131] This commitment is reflected today in the federal Freedom of Information Act and similar laws adopted in every state.

Access to public records takes on special importance in the context of the judicial system, because it is through courts that law is applied most directly to individuals. Public access allows every citizen—whether directly or through commercial providers or other intermediaries, such as journalists—to monitor the activities of the courts, understand the operation of the law, be assured that the system is fair and just, be confident that the guilty are being identified and punished, and evaluate the cost-effectiveness and efficiency of our judicial system.

The value of access is not limited to the public's involvement in the judicial process, it also is an essential foundation of the press' ability to gather information and inform the public about other matters of public importance. Judicial records are critical to many of the stories that journalists write every day about public officials and the activities of the government. For example, the *Star-Tribune* built a database from bulk access to court records to demonstrate funding improprieties involving the Minnesota Partnership for Action Against Tobacco. The *St. Petersburg Times* searched judicial records to discover that a man running for city treasurer had not disclosed that he had filed for personal bankruptcy three times and corporate bankruptcy twice, and that the new director of a large arts organization that solicited donations had been charged with fraud in his home state. Tampa's News Channel 8 mapped the location of all drug arrests—information obtained from judicial records—to uncover a narcotics ring across the street from an elementary school. There are dozens of other examples involving court records. Each involves a published or broadcast public interest story that depended on electronic access—usually bulk access—to judicial records.[132]

In fact, a 2000 study by Elon University Professor Brooke Barnett found that journalists routinely use public records not merely to check facts or find specific information, but to actually generate the story in the first place. According to that study, 64 percent of all crime-related stories, 57 percent of all city or state stories, 56 percent of all investigative stories, and 47 percent of all political campaign stories rely on judicial and other public records. Access to public record databases is "a *necessity*

[131] Madison, Letter to W.T. Barry, Aug. 4, 1822, *reprinted in* 9 *The Writing of James Madison* 10 (Hunt ed. 1910).
[132] *See, e.g.*, Reporters Committee for Freedom of the Press, *Stories Using Electronic Court Records* (available at www.rcfp.org/courtaccess/examples.html).

for journalists to uncover wrongdoing and effectively cover crime, political stories and investigative pieces."[133]

Perhaps the least discussed, although most widely shared, benefit resulting from accessible judicial records is the use of those records as part of the critical infrastructure of our information economy. Reliable, accessible public records are the very foundation of consumer credit, consumer mobility, and a wide range of consumer benefits that we all enjoy. There is extensive economic research from the Federal Reserve Board and others that demonstrates the economic and personal value of accessible public records, but it does not require an economist to see that lenders, employers, and other service providers are far more likely to do business with someone, and to do so at lower cost, if they can rapidly and confidently access information about that individual.

The data elements necessary to determining whether a loan applicant has defaulted on past debts or a job applicant has a criminal record or a history of civil judgments reflecting on his or her character or honesty, require rapid access to data from around the country, with sufficient precision to identify and match individuals. This necessarily, inevitably requires access to account numbers, addresses, and Social Security Numbers. How else is one to distinguish among the more than 60,000 "John Smiths" in the United States, the more than three million people who change their names because of marriage or divorce each year,[134] or the 43 million Americans—17 percent of the U.S. population—who change addresses every year.[135]

Access to public records is particularly important for workers who are moving from one place to another in our highly mobile society, for the speed with which services are provided, and especially for economically disadvantaged Minnesotans. In short, accessible public records, and especially judicial records, facilitate consumer mobility, economic progress, and a democratization of opportunity. This is why the authors of the leading study of public records access concluded that such information constitutes a critical part of this nation's "essential infrastructure," the benefits of which are "so numerous and diverse that they impact virtually every facet of American life. . . ." The ready availability of public record data "facilitates a vibrant

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[133] Barnett, *Use of Public Record Databases in Newspaper and Television Newsrooms*, 53 FED. COMM. L. J. 557 (2001) (emphasis added).

[134] National Center for Health Statistics, *National Vital Statistics Reports*, vol. 51, no. 8, May 19, 2003, at 1, table A.

[135] United States Postal Service Department of Public Affairs and Communications, *Latest Facts Update*, June 24, 2002.

economy, improves efficiency, reduces costs, creates jobs, and provides valuable products and services that people want."[136]

Judicial records are used to identify and locate missing family members, owners of lost or stolen property, witnesses in criminal and civil matters, debtors, tax evaders, and parents who are delinquent in child support payments. The Association for Children for Enforcement of Support reports that public record information provided through commercial vendors helped locate over 75 percent of the "deadbeat parents" they sought.[137] New York City's Child Support Enforcement Department used public record information supplied by ChoicePoint to recover $36 million over two years from thousands of non-custodial parents.[138]

Law enforcement relies on judicial and other public record information to prevent, detect, and solve crimes. In 1998 the FBI alone made more than 53,000 inquiries to commercial on-line databases to obtain a wide variety of "public source information." According to then-Director Louis Freeh, "Information from these inquiries assisted in the arrests of 393 fugitives wanted by the FBI, the identification of more than $37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning."[139]

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[136] FRED H. CATE & RICHARD J. VARN, THE PUBLIC RECORD: INFORMATION PRIVACY AND ACCESS—A NEW FRAMEWORK FOR FINDING THE BALANCE (1999).

[137] Hearings before the Committee on Banking and Financial Services, U.S. House of Representatives, July 28, 1998, (statement of Robert Glass).

[138] Story is available on ChoicePoint website (http://www.choicepoint.com/news/success.html.).

[139] Hearings before the Subcommittee for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies of the Comm. on Appropriations, U.S. Senate, March 24, 1999 (statement of Louis J. Freeh).

2. The Importance of a Legal Right of Access

It is precisely because of the political, economic, and societal importance of judicial records that the U.S. Supreme Court has found a constitutional right of access to the courts—the only branch of government to which the Court has applied such a right.[140] Public access is so essential that the Court has required that access be permitted to every phase of a trial, including voir dire, where privacy interests are arguably at their highest.[141] Access is required even over the objections of both the defendant and the prosecution.[142] Even when minor victims of sexual offenses were involved—when privacy rights are unmistakably at their apex—the Supreme Court unanimously struck down a Massachusetts ordinance that would have presumptively prohibited public access.[143] The Court has repeatedly extended the constitutional right of access to judicial records as well.[144]

This constitutional right of access to judicial proceedings and information merely restates the historical common law right of access.[145] Virtually all states have similarly recognized what the authors of the best-selling communications law casebook describe as "the long-standing practice of allowing inspection of court records by anyone wishing to do so."[146] This is certainly true in Minnesota, where the Minnesota Supreme Court has found that "[i]t is undisputed that a common law right to inspect and copy civil court records exists."[147]

I describe the common law and constitutional rights of access, not to suggest that they mandate access to all information in all court records under all circumstances, but rather to highlight the United States and Minnesota Supreme Courts' commitment to ensuring access to judicial records and the lengths to which both courts have gone to guarantee such access. The extraordinary degree of access that courts have sought to ensure where judicial records were involved reflects the critical role that access to such records plays in our democracy, economy, and society.

3. The Impact of Technology

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[140] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).
[141] *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986).
[142] *Richmond Newspapers*, 448 U.S. 555.
[143] *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982).
[144] *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984); *Press-Enterprise*, 478 U.S. 1.
[145] *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978).
[146] MARC A. FRANKLIN, ET AL., MASS MEDIA LAW 762 (6th ed. 2000).
[147] *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197, 202 (Minn. 1986).

The question the Minnesota Supreme Court asked our committee to address is whether technology affects the degree to which or the way in which our judicial system provides the public with the access it needs and is constitutionally entitled to have. This is a very difficult question, as the Minnesota Supreme Court wisely recognized, and requires balancing the demonstrated benefits of access with the potential for harms that access facilitates.

a. The Importance of Balance

In attempting to answer the Minnesota Supreme Court's question, the majority of the committee appears to have placed heavy emphasis on only one side of the equation—the potential for harm. The introduction to the majority report focuses almost exclusively on the concerns related to Internet access. Only in a few footnotes is there reference to testimony regarding the benefits of access and the purposes it serves.

The emphasis on harm is most evident in the majority's consideration of Internet to Minnesota court records. The majority begins its discussion by noting that "[a]ccess to court records is becoming easier and much broader now that an electronic format replaces or augments paper. The Internet's capacity to consolidate information into easily searchable databases means that the trip to the courthouse is a virtual journey accomplished with the click of a computer mouse."[148]

This is great news: the Internet and electronic access through commercial intermediaries are making widespread, affordable, convenient public access to judicial records practical for the first time in our history. They are helping to turn the theoretical promise of access into a practical reality for all Minnesotans. But rather than celebrate this development, or even reference its positive impact on the constitutional promise of open records, the majority instead laments the fact that "[t]hese changes have eroded the practical obscurity that individuals identified in court records once enjoyed," and then outlines a parade of "competing and often conflicting interests including, but not limited to, protection against unsubstantiated allegations, identity theft protection, accuracy, public safety, accountability of courts and government agencies, victim protection and efficiency."[149] Had the majority focused as much on the many demonstrated benefits of public access as it did on the possibility of potential harms, the subsequent analysis might have been more balanced and thoughtful.

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[148] Report, at 4.
[149] *Id.* at 4-5 (citation omitted).

b. The Importance of Supporting Data

Exacerbating this tendency towards a one-sided presentation of the access issue is the fact that the majority provides supposition and anecdote in lieu of actual data about the prevalence and impact of the asserted harms and the relationship between those harms and access to judicial records. In fact, the majority cites no evidence that electronic access to judicial records has ever resulted in a measurable harm. I do not for a moment suggest that judicial records could not be used to cause harm, but before severely restricting Internet and bulk access, I would have liked to have more than vague supposition about the existence and magnitude of those harms.

c. The Importance of Relevant Data

It is even more troubling that the majority's assertions about those harms ignore relevant and reliable information about their nature and cause. For example, the majority repeatedly cites to identity theft as a concern posed by access to judicial records, but this conflicts with the Federal Trade Commission's comprehensive study of identity theft, published in September 2003. That report, based on more than 4,000 interviews, found that public records of all forms played such an insignificant role in causing identity theft as to be immeasurable. In fact, that study found that, of the one-quarter of identity theft cases in which the victim knew the identity the perpetrator, 35 percent involved a "family member or relative" and another 18 percent involved a friend or neighbor.[150] The majority's discussion of identity theft would lead one to think that electronic access to judicial records was a major contributor to this crime, when the FTC's data suggest it is not.

The majority also fails to note the critical role that access to public records plays in *preventing* identity theft. Bulk access is vital to employment screening, identity verification, and other services that businesses use to ensure that the person seeking credit, borrowing money, or applying for a benefit is who he or she claims to be. The evidence suggests that reducing access to judicial records is more likely to increase than reduce identity theft.

This is also true with regard to the problems faced by persons of color who, as the report notes, may be arrested for certain crimes at such a disproportionate rate as to suggest discrimination by law enforcement officials. Public access to this information does not cause the problem; rather, as the majority report concedes, public and press access is essential to exposing and solving it.

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[150] Federal Trade Commission, *Identity Theft Survey Report* at 28-29 (Sept. 2003).

4. The Majority's Recommendations Concerning Internet Access and Bulk Data Alternative 1

In my view, neither the majority report nor the testimony and documents with which the committee was presented establish any meaningful connection between electronic access to public records and harm, much less a realistic probability of sufficiently serious harm to warrant compromising the access that the public has long enjoyed and to which it is entitled.

Even, however, if for the sake of argument alone, we assume that a connection between access to judicial records and the harms identified by the majority could be established, the majority's recommendations are so blunt and broad that they are unlikely to afford the public any significant protection, while undermining the benefits of accessible judicial records. There are many examples, but I will provide just five.

a. Shifting the Burden

Perhaps because of the majority's focus on possible harms that might result from access to judicial records, to the exclusion of recognizing the benefits of access, the majority and the supporters of Bulk Data Alternative 1structure their recommendations concerning Internet and bulk access in the most restrictive manner possible. Rather than follow the traditional approach used in federal law and virtually every state of providing for public access to all public records, except for those specifically determined to pose a specific risk of harm, the majority and the supporters of Bulk Data Alternative 1 take the virtually unprecedented approach of allowing Internet and bulk access only to a list of documents; everything not listed is excluded: "[a]ll other electronic case records that are accessible to the public under Rule 4 shall not be made remotely accessible. . . ."[151]

This turns the constitutional presumption of openness on its head. In *Globe Newspapers Co.*, the United States Supreme Court refused to allow the Massachusetts legislature to presumptively close courtrooms during the testimony of minor victims of sexual offenses. Despite the magnitude of the potential risk and the fact that the state law was limited exclusively to protecting children, the Court found that in every instance in which a judge determined to close a courtroom, the judge must first specifically determine that the "denial [of access] is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."[152]

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[151] Report, at 56 (proposed Rule 8, subd. 2(b)).
[152] 457 U.S. at 606.

The people of Minnesota deserve no less protection, especially where, as here, the majority has provided no evidence as to the realistic potential for harm if Internet or bulk access is provided. This is what the law requires: in Minnesota court records are presumptively open and a person seeking to block access must assert "strong countervailing reasons."[153] Rather than provide a list of what is permitted, and exclude all else from electronic access, the majority and those supporting Bulk Data Alternative 1 should have sought to identify those data elements that could be demonstrated to pose a specific risk of harm to the public, and then restricted electronic access only to those.

It is no answer to say that access is still available at the courthouse. First, it isn't accurate; the majority recommends prohibiting access to some information altogether. Second, and more importantly, it isn't adequate. U.S. courts and U.S. law has long required that access must be as robust as is feasible within existing financial and technological resources. Minimum access is not enough, if broader access could reasonably be provided. Chief Justice John Marshall, sitting as a specially designated trial judge, moved the trial of Aaron Burr from the courthouse to a larger hall so that more people could be accommodated. Almost 200 years later, Congress amended the Freedom of Information Act to specify that records must be provided in the medium and format requested unless it was impractical to do so. This highlights a third fallacy of the "some access" argument: forms of access are not interchangeable, but the majority treats them as if they were. Courthouse access is no substitute for access from across the state, and access to individual paper records is no substitute for electronic access to the entire database.

Finally, the majority's recommendations on Internet access combined with Bulk Data Alternative 1 restrict access to key data elements to the courthouse alone. This ignores U.S. and Minnesota Supreme law and principles requiring the proponents of any new restriction of access to demonstrate why it is warranted, irrespective of whether other forms of access are available.

b. Confusing the Interests of Litigants, Jurors, Witnesses, and Victims

The majority's recommendations on Internet access and Bulk Data Alternative 1 repeatedly lump together the interests of "litigants, jurors, witnesses and victims," despite the fact that the interests of these parties have long been recognized to vary widely. Litigants who choose to go to court to seek the judiciary's assistance in resolving a civil dispute clearly have different—and weaker—interests in secrecy than do the victims of crime. Similarly, the public's interest in information about these

[153] *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d at 206.

parties differs greatly. While the public clearly has a legitimate interest in knowing that a jury is fair, impartial, and representative, knowing the Social Security Numbers of individual jurors is not necessarily relevant to that task. On the other hand, knowing the Social Security Numbers—the only form of uniform identifier used in the United States—of a person who is disposing of assets or seeking to avoid debts is of the greatest importance.

The majority report on Internet access and Bulk Data Alternative 1 ignore these distinctions entirely and inexplicably makes no differentiation whatever among "litigants, jurors, witnesses and victims" or "parties or their family members, jurors, witnesses, or victims." This is a serious flaw that is easily remedied by addressing the interests of litigants or parties separately from those of jurors, witnesses, and victims.

c. Confusing Courthouse Access with Internet and Bulk Access

Despite having asserted a variety of harms alleged to result from traditional access to judicial records, the majority recommends few new restrictions on courthouse access, while recommending substantial new limits on Internet access and, in Bulk Data Alternative 1, bulk access. Yet neither the majority nor the supporters of Bulk Data Alternative 1 explain why these categories of access should be treated differently.

Presumably—and the public can only presume here because the majority and those supporting Bulk Data Alternative 1 are silent—those supporting the majority position on Internet access and Bulk Data Alternative 1 believe that there are fewer obstacles to a perpetrator of identity theft or other fraud obtaining information remotely than at the courthouse. For example, a criminal is likely to desire anonymity, and the committee may be assuming that anonymity is easier to obtain through remote access. Such beliefs if held are not based on reality. Access via the courthouse historically is anonymous: an individual does not have to provide his or her name to exercise a constitutional right. Moreover, the committee's recommendations would allow for electronic access at a courthouse. If this access is provided through public kiosks, like public access to the Internet is provided at Minnesota public libraries, there will be no occasion for identification.

Ironically, Internet and bulk access, by contrast, do tend to leave the electronic version of a "paper trail" that would allow investigators, months or even years later, to determine who obtained access to a specific record. If payment is required for printing or downloading or to access a commercial service, some form of identification—for payment—is inevitable. No evidence has been presented to the committee that suggested that Internet or bulk access was less reliable or more risky than courthouse access—only that it was less expensive, more convenient, and more accessible for people who live in remote communities or have limited mobility. The available

evidence argues for more, not less, electronic access, if we are interested in serving the people of Minnesota.

d. Confusing Internet and Bulk Access

Nowhere is the lack of precision in the advisory committee's recommendations clearer than with its confusion of bulk access with Internet access. Those supporting Bulk Data Alternative 1 lump bulk and Internet access together, thereby ignoring significant differences between the two. Bulk access is most often obtained by commercial subscription services, such as Westlaw and Lexis, who make the data available to identified subscribers, including law firms, private investors, credit bureaus, and law enforcement agencies. Commercial intermediaries buy judicial records in bulk and then add value by combining information from multiple sources, adding useful finding and interpretive aids, and making standardized information available conveniently, reliably, and at low cost. These commercial information providers both enhance access, with all of its benefits—constitutional and otherwise—and greatly reduce the burden on court clerks by filling many requests for records that would otherwise consume court resources.

As a result, many Minnesota attorneys and businesses use services provided by Westlaw, Lexis, and other commercial providers for convenient, desktop access to court records, rather than apply to courts themselves for those records. Similarly, journalists increasingly rely on commercial intermediaries. And the economic benefits that all Americans share from open court records depend entirely on commercial providers: Lenders, retailers, employers, professional associations, child care facilities, and others who need to verify information about past criminal activities turn not to court clerks, but to commercial intermediaries for this information.

Ironically, even the government looks to commercial providers for public record data. Courts across the country use Westlaw, Lexis, and other commercial providers, as do law enforcement agencies. According to former FBI Director Louis Freeh, access to commercial providers of public record information "allows FBI investigative personnel to perform searches from computer workstations and eliminates the need to perform more time consuming manual searches of federal, state, and local records systems, libraries, and other information sources. Information obtained is used to support all categories of FBI investigations, from terrorism to violent crimes, and from health care fraud to organized crime."[154]

[154] Hearings before the Subcommittee for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies of the Comm. on Appropriations, U.S. Senate, March 24, 1999 (statement of Louis J. Freeh).

Bulk buyers also provide significant financial revenue for public records custodians, including courts, as well as other services, such as returning to the custodian records that have been updated, formatted, or otherwise corrected. Anonymous access is rare: you must have an account and password to log-on. Even those entities that do make such data available on-line, charge a fee for doing so and therefore typically require identification. Thus, the access provided by bulk buyers is typically more secure, not less, than that provided directly by courts. Direct Internet and courthouse access provide none of these benefits or protections.

It is nonsensical to lump bulk access together with Internet access, or to apply the identical rules to both, without discussion of the significant differences between the two. Moreover, it is inappropriate to lump all bulk requesters together. If the advisory committee's concern is ensuring accountability, then bulk access by subscription services, which require subscriber identification, operate subject to contracts with both public information providers and subscribers, and have a long history of responsible service to both courts and subscribers should not be blindly grouped together with one-time requesters or nonsubscription services.

e. The Administrative Burden of Redaction and Other Requirements

The rules changes on Internet access proposed by the majority and Bulk Data Alternative 1 pose serious questions as to how they will work in practice and the burden they will create on court clerks and other judicial officials. Certain data, such as street addresses and telephone numbers, never be disclosed via Internet or in bulk. How is this to be accomplished? These data elements presumably will still be required on court filings. The information will be available at the courthouse, possibly even through electronic systems. How are these data to "disappear" when the document is accessed via Internet?

In the advisory committee's discussions, it has been suggested that this will be accomplished primarily by placing the responsibility on attorneys to segregate such information. The proposed rule, however, places the burden far more broadly and, in any event, many judicial records are not prepared by attorneys, and it is inappropriate in any event to place the burden on them of ensuring that redaction rules are followed. This is not a problem that technology is likely to solve affordably or consistently. The likely results are increased burdens for already over-worked judicial staff, delays in making records accessible to the public, or most seriously, the wholesale withholding of documents containing the specified data elements.

A similar concern is raised by the majority's recommendation that Internet access to "preconviction criminal records" on the Internet be conditioned on those

records being "not searchable by defendant name using automated tools."[155] In part, this rule would place restrictions on criminal dockets available via Internet by ensuring that the docket is not searchable by defendant name. The proposed restriction is unprecedented in any state I have examined. It also seems undesirable, which may explain why no other state has taken this step, to restrict electronic access to the docket itself—not the parties' filings or supporting papers, but the actual barebones record of what our courts are up to. Again, no state has placed limitations on Internet access to docket information and Minnesota should not be the first.

5. Conclusion

The committee's many meetings and extensive research provide a solid foundation for recommending to the Minnesota Supreme Court thoughtful rules for ensuring that Minnesota residents continue to have open access—and realize the potential of the Internet and commercial intermediaries to provide even wider, more convenient, and less costly access—to the records of their court system, while protecting against specific, identified harms realistically posed by expanded accessibility.

Regrettably, the majority recommendation regarding Internet access and Bulk Data Alternative 1 do not deliver on that potential. Instead, they minimizes the historical, constitutional, and practical arguments in favor of access, and focuses instead on broad, unsupported assertions about the harms that might possibly result from access. Instead of tight analysis, these recommendations concerning Internet and bulk access are based on anecdote and innuendo. As a result, those recommendations are too broad and blunt to provide the precision that any effort to restrict public access to judicial records requires.

In particular, these recommendations rest on an unstated, and certainly untested, assumption that Internet and bulk access present greater risks to the public than access (including electronic access) at the courthouse. The inexplicable refusal of the supporters of Bulk Data Alternative 1 to distinguish between bulk and Internet access lead it to make recommendations that not merely fail to serve the public's interest, but actively disserve it. Westlaw, Lexis, and similar commercial services provide widespread access in every corner of Minnesota to critical, enhanced information. This reduces the burden on court clerks and other public records custodians, generates significant revenue for the state, and provides a valuable resource for state government agencies as well as attorneys, businesses, and the public. Yet, without properly noting these benefits or providing sufficient

[155] Report, at 56 (Proposed Rule 8, subd. 2(c)).

explanation, the supporters of Bulk Data Alternative 1 recommend lumping this service together with Internet access and subjecting both to new stringent limits.

What is needed is further study to document the importance of public access to judicial records, identify with precision those specific harms that are realistically posed by different forms of access to different types of judicial records, and then recommend precise rules to prevent those harms while facilitating robust public access to judicial records.

Alternatively, the Minnesota Supreme Court could try to correct the greatest shortcomings of the current report, especially as it applies to remote access. At a minimum, I believe this would require three essential changes:

1. **Permit bulk access to complete judicial records in Rule 8, Subdivision 2(a).** The critical uses of court records by a wide range of government and business clients include: preventing identity theft, helping locate missing children, assisting in the enforcement of child support obligations, helping law enforcement locate witnesses to crimes and finding missing pension beneficiaries. These uses depend on gaining access to the complete record, including key personal identifiers as Social Security Numbers, home addresses, and telephone numbers. The restrictions in Rule 8, Subdivision 2(b) are overexpansive and restrict key personal identifiers such as home address and phone numbers that have traditionally (except in very limited circumstances) been available to the public. At a minimum, bulk access should include Social Security Number, home address, and telephone number information, at least for litigants and parties.

2. **Eliminate the restriction proposed in Rule 8, Subdivision 2(c), that would restrict courts from providing Internet access to searchable criminal dockets.** Internet access to criminal and civil dockets should be unimpeded.

3. **Require the close monitoring of, and regular reporting to the Minnesota Supreme Court about, the way in which redaction and other administrative burdens imposed by the proposed restrictions work in practice** to ensure that they do not result in more information than is specified being restricted, that they do not cause delay in making records public, and that they do not result in records or parts of records that should be made public under the proposed rules being withheld.

(continued next page)

While I believe it would be better for the Minnesota Supreme Court to grant the committee more time to develop rules based on evidence and reflecting the constitutional preference for openness, I believe that these three changes are essential to if we are to comply with what the Constitution requires and the people of Minnesota deserve.

Donna Bergsgaard

Joined by:

Acxiom Corporation
ChoicePoint Inc.
Coalition for Sensible Public Records Access
Consumer Data Industry Association
Equifax
Experian
First American Corporation
LexisNexis
TransUnion
West, a Thomson business

Exhibit M: Minority Report on Searchability of Preconviction Criminal Records by Defendant Name and Public Access to Race Census Data

Introduction

This submission addresses two important issues on which the advisory committee was closely divided:

> 1. Whether preconviction criminal records should be searchable by defendant name when posted by the courts on the Internet.
>
> 2. Whether race and ethnicity census data collected by the courts should be publicly accessible.

With respect to the first of these issues, the committee's final report recommends that preconviction criminal records, even though they are fully accessible to the public, should be posted on the Internet only in a manner that does not allow them to be electronically searched by use of the defendant's name. *See* proposed Rule 8, subd. 2(c). As for the second issue, the Report suggests that there be no general public access to race and ethnicity information, even though the court system has been collecting this information from criminal defendants for nearly two years, during which time it has been fully available to the public. *See* proposed Rule 4, subd. 1(e).

As discussed below, these recommendations are the product of good intentions but demonstrably flawed factual premises. They would accomplish virtually nothing in terms of what their proponents describe as the reasons for adopting them, while seriously interfering with a number of important values–including some that the Rules of Public Access are designed to foster. The recommendations should therefore be rejected or modified by the Minnesota Supreme Court.

1. Remote Searchability of Preconviction Records by Defendant Name.

Proposed Rule 8, subd. 2(c) states that "[a]ny preconviction criminal records posted on the Internet shall be made available only by using technology which, to the extent feasible, ensures that [the] records are not searchable by defendant name using automated tools." If adopted, this provision would cause preconviction criminal records to be treated differently than all other court records that the proposed Rules authorize remote (Internet) access to. It would severely inhibit the ability of citizens, attorneys, parties, and others to effectively use what is one of the most frequently employed databases maintained by the court system.

Proponents of the recommendation principally argue that Rule 8, subd. 2(c) is necessary to minimize the "imprimatur" that might otherwise be perceived by visitors to a court Website with respect to preconviction data–such visitors would somehow conclude that a criminal defendant was guilty even though not yet convicted, since the information appeared on the official court site. *See* Final Report, 4, 9, 15.[156] This view is coupled with a number of other objections, which focus on the concern that "making preconviction court records available to anyone at any time and in virtual perpetuity over the Internet will have a permanent, disproportionate impact on the housing and employment of persons of color, especially young men of color." Final Report, 14.

The issue of whether preconviction criminal records should be remotely accessible in searchable form was frequently addressed during the advisory committee's deliberations. In the end, the position described in proposed Rule 8, subd. 2(c) prevailed by a vote of 9 to 7—a bare majority of the committee members present on the day the vote was taken, and not a majority of the entire committee. *See* Report, 19.

This minority report asks the Minnesota Supreme Court to reject the recommendation. There are a number of readily evident defects in the arguments that the proponents have offered to support the proposed Rule.

First, at a pragmatic level, it is clear that the recommended Rule will accomplish nothing in terms of limiting the availability of searchable preconviction criminal records on the Internet. That is because a large number of other entities–both private and public–independent of the court system have for some time made, and continue to make, such records available on their Web sites. All of the criminal records at issue here are publicly accessible at the courthouse. This would not change under the advisory committee's recommendations. As its Final Report (at 10) acknowledges, if "the underlying information is public on paper, the information likely will be available from private-sector data brokers." It is available through public agencies as well.[157]

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[156]References are to the Draft Final Report, since the Final Report was not completed at the time this submission was prepared. Thus, page numbers may be slightly different in the Final Report.

[157]See, for example, the Hennepin County Attorney's Web site (www.hennepinattorney.org), which provides considerable preconviction information about criminal matters, and which is in part expressly designed to help citizens actively participate in and follow judicial proceedings. Such sites are of course not governed by court access rules.

Thus, the specific consequences that the proponents of proposed Rule 8, subd.2(c) most zealously expressed concern about–the purported impact on housing and employment for persons of color—will simply not be ameliorated by the proposed Rule. The preconviction information will be widely available in a searchable form on the Internet regardless of what the Minnesota Supreme Court does. As the proponents of the proposed Rule effectively conceded during the committee's deliberations, its principal value would therefore be, at most, symbolic. It would have little or no practical benefit.

In contrast however, there would unquestionably be specific adverse consequences flowing from adoption of the proposed Rule. Prominent among them would be the impact on court system resources. One of the singular benefits offered by Internet access to court records is the potential for substantial efficiencies with respect to court staff time. There can be little doubt that when citizens, attorneys, and others using the court system are able to acquire routine information by visiting a court Web site, the number of phone calls and physical visits to court administration will be significantly reduced. Queries about criminal matters probably constitute one of the largest of all categories of requests for information fielded by district court staff. Thus preventing searches by defendant name will likely eliminate much of the benefit that Internet access to court records would otherwise provide, because efforts to locate the particular case or party in which a person is interested will often be slow and cumbersome given the volume of criminal records. It will frequently seem more convenient to simply make a phone call to the court administrator's office.

The advisory committee specifically considered this issue in the context of Hennepin County, which for approximately the past 10 years has operated a subscriber service allowing dial-up access (for a fee) to court records, including preconviction criminal records. Hennepin County district court officials were asked by the committee to estimate the impact of eliminating remote searchability of preconviction records, as suggested in proposed Rule 8, subd. 2(c). They responded that it would almost certainly affect their operations, surmising that at least two additional full-time employees could be required to handle the increased calls and counter visits. While these officials conceded that it was difficult to provide exact estimates, they left no doubt that there would be a definite consequence in terms of staff time and resources caused by proposed Rule 8, subd.(2)(c). If that potential impact is considered collectively with respect to all of the district courts in the state, the financial ramifications could be substantial.

There will be other costs for the court system that result as well. For example, the advisory committee's report acknowledges that posting only "non-searchable" preconviction records on the Internet affords no permanent solution to the alleged harms that searchability might cause, because it may be obviated by "technological

advances" that will allow the records to be searched regardless. *Id.* at 18. The report suggests that though this may be offset by "advances and vigilance" it "is anticipated that this will be a constant struggle." *Id.* In practical terms however, this "constant struggle" translates into potentially significant ongoing costs for the court system, and in the end will probably be futile anyway.

If incurring such expenses was likely to produce some sort of tangible benefit, then of course they might be justified. But as noted above, fully searchable preconviction criminal information is and will continue to be readily available on the Internet regardless of whether the court system supports it. Given the many other demands on the court system's resources, this minority report submits that the funds which would be expended on attempting to adequately administer proposed Rule 8, subd. 2(c) could be far better directed to other priorities–where some real advantages might accrue.

While it may be questioned whether anyone will in fact benefit from proposed Rule 8, subd. 2(c), there are many individuals and entities (in addition to the court system itself) that will be concretely and negatively affected by the anti-searchability provision found in the Rule. Though these parties are not always as visible or easily counted as those whom the proposed Rule is supposed to aid, they should nonetheless be considered. They include parties to criminal actions, witnesses, victims and their families, attorneys and other officers of the court, journalists, public employees (among them law enforcement officials) not part of the court system, neighborhood groups, various kinds of advocates, and court-watchers. All would benefit greatly from being able to efficiently monitor, via the Internet, the court system's treatment of criminal defendants during the preconviction phase of the proceedings.

However, banning the capacity to remotely search criminal court records by means of a defendant's name will significantly impede the ability of all these individuals and many others to effectively obtain the information that they are seeking from the court system. Not only will many of them, as discussed above, then burden employees of the court administrator's office by making phone calls or visits, but the additional time these persons must collectively invest in trying to obtain information will certainly be very considerable, and should also be taken into account in assessing the cost and impact of the proposed Rule. In short, the Rule will penalize the many potential beneficiaries of searchable on-line access to preconviction criminal data, without any corresponding benefit to defendants.

In addition to the advantages of time savings, convenience, and efficiency that would be realized, searchable remote access would more broadly promote accountability and accuracy with respect to the criminal court system--a value often identified by the Minnesota Supreme Court as one of the reasons warranting public

access in the first place–because of the expanded number of individuals and entities who could conveniently obtain access to criminal records by means of the Internet.

The value of such accountability can be demonstrated in many ways. For example, there are a significant number of criminal dispositions–typically achieved by means of a plea negotiation–that permit defendants to avoid a conviction even though they very well may be essentially guilty of what they were charged with. As the advisory committee's report notes, a continuance for dismissal, a diversion, a retention of unadjudicated offenses under MINN. STAT § 609.04 (2003), or a stay of adjudication may all result in no recorded conviction. *See* Report, 19-20. As a result, *none* of the records relating to such prosecutions would *ever* appear in searchable criminal records available on a court's Web site. Yet the community at large, as well as victims of criminal behavior, have a distinct interest in being able to readily monitor such proceedings and the resulting dispositions.

In addition, criminal records posted by the courts on their own Web sites are likely to be more accurate and up-to-date, as compared to those maintained by private data brokers. But if use of the court sites is inefficient, the data having more integrity will receive less attention. In addition, incorrect and outdated information about criminal proceedings that does exist in court records may go unremedied, because those most likely to notice–including criminal defendants themselves–will not have ready access to the records, and the errors will be perpetuated through private Web sites that they would rarely see.

Moreover, there is reason to believe that concerns about the potential adverse impact of searchable Internet access to preconviction criminal data have been exaggerated. It is worth noting, for instance, that while many state and federal courts have recently moved to make criminal records accessible via the Internet, none has imposed the cumbersome condition found in proposed Rule 8, subd. 2(c). Yet if it were in fact plausible that the sort of harm claimed by proponents of the proposed Rule would occur simply because preconviction criminal court records are searchable on court Web sites, it seems unlikely that no other jurisdiction would have acknowledged it. Furthermore, as noted above, Hennepin County has permitted dial-up access to criminal records for approximately 10 years, which includes searchable preconviction data. However, not a single demonstrated case of harm resulting from this access was presented to the Advisory Committee. Indeed, despite the fact that many commercial Web sites have long provided widespread access to preconviction data, no specific empirical evidence of harm attributable to such access was identified.

In other words, the case for proposed Rule 8, subd. 2(c) rests almost entirely on unsubstantiated speculation. [158]

This minority report contends that when the foregoing considerations are assessed, it is clear that many more benefits will accrue from allowing remote, searchable access to preconviction criminal court records as compared to what will happen if proposed Rule 8, subd. 2(c) is adopted. Neither alternative is perfect. However, since one must be chosen, the option that provides the more demonstrable and distinct advantages should be preferred.

Furthermore, the Minnesota Supreme Court has two relatively simple options by which to mitigate the claimed harm that would be caused by remotely searchable preconviction criminal records, while retaining most of the benefits. The first of these would be to require an explicit disclaimer that would appear whenever a court's criminal records are accessed on line, informing the Web site visitor that until a conviction is entered, defendants are presumed to be innocent of all charges, and that the state has the burden of demonstrating guilt beyond a reasonable doubt. Additional information could be provided as well, cautioning the visitor about misuse of such information. Indeed, such a notice would not only offset the purported "imprimatur" that supporters of proposed Rule 8, subd. 2(c) identify, but it could well be effective in counteracting the possible effects of commercial Web sites supplying preconviction criminal data, which typically do not contain any such notice. Thus access to preconviction criminal records through a court Web site in this fashion would, on a net basis, be likely to have positive effects rather than negative ones.

The Minnesota Supreme Court could also choose an intermediate option in terms of searchability, which would be based on the distinction between search engines external to a particular Web site (such as Google) and those available only once a particular Web site is reached. Selecting the latter would reduce the purported harms caused by casual Internet "surfing," something that the proponents of proposed Rule 8, subd. 2(c) have most focused on. Those who take the trouble to locate and visit a specific court Web site might be more likely to have a legitimate reason for doing so. In any event, both of these options–Web site disclaimers and limited, site-specific search engines–are preferable to Rule 8, subd. 2(c) as currently drafted.

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[158]It can be observed that similarly dramatic and speculative claims were made to the Minnesota Supreme Court prior to its recent adoption of presumptive public access to child protection proceedings. Yet despite a lengthy experimental period allowing such access in several pilot counties, and then adoption of the public access rule on a statewide basis effective July 1, 2002, there has been no factual demonstration that the many dire predictions made by opponents of CHIPS access were warranted.

2. Public Access to Race and Ethnicity Census Data Collected by the Courts

The advisory committee also recommends that a new Rule 4, subd. 1(e) be adopted that would almost entirely prohibit public access to race and ethnicity census data collected by the court system. The Rule would create an exception to the normal presumption that governs court records, restricting access to the "contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters," subject only to a few narrow exceptions. Again, this suggestion was adopted on a closely divided vote—indeed, by a one-vote margin. *See* Final Report, 29. The minority report takes the position that the Committee's recommendation conflicts with the very purposes for which the race census data are being collected in the first place, namely, to monitor the judiciary and provide some assurance that allegations of race bias in the court system are being properly addressed.

It can hardly be contested that claims of racial bias in the court system have been among the most difficult issues confronted by the judiciary in recent years. As the advisory committee's Final Report notes, the collection of race census data was recommended as a means of promoting racial fairness. *Id.* at 28-29. However, preventing public access to these data would threaten to markedly diminish the credibility of any claim by the court system that it is making headway with respect to the racial bias issue. That is because the proposed Rule would plainly inhibit independent, outside parties that might attempt to evaluate the treatment of racial and ethnic minorities in the judicial process. If the very entity against which the allegations have been made—the court system—is the only one that has full and convenient access to individual race and ethnicity data, then its capacity to credibly contend that progress is occurring by reference to that data will inevitably be suspect.

The two exceptions described in proposed Rule 4, subd. 1(e) authorizing some outside access are of little or no value in facilitating independent scrutiny using the race census data. In the first place, both accord a great deal of discretion to the court administration in terms of whether access is even permitted. History demonstrates that this constitutes a decidedly inconsistent and unreliable method of fostering accountability. Furthermore, both exceptions impose significant limitations on disclosure "to any third party." This considerably reduces the independent usability of such data. Moreover, both alternatives would effectively require the court administrator to obtain the identity of the requester in order to properly determine if an exception applies. Yet it is well understood that there are many instances where a person seeking to scrutinize government records would prefer to remain unidentified.

For this reason, the statute governing access to Minnesota's administrative branch records—the Minnesota Government Data Practices Act, Minn. Stat. ch. 13—contains an express provision barring public officials from demanding the identity of a requester of records as a condition of permitting access. *See* Minn. Stat. §13.05, subd. 12. In short, proposed Rule 4, subd. 1(e) will frustrate the very accountability that collection of race and ethnicity census data is designed to promote.

As the advisory committee report notes, a principal reason identified by the proponents of preventing public access to such data is based on the concern that disclosure would deter parties from completing the forms (which is voluntary). However, as with many of the concerns relating to remote searchability of preconviction criminal records, this is entirely speculative, and is in fact contradicted by experience. The race and ethnicity census forms have been in use for approximately a year and a half, according to information submitted to the committee. During that time, there has been no restriction on public access to the forms. Yet there is not the slightest empirically based indication that public access to the data they contain has in any way deterred participation. The committee was told that a very high percentage of those asked to complete the form have done so, without qualification. Furthermore, there was no evidence whatsoever presented suggesting that particular individuals who completed the forms have experienced any harm, or even that there have been concerns expressed by those parties.

Whether the judicial system does have a problem with racial bias and unfairness remains a question to be debated. However, if that question is to be credibly answered, effective public access to one of the main compilations of data by which the issue can be rationally assessed is essential. Thus this minority report also asks that the Minnesota Supreme Court reject proposed Rule 4, subd. 1(e), and instead continue to allow public access to the race and ethnicity census data.

-- Mark R. Anfinson
-- Donna Bergsgaard
-- Paul R. Hannah
-- Gene Merriam

Exhibit N: Special Fact Finding Subcommittee Report to Advisory Committee

April 30, 2004

The Fact Finding Subcommittee was directed to compile additional information on the potential impact of the competing Internet access and bulk distribution policies. The subcommittee examined the current majority proposal that limits automated searches of calendars and registers of actions, and precludes Internet posting of name indexes. The subcommittee asked what is the potential impact on the MNCIS project timeline and resources? It also asked what is the potential impact on current fourth judicial district electronic access customers? Related policy issues and information are also included in this report as they were part of the subcommittee's discussion and offer valuable insight for the full advisory committee.

MNCIS

Information presented by Bob Hanson, Supreme Court IT Director:

Modify the current viewing tool (referred to as MNCIS Public Access or "MPA") for presentation to the Internet

Option 1. Use case status to distinguish pre- and post-adjudication
- a. Requires separating the current six User Case Statuses into pre- or post-adjudication categories (advisory committee to do this?).
- b. Viewer sees the entire case or not at all. Would see the convicted charges along with any dismissed charges. If any charge in the case remains un-adjudicated, case will not be viewable.
- c. Estimated cost is 32 hours or approximately $5,000

Option 2. Use Disposition/Judgment event codes to distinguish viewable and non-viewable events.
- a. Requires separating the current sixteen Disposition/Judgment event codes into viewable or non-viewable events (advisory committee to do this?).
- b. Assuming dismissed charges would be considered non-viewable and that other viewable dispositions exist (e.g., convictions), then viewer would see the case and convictions, but not any dismissed charges.
- c. Estimated cost is 62 hours or approximately $10,000. Some performance impact as this requires loading of additional data upfront.

Timing: although hours are relatively low, have to work this into the budget and overall project schedule, which could take several months to accomplish. Could be done either on a phased roll out (i.e., as counties are added to MNCIS), or wait until after all counties convert to MNCIS (scheduled completion mid-2006).

Estimates do NOT include any modifications to bring online TCIS to the Internet as TCIS is being phased out by MNCIS.

MNCIS Calendar and register of actions

MNCIS has a calendar and register of actions functionality, but no estimate yet on what it might cost to implement non-searchable (e.g., PDF) format and prove-you-are-human log ins. Since it would utilize off the shelf software tools, the best guess is that the cost may be between $5,000 and $20,000 initially for the tools. How effective the tools remain over time depends on how quickly they produce updates and how quickly the hackers break them.

Concern noted by subcommittee members: if formats and log ins are too cumbersome, effective use by people is jeopardized. Consider using the invisible-to-users barriers that were used to prevent automated searches for the Hennepin property tax database.

4th District SIP (criminal)

Information presented by Jim Wehri, 4th District IT Manager:

SIP web based application in pilot/proof of concept mode (12 test users) but it does not have any security features or subscription service at this point. Developer anticipates adding these but does not have a specification and cannot estimate without a specification; also concerned about support for a subscription service. Thus subscription service for the web based application may or may not be available before 4th district fully migrates to MNCIS. Once security and subscription service are established, appears that it would be relatively easy to then modify to restrict viewing to convicted charges and eliminate active, pending cases.

SIP non-web based technology (currently implemented via subscription service) Includes any all formal charges except confidential (e.g., warrant pending) cases. Includes name search on defendant name and aliases; includes sentences and conditions, and most of what is known as a register of actions. Addresses and telephone numbers of participants included, but no SSN in SIP. Party screens (e.g., attorneys, prosecutors, defendant, probation, arresting

officer) not jurors, witnesses or victims. Includes observed race (not race census data, which is held in another database)

Change estimate: If the objective is to not show dismissed charges but show convictions only (most cases have mixtures of the two), implementing this type of rule in SIP would be extremely difficult and require 100's of hours of work as it would involve creating a different database and writing a new system to display the data. Fourth District IT would not recommend this approach because SIP will be gone in a year or two.

If the objective is to not show pre-adjudication cases, then could set up a process where cases default to a pre-adjudication status upon initiation and the default status remains until all counts are adjudicated (SIP, like MNCIS, requires each count to be adjudicated before a case can be closed). At the end of each day, the system would review all cases updated during the day to determine if adjudication has occurred on each count. If all counts are adjudicated, the classification would be changed to post-adjudication and would be viewable. Estimated that the work would be about 100 hours at a cost of approximately $8,000. There will also be considerable security and documentation work. Probably another 20 hrs.

SIP usage for each dial-up customer in February 2004: customers submitted 158,475 transactions costing $14,960.04. Money goes to general county fund intended to recover costs of SIP.

What impact on fourth district court staff if pull off pre-adjudication cases? 158,000 transactions equates to about 10,000 names being looked up. If users call the Clerks office 30% of the time to check on pre-adjudicated cases, and if it takes a clerk 5 minutes to take the call, and a clerk is available about 114 hr/mo, then the Clerk's office would need two FTE's to answer the expected calls [(10,000 x .30) x 5 min) / 60 min/hr = 250 hrs, 250/114 = 2.2 FTE's].

Impact on technology needs if pull off pre-adjudication cases? Fourth District IT expects to see an increased demand for public terminals. Public terminal costs include the initial purchase of hardware/software/furniture ($2000), network connect fee (19/mo) and transactions fees ($.0144/transaction).

User impact: Carol Buche of Tennant Check explained that her company screens approximately 1,000 rental applications a month for landlords and property managers. Pending and dismissed charges are critical to their clients. Will continue to get the pre-adjudication charges from the courts any way they can; would have to hire one more full time person just to cover fourth district courts. Not efficient to begin with arrest records from law enforcement. There

is tremendous pressure for landlords to minimize police calls to their rental property as some cities charge fees based on the level of calls. (More details on how Tennant Check operates is set forth below in the discussion on Related policy issues, assumptions, and other items).

Timing: any modifications would take staff resources away from the MNCIS implementation currently underway in the fourth district.

Experience Under 4th District subscription service: Operating since 1992. Have had some complaints; biggest issue is users not differentiating between defendant name and aliases.

Daily Calendar 4th District

Currently search by community, not by defendant name, includes main charge. Currently presented in searchable PDF format. Each calendar is available for two weeks. Estimate for producing in Image Only PDF format and using prove-you-are-human log in: 4th district has no tool currently available to perform prove you are human log in so no estimate is available. Regarding non-searchable PDF format, the calendars are produced in Power Builder and then converted to Adobe Writer, but Power Builder is unable to manipulate all of the security features in Adobe Writer to make the report Image Only. Another tool would need to be used, and although the 4th district has such a tool, the staff is not familiar with it and no estimate is available.

Related policy issues, assumptions, and other items: These items were inescapably intertwined with the subcommittee's impact assessment and discussions, and are presented as informational items to the full advisory committee.

Public terminal access at courthouse: Users will still get pre-adjudication and dismissed cases if they visit a public access terminal at the courthouse. MNCIS currently presents data only on county-by-county basis, but can be easily modified to view on a statewide basis (and current draft rule 8, subd. 2(d), which defines "remote access," permits this).

Criminal justice business partners: Current draft of rule 8, subd. 4, provides that criminal justice business partners can receive via remote or bulk any case records where access to the records in any format by such agency is authorized by law.

Searching v. Downloading or Compiling: It was noted that the current draft of rule 8, subd. 2(c), only prohibits searching by name using an automated tool

external to the courts website; it does not address plain downloading or compiling all available information in an automated fashion. That draft rule reads: "Any preconviction criminal records posted on the Internet shall be made available only by using technology which, to the extent feasible, ensures that records are not searchable by defendant name using automated tools external to the court's website." If the rule is to address automated downloading or compiling, it needs to be modified.

Subscription v. Internet: One member draws a distinction between paid subscription services and free Internet access, and would allow the former access to all cases including pre-adjudication charges, but limit the latter to post-adjudication records. Although the subscription services allow access to commercial enterprises, those enterprises presumably follow FCRA and other similar laws. If its all on the web for free, landlords will stop paying for the search and do it themselves and will not tell the applicant (as simple as not returning a phone call). In order to change the law and have the legislature require the landlord to provide reasons, use dates of birth for verification, and have current records, need court rules imposing some limitations on free Internet access; otherwise get whipsawed in the legislature, which would simply respond "but its public data from the court." Most low-income people cannot afford Internet access and shrinking library hours are further limiting their electronic access, so they have no access, regardless of what price commercial enterprises might pay for subscription services.

Other members struggled with the distinction. Some disagreed indicating that: the credit report is more important to the tenant review than the criminal record check; that the problems with web surfers and other problem users represent a tiny percentage of the overall use; and that the distinction creates a policy that is based on what a user can afford. Other members suggested a possible alternative of imposing restrictions on subscriber's use of data as part of their access to the data, although effective enforcement of such restrictions may be an issue.

Tennant Check operations: provides both a credit bureau check and a criminal records check for landlords and property managers. The cost (currently $35) is passed on to the applicant for rental. Applicant must provide a signed release (under FCRA, credit bureau will not provide the credit information without one). Landlords can reject for rental based on a felony charge as opposed to a felony conviction. Even if there are certain convictions on the record, market factors may still result in some rental property being rented.

Tennant check does not make a recommendation one way or another regarding whether to rent. Under the FCRA the landlord is required to notify the applicant if they deny rental based on the report by Tenant Check. The notice must indicate that they can get a copy of the report for free from Tennant Check within 60 days of such notice.

Under FCRA, if an applicant contests information (e.g., this particular charge or debt is not me) and Tennant Check cannot verify it, it must be removed from the report. Even if there is no correction made, the FCRA also requires a Tennant Check to include an applicant's written statement of disagreement (up to 100 words) as a part of the report.

-Mark R. Anfinson
-Sue K. Dosal
-Donald A. Gemberling
-Pamela McCabe
-Teresa Nelson
-Robert Sykora

Exhibit O: Public Hearing Witness List

Thursday, February 12, 2004
Room 230, Minnesota Judicial Center, St. Paul
(in order of appearance)

John Stuart, State Public Defender

Lucy Dalglish, Director, Reporters Committee for Freedom of the Press

Tom Johnson, Council on Crime and Justice

Pastor Albert Gallmon, Jr., Fellowship Missionary Baptist Church, Minneapolis

Archbishop Harry J. Flynn, Archdiocese of St. Paul and Minneapolis

Hon. George Stephenson, Ramsey County District Court

Prof. Jane Kirtley, Silha Center for the Study of Media Ethics and Law, School of Journalism and Mass Communication, University of Minnesota

Patricia Weinberg, Minnesota Association of Verbatim Reporters and Captioners

Gordon Stewart, Legal Rights Center

Richard Neumeister

Roger Banks, State Council on Black Minnesotans

John Borger and Chris Ison for the Star Tribune

Kizzy Johnson, Communities United Against Police Brutality

Scott Benson, Attorney and Minneapolis City Council Member

Sharon Anderson

Bishop Craig Johnson, Evangelical Lutheran Church in America

Gary Hill, KSTP TV

Exhibit P: Summary of Presentations from 2/12/04 Public Hearing[1] in Response to 1/21/04 Preliminary Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch				
#	Name	Perspective/ Organization	Comment	P[2]
1	John Stuart	State Public Defender	Supports committee minority report regarding pre-conviction court records. 175,000 public defender cases per year across the state; 15,000 cases dismissed per year; just outright dismissals, not including plea bargains or not guilty verdicts. In Mpls., there are 11,000 dismissals, with 10,000 dismissed by the city prosecutor. Why so many dismissals? 95% are unscreened by prosecutors (e.g., tickets and tab charges) before they are filed with the court. But the defendants name and charges are available on the court's calendar. Q-what if name is not there? A: at that point it has crossed over into non-information because it is no longer associated with a name. Data brokers won't want it. Compromise is to find a non-searchable format to display the data. Disagrees with statement in the committee majority report that release of pre-conviction data would help defendants expose shortcomings in the justice system. There are many other existing data sources available to analyze the system without publishing it on the Internet. Just because somebody else (data brokers) are posting the information does not make it right. Big difference between public and publish. Context is everything, the person who buys the pre-conviction data might not be interested in buying the dismissal data. The courts' tremendous power and trust gives its data its commercial value, and the courts' role is to bring people together, not push them apart. Publishing pre-conviction data will hinder society from getting to the point of judging people by the content of their character. Q: For last 15 years public has been able to purchase arrest data from local law enforcement (e.g., Minneapolis) including their names and what they have been arrested for. How does cutting off court disposition information on those charges help the arrested people? A: When you compile information from all 87 counties and add the courts name to it you increase the marketability of the data.	1, S1

1 = Summary of Written Only Comments is set forth in separate table

2 = Page number refers to printout of comments distributed at hearing and supplemental printouts

Exhibit P: Summary of Presentations from 2/12/04 Public Hearing[1] in Response to 1/21/04 Preliminary Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch				
#	Name	Perspective/ Organization	Comment	P[2]
2	Lucy Dalglish	Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, Association of Alternative Weeklies, Radio Television News Directors & Society of Professional Journalists	Committee's majority report does not go nearly far enough in securing the substantial benefits of electronic access to court records because it limits remote access to documents created by the courts themselves. Proposed policy also defers excessively to assertions of privacy and vague claims of potential harm (privacy, embarrassment and identity theft) at the expense of the public's First Amendment and common law rights of public access. Access to court records via the Internet should be equal to access to paper records at the courthouse. Internet access is very useful to journalists especially in rural areas and after business hours. It also efficiently resolves problems such as multiple requests for the same "file" or when it is checked out to "chambers." Internet access also greatly improves accuracy and timeliness of news reporting, and Internet access to motions and transcripts would greatly help. Internet access aids watchdog activities of journalists and others. Identity theft issues can be handled by requiring SSN and financial account numbers to be filed separately or limited to last four digits; this is how the federal courts now handle civil cases. "Practical obscurity" is not germane to court record access policy. It arose in the context of a discussion about access to FBI "rap sheets" under the federal Freedom of Information Act (FOIA), and did not prevent access to any of the underlying court records. Congress destroyed the "practical obscurity" under FOIA with the 1996 amendments allowing access to federal agency records for any public or private purpose. Distinction between publicly available records at the courthouse and "publication" on the Internet is false. Enabling members of the public to find a brief in a case that they are monitoring via the Internet is not remotely comparable to publishing the brief in the New York Times. Limiting Internet access to court generated documents undermines the benefits of the policy; party-filed documents often contain the most useful information. Limiting access to party filed documents due to concerns over SSN and financial source documents is	2, S9

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			excessive as the overwhelming majority of pleadings do not contain this data. Private litigants have a strong incentive to avoid such disclosures and can seek appropriate sealing orders where necessary. Bans on juror, victim and witness identifiers are excessive. Access to identifiers is critical to allow reporters to track down and interview participants and thereby report stories of clear interest to the public (explain what it like to serve on high profile jury, explain verdicts, expose public corruption, scrutinize fairness of jury selection, discourage perjury, bring forward new witnesses). Ban on identifiers also imposes substantial burden on court staff. Bans on SSN and contact information of parties is overbroad; these should presumptively be public; use case by case sealing for legitimate, case specific reasons for precluding public access, or use last four digits of SSN. Supplemental juror questionnaires in civil cases should be presumptively public; otherwise they will be less accessible to the public under the proposed rule (R.Cvi.P. 47.01). Fees must be directly related to the actual cost of providing records. Maryland courts abandoned initial broad restrictions on access to court records (including home addresses and telephone numbers) after outcry from media and citizens, including bankers, apartment managers, nuclear power plant operators, and employers. Federal courts are implementing civil case management and e-filing system (implementation will be complete by 2005) that will permit Internet access equivalent to courthouse paper access, subject to redacting SSN and other "personal data identifiers. Federal criminal case records have a more limited policy but pilot programs are now experimenting with Internet access. No evidence of significant abuse has resulted. Even where there are demonstrable cases of Internet access to court records causing embarrassment, injury to reputation, or general invasion of "privacy," these are insufficient to overcome the presumption of public access. Critical to establish robust Internet access to court records now because 100% of court	

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			records will soon be stored in electronic format. Requiring the public to drive down to the courthouse is not meaningful access; only Internet access from the office or home is meaningful public access. Q: What records would you advise the court to classify as not public? A: The records that are currently classified as not public, and that there be a procedure that is easy to use for attorneys and pro se parties to easily seal particularly sensitive case records on a case by case basis. Q: What about concerns over pre-conviction data? A: Most landlords say they look for convictions. Existence of so many dismissals is a story that should be reported; if people are being mistreated, the cure is not to shut down access to the data that demonstrates they are being mistreated. (Supplemental Written Comments) Cites remarks by the late Washington Post publisher, Katharine Graham, regarding the vitally important journalism that is made possible by remote electronic access to court records (copy of Ms. Graham's remarks appended to supplemental comments), including: • Washington Post series on ineffectiveness of Maryland drunk driving laws and problems in the D.C. foster care system; • Associated Press report of an investigator's use of the Internet to discover that a client's potential babysitter was a convicted child molester; • January 2004 Miami Herald series exposing problems in the Florida criminal justice system, including severe racial disparities and overuse of "adjudication withheld" determinations that erase convictions from people's records; • January 2004 Denver Post report on Colorado child abuse and neglect, including some resulting in deaths, indicating that social service agencies missed advance warnings of problems; • October 2003 Louisville Courier Journal report that more than 2,000 indictments in	

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			Kentucky courts had been pending for more than three years and hundreds of cases were dismissed for lack of prosecution; • September 2000 Chicago Tribune report deter5mining that 1,700 people had been accidentally killed across the country by mistakes from nurses. Mistakes traced largely to cost-cutting measures that overburdened nurses in their daily routines; • October 2002 San Antonia TV report that thousands of accused criminals in Bexar County, Texas, were being freed without adjudication because the criminal justice system could not process their cases fast enough. The benefits of this reporting using computerized court records will be lost unless the courts ensure that the necessary information is available in electronic form. Both the media and the general public are better able to follow cases of interest when records are available online, and this makes the system more accountable. Committee's proposals lose sight of these enormous benefits while deferring excessively to vague or unspecified harms such as ensuring general "privacy," avoiding "embarrassment," or minimizing reputational harm to individuals. Committee's proposals would withhold huge quantities of information on a blanket basis, such as document submitted by the parties (which make up most of the court file) and most information about witnesses and jurors. Online access should be co-extensive with access to paper records at the courthouse. Cites recent adoption of this principle by the state courts in Maryland and New York. States that permit broad electronic access to court records have not experienced widespread problems with identity theft or experienced outbreaks of tortuous misuse of information. Committee should await results of actual practice, instead of relying on unsupported fears, before striking entire categories of information from online access. Misuse of court records is best addressed though existing remedies instead of a prior restraint. Cites after-the-fact remedies of state and federal criminal laws on identity theft, and the policy in some states of limiting SSN access to last four digits. Addresses, phone	

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			numbers, real estate, and bankruptcy information is readily available from many other sources. Potential harms from non-meritorious allegations are best address through after the fact remedies, including defamation or libel, and sealing of records in particularly sensitive cases. Disparities in criminal justice system favor expanding public access, not restricting it. Does not dispute racial discrimination exists in the system, but does not believe that the proper response is to restrict access to the information that sheds light on the problem. Restricting access makes it far more difficult, if not impossible, for reporters to expose the problem and promote public debate of the issue. Cites very recent Miami Herald article that discovered that white offenders are almost 50% more likely to than blacks to receive plea agreements that erase felony convictions from their records even if they plead guilty. Restricting access is particularly indefensible because there is no actual evidence that electronic access to records that contain unproven allegations will have a negative impact. No evidence from multi-unit housing representatives, or Section 8 eligible buildings, or others who would know, instead of speculate, about the likely impact on housing decision of making such information available online. Availability of commercial databases suggests that further restrictions would only affect the media and the public.	
3	Tom Johnson	Council on Crime and Justice	In 2001 Council tracked 2600 arrests in Minneapolis for low level offenses: driving after revocation, driving after suspension, driving without a license, loitering with intent to commit prostitution or to sell narcotics, and lurking with intent to commit a crime. 78% of defendants arrested and booked were also charged (i.e., end up in court records), but only 20% were convicted. 33% booked and charged had no criminal history, and 10% had been arrested at least once before without any conviction ever having been obtained. Disproportionate % of those arrested (74%) and charged (79%) were black, but only 18% were convicted. Many more blacks had multiple previous arrests without convictions than whites; 865 of those with having more than five arrests without convictions were black.	29

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			To extent that public assumes that a pending case either will result in a conviction or that there is a high probability of a conviction, Internet publication of pre-conviction criminal court records will mean that there is an 80% probability that the public assumption will be wrong. Urge not to publish on Internet pre-conviction criminal case records, especially of low level offenses and misdemeanors in general. Q: Methodology include paper record research of court files? A: No, blended databases from Minneapolis (CAPR system for arrest information) and the courts' databases for charges and criminal history scores. Q: What was definition of a criminal history? A: Any conviction online at BCA, which would not have included convictions outside the ten year window. Q: Can the public test the conclusions using the same databases? A: Yes.	
4	Pastor Albert Gallmon, Jr.	Fellowship Missionary Baptist Church, Minneapolis	Hearing will produce overwhelming arguments as to how Internet publication of pre-conviction court records could adversely impact the lives and futures of persons of color, especially African American males. Also need to consider the moral implications of placing arrests and prosecutions in the public domain. Cites old statement "All things may be lawful, but not all things may be expedient," and asks committee to consider the expediency here. Aware of data brokers harvesting this information but sees no need for the public to access it at the touch of a keystroke. Supports Council on Crime and Justice statistics. The very same areas affected by the study are seeking to empower the community from within through better jobs and housing. How people think about potential employees and their neighbors is critical. Publishing pre-conviction court records when 80% of the people involved have done nothing wrong is both immoral and un-American. Power structure systematically keeps people disenfranchised through things like mortgage and insurance red lining, discrimination in processing loan applications, and restrictive	33

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			housing covenants. These obstacles have been systematically and deliberately built. The systematically disenfranchised are robbed of hope that maybe one day they can become a homeowner or landlord. We can help to remake the system to enfranchise people but we need to do so intentionally and cooperate with one another to create healthier communities. Urges committee to consider not allowing Internet posting of pre-conviction court records and to consider ways in which we might recapture some of our rights to privacy in this community.	
5	Archbishop Harry J. Flynn	Archdiocese of St. Paul and Minneapolis	Deeply concerned with indiscriminate, worldwide Internet access to court records of pre-conviction criminal proceedings because such access may have far reaching negative consequences for the poor who are members of ethnic minorities and who are people of color. Racism is alive in our nation and in our own state is one of America's and Minnesota's most serious and unresolved evils. Racism is a fundamental denial of the inherent dignity of each human being and we are all called to respect the dignity of others and to be concerned over the well being of others, even if they are strangers. The mere existence of extreme disparities in social and economic outcomes for people of color as compared to whites is a clear sign that the principles of human dignity and human equality are not being realized in our society. This is a call to us to respond and undo these injustices even if we have not personally and directly caused them. Racial and economic disparities in our criminal justice system are well documented, citing Committee's minority report and the Court's Task Force on Racial Bias. Ratio of African Americans to whites in our state prison is about 25 to 1, which is the highest in the nation! In 2002, 37.2% of this state's prisoners were African American while only 3.5% of the state's population is African American. People of color are arrested more often, charged more often, required to post higher bails, faced with tougher plea bargains, provided less fair trials, and given longer sentences than whites. People of color have daily experiences that demonstrate that racism remains a powerful force in our society.	34

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			If pre-conviction court records are available to anyone at anytime and in virtual perpetuity via the Internet, disproportionate numbers of poor, ethnic minorities, and persons of color may very well be denied employment or housing because they have been arrested for a crime even though they may not ultimately be convicted of any offense. Members of the general public may not as easily distinguish between a charge and a conviction. Our commitment to combat racism must extend to the public arena. Urges committee members to exercise their unique privilege of power to support the Committee Minority report. Racial disparities prevent all of us from realizing the kind of human community that is necessary for our full human development and happiness.	
6	Judge George Stephenson	District Court, Second Judicial District (Ramsey County)	Prior to becoming a judge, 20 years legal experience as assistant city attorney (housing), assistant county attorney, and federal defender, and private defense attorney. For 14 years also owned a manufacturing business in St. Paul that employed as many as 15 part time and contract employees of all backgrounds. Also is a black man and a father of three children. While working as city prosecutor in St. Paul, assisted in developing law enforcement strategies to decrease the incidence of prostitution related crimes and other livability crimes affecting neighborhoods in St. Paul. Strategy included publishing on the Internet prostitution-related arrest information by name of defendant on the St. Paul police website. Publication lasted for two weeks after an arrest had been made, and for four weeks after a conviction had been obtained. The goal of Internet publication was to deter prospective prostitution participants and to confirm for community members that offenders suffer consequences for this bad behavior in their community. The city understood that some unintended consequences would occur. The city did not, however, publish arrest and conviction data by name for all types of crime, which the law currently permits them to do; instead it carved out a narrow area of crime to focus on. Strategy also required offenders to attend a full day of lectures called "john" school; during this program, personally discussed with offenders the impact crimes had on community	38

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			residents and on them. A number related devastating impact of Internet publication. Some lost jobs because of convictions, and some lost jobs from the mere allegations. One offender was a college classmate who lost his job and had been discharged from a masters program just months before earning his degree. Understands the difficulties that people will face when convicted, but more concerned about difficulties we will cause people by Internet publication of criminal records when they have not been convicted. People presumed innocent under our Constitution and those falsely or mistakenly accused. While this may be a small percentage of cases, the effect of such disclosures can be catastrophic particularly for people of color in Minnesota. Experience as a judge is that nearly everyday people from all segments of society appear in court and relate the difficulty of finding affordable, stable housing and meaningful employment. It's easy for some in our society to say "If you really wanted to work, you could find a job," or "that's what happens when you commit a crime." Those who say so are less likely to have found themselves unemployed and/or homeless lately. Not convinced that the goal of obtaining an open and transparent judiciary outweighs the disastrous impact on people of color in Minnesota. People of color have been shown to be disproportionately stopped, searched, and/or cited by Minnesota law enforcement, disproportionately represented as defendants on Minnesota court calendars, and disproportionately represented in Minnesota jails and prisons. Unless there is a more specific objective and a more focused approach, the practice of Internet publication of pre-disposition court records would further disadvantage those already disadvantaged. Urges committee to restrict Internet publication of pre-disposition criminal court records as much as possible in order to reduce the negative impact on the least fortunate and most disadvantaged. Q: Is St. Paul website still active? A: yes. Q: Any statistics on success of the website? A: Unknown, but personally experience with "john" school was that over four years and an excess of 700 men, only two reoffended.	

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			Q: Any sense of how many people are affected by accusations versus convictions? A: Don't know, but from what people relate in court everyday believes that problems in finding jobs and housing would only be exacerbated by Internet publication of unproven accusations.	
7	Prof. Jane Kirtley	Silha Center for Study of Media Ethics and Law, School Journalism & Mass Communica-tion, University of Minnesota	Questions whether "measured step" of limited Internet access in committee majority report is necessary because: information public in one format should not become confidential in another format; redacting court records is feasible using current court technology; and remote access reduces burdens on court staff once an effective redaction process is implemented. Limited Internet access is inconsistent with common-law and constitutional presumptions of public access and should be replaced with a clear commitment to provide remote access to all otherwise public court records. Government should not withhold entire categories of public information based on fears about possible misuses of that information; this undercuts the public benefit of Internet access. Solution is case-by-case sealing of records when clearly articulated dangers exist. Where current law is inadequate to protect privacy, solution is to change the law regarding all formats of records. Fears of identity theft and harassment are speculative at best and do not overcome the presumption of access. If misuse of records is a genuine threat, then it's the legislature's job, not the courts', to define and take steps to prevent illegal acts. Avoid inadvertent release of non-public information by making sure it is redacted before publication and that erroneous information is identified and corrected as swiftly as possible. Once e-filing occurs, existing technology will make redaction of filings easy. Providing limited Internet access provides unequal access; commercial data brokers and others who have the resources to come to the courthouse will have access but others will not. SSN and financial account numbers conceivably might implicate legitimate privacy concerns, but home addresses and telephone numbers do not. Issue is not how much or how little should be protected, but whether there should be a different access standard for	40

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			paper and Internet formats; believes that there should not be a different standard. Public access enhances public knowledge and protects the legitimacy of the legal system. If access at the courthouse serves important interests, then easier access must only increase the benefits. Internet access increases the likelihood that errors will be brought to the courts' attention and corrected. Opposed to commercial fees in Rule 8, subd. 6; agrees with minority report position that fees should be limited to actual costs of providing the data. Commercial fees drive another wedge between government and the governed, restricting access for the average citizen and allowing those who can afford to pay a premium full access. "Practical obscurity" does not apply to primary source records such as court records. As courtrooms move toward greater automation and computerization of cases (attaches article describing Courtroom 21 project), paper records will cease to provide the kind of full and complete access to trial records that the public needs. Paper records will eventually cease to exist at all and the presumption of access will be preserved only if expansive electronic remote access is available. Remote access is not a luxury; it's a soon to be necessity for meaningful public access. Endorses changes in rule 5, subds. 6-8, and Rule 6, that provide information about records that are not public documents, and proposed grant of immunity (rule 11). Encourages committee to modify or delete aspects of proposal that limit remote access to otherwise public records, and to add language embracing full remote access or set forth a detailed plan for making such access possible. Eloquent arguments have been made about exacerbate social problems in our society, but trying to solve these on the basis of secrecy is poor public policy. Our system operates best when open to public scrutiny. The solution is to legislate against misuse and vigorously enforce those laws. The poor, minority victim of crime has a different aspect than the accused. Access to	

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			identifying information about victims is necessary; members of minority communities can only hope that law enforcement and others will pay attention to the crimes that are committed against them if victim identifiers remain on the public record. "We don't want some big brother watching us," was a comment from a local radio show discussing this topic, but big brother is watching, and the only way to keep that system in check is to keep the system open and accountable. Q: Why is remote access so important? What of the teenage web surfer? A: Remote access gets us back to first principles, the small town where people know each other. Privacy is illusory because the information is there in paper. Q: Isn't legislating against misuse and vigorously enforce those laws itself illusory? A: Would hope that our laws mean something and if there are laws that are not being enforced, then we have a much bigger problem than this committee can solve. Answer is to deal with the conduct and not try to do that through some backdoor way. On the federal level its often a lack of courage on the part of legislators who are afraid to take on the interests, for example, direct marketers who argue "don't legislate against our ability to solicit," and they say okay so we will just close off access to records because that is simpler. It's simpler but not very honest; have to grapple with the direct question. Slamming shut the door on access is not the way to go. Q: Isn't Internet access an expansion of existing access rather than a limitation of it? A: Electronic courthouse will be a reality much sooner than any of us realize, paper records will eventually cease to exist. Need to look forward. Q: Is there a danger of expanded electronic access promoting a backlash in what is accessible? A: many members of the public who weigh in on the issue are not fully aware of the level of access that exists now, which is a public education issue. Internet fear is generational; younger people do not fear it.	
8	Patricia Weinberg	Minnesota Association of	Access Rule 3, subd. 5, last sentence of the first paragraph, should be rewritten to state: "*Court reporters' notes shall be available to the court for the preparation of a transcript*	58

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	(written comments by Barbara Nelson)	Verbatim Reporters and Captioners	*when the court reporter is unavailable to produce a transcript in a timely manner. Court reporters' notes shall be defined as, in the case of stenographic reporters, the court reporter's paper notes, and in the case of electronic reporters, the electronic reporter's tape recordings and logs.*" In the case of electronic reporters, there are no notes, only the tape and logs. Most stenographic reporters use computer aided transcription, which produces paper notes and can also write notes to a disk. All stenographic reporters produce paper notes, but production of notes on disk is not uniformly done even for individual reporters. Moreover, the information on the disk is retrievable only through software purchased by the court reporter and a "personal dictionary" built and maintained over many years by the reporter. The personal dictionary and software are the private property of the stenographic reporter (citing Fifth Amendment to the U.S. Constitution: "nor shall private property be taken for public use, without just compensation"). In addition, technology changes make questionable the long-term ability to retrieve information stored on disks, whereas paper notes have withstood the test of time. Although some stenographic reporters may also make a backup tape recording, such tapes only serve as an aid to the expeditious transcription of the stenographic reporter's notes and are not a reliable method for capturing the record by themselves. The court has the right to possess and maintain court reporters' notes, but the existing rule is too broad because it can be interpreted to mean that the notes can be transcribed by anyone the court chooses in all instances without giving the reporter who produced them an opportunity to transcribe them. Illness, death, retirement, and discharge are appropriate situations where the notes may be turned over to someone else for transcription. In all other situations, the quality and integrity of the record is greatly compromised by having someone other than the original stenographic or electronic reporter prepare the transcript. Q: Each reporter has their own personal dictionary? A: Yes, and it runs on software owned by the reporter; what is universal is the paper notes.	

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			Q: Are the notes referred to the ones that come out with the holes punched in it, and nobody can read the notes except a court reporter? A: Its comes out on paper but not with holes in it, and no one who hasn't been trained could read it.	
9	Gordon Stewart	Legal Rights Center	Cites personal experience of social work with black homeless men in 1960's in Philadelphia, the Kerner Commission Report, and the Eisenhower Foundation Study establishing that America is divided by race and class and rapidly moving apart. The decision on Internet access to court records will either contribute to the widening or narrowing of the gap. Although lawyers and judges easily draw a distinction between a court appearance and a conviction, such distinctions are not made in the world of employment and housing. Laws of public access (First Amendment) were intended to keep government accountable, but not intended to allow government to harm individuals or abridge the presumption of innocence. Last year the Leal Rights Center represented 314 people whose cases were dismissed. Their lives, and their families' lives, will be irreparably changed by posting pre-conviction data on the Internet. The court must guard the presumption of innocence in ways that affect the larger world outside courthouse doors. The court must not unwittingly contribute to the creation and maintenance of poverty. Cites 2002 Hamline Law Review article by Thompson and Martin arguing that without due diligence the court is part of a wider web of the injustices it deplores. In reading the submission to this committee, noticed that the first one was Pastor Gallmon's email request to appear in front of this committee. The email inadvertently included previous messages written to Pastor Gallmon from Mr. Stewart and others and had been copied to others. When Mr. Stewart notified this committee's staff and requested deletion of the previous emails, staff immediately deleted them. This committee is sensitive to these types of issues, but if this type of mistake can be made by this committee,	61, S2

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			what will happen when Internet publication of court records is unleashed on the rest of the world. Q: If you learned that it had become common practice for information gathering companies to come to courthouses with high tech scanners and go through the public paper records to capture the pre-conviction records, would you urge the courts to pass a rule stopping that particular practice? A: would ask the courts to do what they could to uphold the presumption of innocence, and ask the legislature and executive branch to do whatever was in their power to protect people from such practices. Q: What about victims in high crime neighborhoods? A: Victims need advocates too.	
10	Roger Banks	State Council on Black Minnesotans	No policy or rule is neutral; there are always beneficiaries and losers. Concerned about intended and unintended consequences of proposed rule 8. Cites to recent reports and court data establishing racial bias in our systems, particularly for young African American men. Placing pre-conviction arrest information on the web is tantamount to giving those young men a life sentence. Research by Barry Cohen found that after release from prison the big problem in finding affordable housing and employment opportunities was their criminal record. The committee needs to think through this policy very carefully. Ten years ago, the Racial Bias Task Force report was criticized as having too much anecdotal information and that it was too subjective. 10 years later the courts release their statistics and people complain that the methhodology is flawed. No rule for success will work unless we do. We all must work to achieve the ideal of true justice. Statistics show that true justice has not been obtained. The Council and other organizations are happy to work with the committee to achieve a reasonable and just conclusion. Has been working with a judicial task force chaired by judge Lynch and is involved in public education and outreach regarding the substance of the reports that have been generated and the nature of the judicial system. This committee however is looking at policies that will have a detrimental impact on all of the efforts of the last ten years to combat racism in the court system.	62

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			Q: Committee is aware of Judge Lynch's task force and will make sure to get input from them and see that we are not counter intuitive. Committee has also made specific requests for input to the Race Bias Implementation Committee and some of their comments have already been submitted. A: Okay.	
11	Chris Ison (written comments by John Borger)	Star Tribune	(Oral comments) Teaches a class on journalism; has students to use the courthouse because it is such a great window into so many things that go on in our community. Students relate the obstacles they faced getting records, including parking, finding the right clerk, finding someone who will actually dig out the file, which might be in archives or on the judge's desk, and get to a copy machine. It's hard and intimidating for these students. Views the students just like any member of the public, but the students have someone to coach them through the difficulties. When students get a civil case and see the complaint they relate that they know that it is just an allegation and they don't know if its true or not, and the same happens in regard to criminal charges. Views the students as being just like the average member of the public. Star Tribune might have 6 reporters in any given day out in courthouses, and the information they gather shapes how and whether stories are written. Very little of what is learned ends up in the newspaper but it helps the newspaper to understand current events. This is a highly important issue to the newspaper, which really believes that these records because they are public should be accessible. Experience shows that when records are hard to get at they are not really very public. If the spirit of the leadership in this state is to make court records public, they need to make them as accessible as they can. When they first made copiers, they made a 100 page brief a lot easier to get and to take some time to read and understand it. Remote access is an extension to this kind of tool. Q: Any concern about misuse of affidavits containing accusations that might lack integrity? A: there is always a potential for misuse, and technology can increase that, but it is dangerous to try and identify which documents are public but should be made hard to obtain.	63

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			Q: Are there any judicial records that you would acknowledge ought to be protected from public disclosure? A: Records that the courts have deemed to be not accessible should not be accessible. There are probably cases when it might be reasonable to make not public the SSN and financial account numbers. There may be a lot of others cases but those should be determined on an individual basis. Newspaper editors stress importance of finding out what we don't know, and court records are very helpful in this regard. Geography is often a problem. Remote access would greatly help timely, fair, and thorough news coverage in rural areas. Q: The proposal allows remote access from a courthouse terminal, so what is the difference between that and full remote access? A: Hours; news is a 24-hour operation but courthouses have limited hours. It also overcomes the intimidation and difficulty in getting to records in the courthouse. Details such as birth dates are important to clearly identify people. Racial profiling is a serious problem, but it is the existence of the court data that we have that has helped us understand the problems that exist. Believes that the racial profiling problem rests mostly with police and they way to solve it is to let the sun shine on it. Q: What about the suggestion to provide the press with remote access via user number but provide more restrictive remote access to the general public? A: Would like to support that but views newspaper's role as an extension of the public. Having public records means making them easy to look at. (Written comments) The committee's report should affirmatively embrace public access rather than focus upon perceived problems of remote and bulk access. Quotes from James Madison regarding the power of knowledge and from the U.S. Supreme Court's Richmond Newspapers case regarding the difficulty people have in accepting what they are prohibited from observing. Technology has played a central role in empowering people with knowledge, and Internet is just another step. Technology for redacting certain limited personal information already exists to some extent and will become better and more	

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			efficient in the future. Policy that does not reach the future is shortsighted. A "go-slow" approach should not become a "do not go" or "go backward approach." To the extent that records exist in electronic format right now, courts should be able to release them both remotely and in bulk. Remote access will improve news reporting on matters of public interest. Provides several examples of stories where remote access would provide the opportunity for more timely, complete, fair and accurate reporting. The public is harmed without remote access to records when the courthouse is closed and/or a far distance from the media's offices. Remote access should include identifiers of name, street addresses, and telephone numbers. Street addresses and telephone numbers are readily available in telephone directories. Deliberately withholding such details will only aid and abet the sort of mistaken identity that the media was held liable for in *Thorson v. Albert Lea Pub. Co.*, 190 Minn. 200, 251 N.W. 177 (1933). Bulk access to court records will improve news reporting on matters of public concern, including trends in prosecutions and convictions, courthouse backlog, and judicial workload and budget issues. Proposed limit of bulk data to that available remotely is far too limited, far greater than necessary, and cannot withstand either the common law balancing of interests or the constitutional strict scrutiny tests. Bulk and remote data should include documents filed by parties, attorneys and others. For a moderate fee, the public has access to a virtual clerk's office via the federal courts' PACER system, where all documents in electronic format are accessible. The Eighth Circuit website allows free access to briefs and audio-visual recordings of arguments in almost every recent case. Principles of openness must not become lost in a zeal for privacy to protect victims of abuse. If there is concern over unsubstantiated criminal charges, it should be taken up with the prosecutorial arm of government, and the public should know about it so that the problem can be corrected. Practical obscurity is a problem, not a virtue, and the committee has missed a golden	

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			opportunity to eliminate this problem. Vague or generalized concerns about privacy should not, and traditionally have not, been an excuse for denying public access to judicial records. Cites First Circuit case for position that denial of public access requires specific findings, and that the First Amendment right of public access requires consideration of the feasibility of redaction on a document-by-document basis. Cites *In re Rahr Malting Co*, 632 N.W.2d 572 (Minn. 2001) for the position that under the common law right of access and its strong presumption of openness, conclusory allegations of harm do not support a finding that data constitutes a trade secret. Cites Third and Seventh Circuit cases for the position that in order to override the common law right of access, the party seeking closure has the burden of showing that the material is the kind of information courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure. The Preliminary Report gives weight to "privacy" and "embarrassment" interests that court after court has found insufficient to justify sealing court records (citing cases from Minnesota and around the nation). Agreement among the parties does not eliminate the need for a court to independently consider the legal and factual basis for protecting data from the public (citing cases from Minnesota and around the nation). Access costs to the public, academics, the media, and similar users should be minimized. Courts should provide remote and bulk access as an enhancement of the public's right of access and as an offset or reduction of the administrative costs of providing in-person access at the courthouse. It would be unseemly, shortsighted, and unconstitutional for the courts to transform the public's exercise of its fundamental right of access to government records into a source of revenue (citing Twenty first amendment proscription against poll taxes and cases prohibiting parade permit fees and a flat licensing fee on distributors of religious literature).	
12	Kizzy	Communities	Concerned about efforts to make court schedules and dockets available on the Internet in a	83

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	Johnson	Against Police Brutality	name searchable manner. No problem with availability of conviction information, but for accusations the burden of proof is on the state and there is a presumption of innocence. Placing unproven allegations into full public view implies that a person is guilty. Minnesota has the highest rate of any state for over prosecution of blacks (citing council on crime & Justice). People of color are more likely to be represented in any database of charges and arrests. Making such data widely available will have a disproportionately negative effect on people of color and will increase the ever-present problem of racial discrimination in housing, employment and other opportunities. Many people are charged with disorderly conduct, obstructing legal process, resisting arrest, 4th and 5th degree assault on a police officer, and other crimes in which the victim is a police officer. These are frequently used by police officers to cover their own brutality and misconduct. Proposed rule 8 would have a triple whammy impact on individuals affected by police brutality: first, the person is brutalized, then they are falsely charged, and finally even if found not guilty they will have a "record" that will come back to haunt them during employment and housing searches. This is simply unfair. Was personally falsely charged when parent had been driving her car when given a felony charge. Stopped frequently because of "DWI plates." Took over a year of effort and a judicial hearing to clear this false status from her plates. Work with the organization includes observing court proceedings. Observed that a majority of defendants are people of color. Most are young, uneducated black males who suffer from poverty, lack of legal knowledge, and lack of basic family structure and support. Proposed rule 8 undermines the efforts of the Supreme Court Task Force on Racial Bias and will increase discrimination against these vulnerable people. Supports minority report regarding unproven allegations and its recommendations to allow access to register of activities and court calendars that do not rely on searchable databases by defendant name. Q: How do we resolve tension between open access and protection of individuals? A:	

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			Public has a good understanding of what is going on now. Victims of police brutality and persons of color are the main ones damaged by the proposed Rule 8. Q: There seems to be a disconnect here when commentators say don't place court system criminal charges on the Internet when the same arrest information is available online from police stations. How does not having court record online, which may include the factual information that the charge has been dismissed, help communities of color? A: Some commentators say that majorities of people want to access this information, but how can they say that when people of color and people who live in poverty do not have computer resources.	
13	Bill Dahn	Citizen	Fighting for title to his home and fighting government over work done on home.	85
14	Scott Benson & Don Samuels	Minneapolis City Council Members	(Benson) The founders of our country recognized that it is human nature to jump to conclusions, to believe the worst, and they designed the constitutional presumption of innocence and proof of guilt beyond a reasonable doubt to protect people from rash judgments. They assigned the courts the sacred duty to guard these principles from erosion and compromise. By publishing pre-conviction information over the Internet the court will indirectly but undeniably degrade the presumption of innocence. The wrongly accused will have their lives inalterably changed, as the accusation will precede them in their business and personal lives because the information comes up over and over again. When we make it impossible for people on the lower rungs of society to work their way up the ladder, we create a class of people with no hope, with nothing to lose. This is bad public policy. Although the same sort of negative consequences result from private industry data brokers, the court's attention should be directed at ways this damage can be mitigated, perhaps by imposing standards of accuracy, completeness and data currency. (Samuels) Has moonlighting business appearing before corporate leaders discussing racism. After several hours in a trusting environment, those leaders admit that they do not see black people, don't look into their eyes, or don't see them as human. Most people	86

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			would not admit these things, they act them out. Racism is ambient. We breathe it in, absorb its influences, and breath it out and perpetrate it, especially people who have power, like the police. When an arrest is false, those who are the victims of it must pay a permanent price. Its not just crime and punishment, it becomes suspicion and punishment. Proposed rule would exacerbate and project the punishment into the future. Was personally arrested twice, once in his early twenties for robbery, but was innocent and charges were dropped. If some enterprising individual captured that fact and frozen it in cyberspace, it would be haunting him for the rest of his life. Second arrest was for disorderly conduct and trespassing, and the charges were dropped. A Star Tribune Reporter discovered this and in an interview asked his wife "what do you think about your husband being arrested?" If he had kept that information from her, it would have been a challenge to the trust in their relationship. But that is a reporter. How about somebody who wants him to lose the next election? These things continue to sting. Asks committee to not do anything that would exacerbate this problem for people who look like him. Q: City of Minneapolis has routine practice of selling arrest information; what do we do about that? A: One bad turn does not deserve another. Arrest data from the city does not have the imprimatur of the court and is not as subjected to being data harvested as court records, and arrest data is not being published over the Internet. Media and others do not need Internet access to court records to conduct studies and learn trends on racial issues. They do that already without Internet access. Q: If I am aware that a person has been arrested through arrest data that the city of Minneapolis has provided to a data harvester and I want to check what happened to that, isn't it better if I am able to access that information as easily as possible? A: It is fair to have the ultimate disposition of cases released on the Internet. Q: Many have testified that it is wrong to have the charge out there if ultimately the charge is dismissed, but wouldn't the rules as proposed allow you to see both the charge and the disposition? A: in some cases having the ultimate resolution available is fair, but the court	

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			has to very carefully weigh whether it wants the charges out there before resolution of the case by way of calendars and other records that are searchable by name by data harvesters.	
15	Sharon Anderson	Citizen	Federal courts are placing all litigation online. Must conform to presidential mandate and have all records on line. Alleges corruption in the judiciary.	87
16	Leslie Mercer	Citizen	Believes that child custody records, including custody evaluations and other records, should be in the public domain of the Internet to protect children. Alleges she married a predator but finally obtained a restraining order to get spouse removed from the home after witnessing abuse of children. Alleges abuser continued to work with children.	93
17	Bishop Craig E. Johnson	Evangelical Lutheran Church in America, Minneapolis Area Synod	Deep concerns about publishing names of persons who have not been convicted over the Internet. Results in a de facto conviction in the public and economic lives of the individuals involved in such matters. Rental agencies, housing, potential employers and others would make decision about the individuals simply on the basis of an arrest and not on a conviction or plea. This would adversely affect an inordinately large number of poor, minority and innocent populations. This is not justice; the presumption of innocence is undermined. The role of ancient prophets was to tell political, civil, judicial and religious leaders the truth about what was happening in their society, and the measure was how well society took care of its most vulnerable. Posting appearances without convictions on the Internet will create a system where innocent people will be shamed and marginalized because the will very likely be unable to find housing and work if the Internet is used for the wrong purposes. We are here to protect the innocent, to remember the poor and to work toward a just society. The Committee's majority proposal will work in the opposite direction.	96
18	Gary Hill	KSTP TV, Minn. Chapter of Society of Professional Journalists,	Public has benefited mightily from Minnesota's rich and noble tradition of openness. Able to know when justice has been done or make our own judgment if it has come up short. Although for many people the courts are the place where their lives meet the law and it is often not pretty, the Minnesota Courts have recently decided that more openness was needed in Child Protection matters, which involve some of the most private issues and the	98

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		Freedom of Information Committee, and Minnesota Joint Media Committee	most vulnerable people in our society. Many dire predictions were made about the awful outcomes that such access would entail, but the courts took a courageous step and the sky did not fall. Most now agree that the move to openness was a good thing. If anything, the media is appropriately being criticized for not taking full advantage of the openness afforded it. Public perception is what is at stake here. Keeping records off the Internet means the public will know less and less about what is going on in its justice system. More and more people are turning to the Internet for information. Should not let dire predictions dissuade from embracing openness. Court needs to take a courageous and principled stand and make sure this information is there for all who choose to see it. Court should embrace the value of allowing the media to have access to the entire court files in computerized data base form because computers are the power tolls in a modern journalists toolbox. Using computers the media has produced stories that revealed voting fraud, got tens of thousands of unsafe cars off the road, or blocked dangerous criminals from being in our nursing homes. These stories help save lives and money and keep the public informed of the workings of government. If the system is broken to the extent that race-based arrests are occurring, the fix is not to deny access but to provide wide access so we can root out bad practices and end them. The court should follow the executive branch and embrace the inherent value of openness and transparency and reject overblown fears. Q: Is there a difference between statewide access from a courthouse terminal and tools as opposed to Internet? A: News organizations operate around the clock and there are lots of times when whole news cycles will pass and they cannot get access to the court's records. Some of the checks that should get done don't get done because can't get to the courthouse. There are many static databases out there and if the current information were available on the Internet would not have to rely on old information from a static database.	
19	Richard	Citizen	Definition of "custodian" in rule 3, subd. 1, gives the state court administrator	S4

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	Neumeister		responsibility for Internet and bulk data requests. Shouldn't the Hennepin county court administrator be able to respond to a request that is for Hennepin county data only? In Rule 5, subds. 6 and 7, the definition of material terms is vague. Would like to see entire contracts including all appendices, accessible to the public, just like in executive branch. In rule 5, subd. 8, would like public to be able to know who has submitted sealed bids before they are opened. Would also like to see courts follow Minnesota Statutes, section 13.37 for trade secrets. Its not clear that all data except for trade secrets will be available to the public after bids are opened. In rule 7, subd. 3, where the new language indicates that "Appeals are governed by rule 9," would like to see additional language indicating that a person who is denied access shall be notified of the appeal process and including who, where and what to do. Prefers alternative language for rule 7, subd. 5, regarding correction of case records, but delete "no longer than two pages." Also suggests that alleged errors should be flagged until resolved. Rule 8, subds. 2 and 3 include the phrase "to the extent that the office has the resources and technical capacity to do so." Has heard this many times from executive branch agencies, and sometimes they have the resources and capacity but just don't want to do it. Suggests tightening the language or deleting it. Rule 8, subd. 6, regarding commercial fees should include language from the executive branch data practices act that requires fees to be related to the actual development costs, and require that upon request of any person the courts shall provide sufficient documentation of those costs. Courts need an accountability/compliance official for these rules, and a continuing oversight committee that includes public members to actively monitor these rules over time. Rules need an easy means of expungement and sealing of records. Supports the notice requirement in the Weissman/Gemberling minority report that litigants	

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			should receive notice about the procedures available to protect private data. Effective date and retroactivity need to be spelled out so people can adjust Put civil cases on Internet first, not the criminal records.	

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1	John Sens 2-4-04	attorney	Favors having all public records available for review to the public free of cost on the Internet to the same extent those records are legally available in court administrator's office. Explains difficulties he has experienced in accessing paper files	1
2	Annette Bertelsen 02-04-04	citizen	Online records have proven to be a vital tool to clear a person's record if falsely named, because the person has the opportunity to search, find, and correct the records. However, do not immediately post case filings; make sure there is a delay until the person being sued or charged is notified. Clearly separate and label criminal charges and convictions.	2
3	Jonathan Osborne 2-4-04	citizen	Court records are public and therefore should be available online, just as they are in Wisconsin.	5
4	Anonymous 2-4-04	citizen	Public court records should be online.	6
5	Mary Ann Vogel 2-4-04	citizen	Public court records should be online, for ease of access and to reduce storage and staff time. It would help the public and employers find information and be aware of crimes and perpetrators.	7
6	Anonymous 2-4-04	citizen	Of course public court records should be online. People should not have to go through the many hassles of getting paper records, including driving to courthouse, waiting in line, making copies, paying for parking at ramp, etc.	8
7	Larry Hubner 2-4-04	citizen	Documents should be available online	9
8	Reva Chamblis 2-4-04	citizen	Court records should be online for felony convictions within the last three years. This would save the inconvenience of accessing paper records, allow people to be better informed, and deter repeat offenses.	10
9	Don	citizens	Court records should be on the Internet.	11

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	Johnson 02-04-04			
10	Sandra Nelson 02-04-04	citizen	After being swindled by a building contractor, it took 30 days to research the contractor's criminal background. In the interest of consumer protection, records of civil judgments should be online. It would have been faster and far easier to conduct my research if this individual's history of civil judgments could have been accessed online. Since this is already public information, I see no harm or breach of privacy in making this information more readily accessible.	12
11	Jeff Johnston 02-04-04	citizen	If it is a public record it should be available electronically.	13
12	Thomas Hayes 02-04-04	MN District Judge	Has anyone looked at the costs and who will pay for this? I fear that trial court resources may be sacrificed to pay the costs of putting court documents online.	14
13	Brad Swanson 02-04-04	citizen	Feels criminals don't need privacy, that failure to publish court records on Internet denies public its rights and gives advantage to wealthy. Publishing court records on the Internet might deter antisocial behavior; crime rates would drop and as well as the number of family disputes in court. Would be upset to see any charges for Internet access, but would not mind a daily limit to ease burden on Internet servers and bandwidth. Desires a high measure of accuracy; carefully identify people so that the bad conduct is not attributed to the innocent. Frustrated by lack of information available to voters to measure judges; although legal publishers and the media may have the information, wants access to it without editorial spin.	15
14	Charles Zea 02-05-04	citizen	As a genealogist, public records are very valuable source of information. However, an online index is all that is needed; I am against posting the entire record. Data/record integrity is a very important considerations; be sure that online documents cannot be	17

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			passed off as originals, such as birth and death records. For example, some records are stamped in big bold records: "For Genealogy Purposes Only."	
15	Katie Mitchell 02-04-04	Paralegal from local firm	Advocates online records. Would be a much more efficient way to research court records. Her experience is that some clerks allow you to see information that another clerk in another county does not allow—there is inconsistency across the state.	18
16	Anonymous 02-05-04	citizen	Threats to privacy outweigh needs for public access. Under no circumstances except when there is clear and present and severe danger to public safety should any accused unconvicted person's name be made public.	19
17	Michael Friedman 02-04-04	Minneapolis Police Civilian Review Board	Has seen police misconduct result in wrongful charges. Dismissed cases cause harm to those who have been falsely accused. It is unfair that tenant screening criteria allows dismissed charges to be a basis for denying a rental. It is also unfair that individuals with dismissed felonies have difficulty getting jobs, and do not know how to seek expungements. The numbers affected by bias in the criminal justice system and policing are far greater than those who are provided the support needed for successfully exercising their rights to expunge dismissed cases. Putting non-conviction data on the Internet clearly exacerbates the problem. The court should seek out a method to automate the expungement of cases that do not result in convictions. If that can be accomplished, then the integration of court records and public access technology would not present the sever problems that would result today.	20
18	Bridget Gernander 02-04-04	Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts	Thanks the Committee for opportunity to comment and provide input on issue of race data on the Internet. Several members of the Implementation Committee have expressed support for the Minority Report Regarding Unproven Allegations. People never convicted of a crime will lose job and housing opportunities based on the dissemination of this raw data. For example, 18% of misdemeanor cases are dismissed. A disproportionate number of the people charged in criminal court are people of color. Therefore, the majority report would have a disproportionate impact on people of color.	21

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19	Shawn Shelby 2-2-04	citizen, business development manager	No Internet access to records that are not found guilty. It's unfair to those that have been wrongfully accused. If someone needs to have access, they should get in by going to the courthouse to do their research.	23
20	Evelyn Ronneberg 02-05-04	citizen	Opposes online access to court records. It would be a violation and invasion of an individual's rights to privacy. If someone wants court records they should be required to go to the courthouse, request the files, and spend the necessary time looking for the information.	24
21	Anonymous 02-04-04	citizen	Court data should remain public at the local court house/source only. Data subjects have a presumed right to privacy in this state. Information cannot be put on the Internet until thorough studies about the ramifications of releasing this data have been completed. Do not let data miners publish the data.	25
22	Jack Larson 02-04-04	citizen	Pleads with court not to put records online because people convicted of crimes years ago that have reformed and paid their penalty will continue to be punished by people who discover the information. When someone goes to the courthouse it shows they have a real reason to care about the information, rather than for the purpose of gossip.	26
23	Jenny Boegeman 02-04-04	citizen	It's bad enough that court cases are published in local papers. Offenders already have to pay the consequences of their actions, without months later having to deal with public scrutiny. How do you expect people to move on and better themselves if we keep slapping them in the face with their past. Keep records off line.	27
24	Terri Wentzka 02-04-04	citizen	Public records should absolutely not be available online because it would invite casual misuse. Anyone who wants access to such records should have to spend some in-person time and effort to get them.	28
25	Jean Mellett 02-04-04	citizen	Voiced opposition to the state posting civil cases on the Internet because the Internet is an inappropriate forum to disclose painful, private, and sometimes humiliating allegations	29

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			concerning individuals. Claims that the majority of Internet users "google" friends, neighbors, acquaintances merely out of curiosity. References an article that labels such people as "webstalkers."	
26	Jan Melander 02-04-04	citizen	Stated that she was happy to read in the report that the Committee is taking a "go-slow approach" and is suggesting that certain information be kept off the Internet, such as SSN and divorce records. Has had concern about this issue since 1998 when she found her company's employee information on the federal court web site in connection with a bankruptcy proceeding. Records on the Internet facilitates "hunting expeditions."	30
27	Doug Brong 02-04-04	citizen	Our current system requires a person to take some initiative in finding court records. Whereas records on the Internet would open the door to data "mining," repackaging, and re-selling it as a service. If records are put on the Internet, I would assume that more records would be classified as non-public.	31
28	Grant Cooper 02-04-04	citizen	Online court records should be restricted to law enforcement or similar government needs. Do not make it easy for abuses such as marketing or harassment.	32
29	Steven Hufendick 02-04-04	citizen	General opposition to making available on-line most 'common' public court documents, for example divorce decrees, though court information should continue to be available by physical review. On-line publishing of sex offender listings and searches should continue, but preponderance of public court records should remain off-line. The last thing a parent of young children and teenagers probably wants is to be approached by their tech savvy children (or their friends) asking about a past marriage they new nothing about. Most parents would probably prefer to explain life choices to their children if and when they believe it to be appropriate. And how will children feel when their tech savvy friends bring them the dirt on Mom and Dad? Proposes that the qualifications for on-line publishing be constructed around what are common vs. egregious activities. If a person poses a genuine risk to the community vis a vis past behavior as documented in the court records, then protecting the public by making that information available on line seems	33

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			appropriate. Make available easily searchable on line court records of common matters related to common people seems inappropriate.	
30	Darren Mckernan 02-04-04	Police officer	Release of personal information (full name, DOB, address) sets people up for fraudulent activity, identity theft and numerous other violations of personal information. Placing criminal complaints that have been determined to be unfounded on the internet could be very damaging to someone. If the State of MN is concerned about law enforcement having access to MJNO, it is absolutely ridiculous to provide easy access to the public. If someone wants to see past criminal complaints they should have to do so by going to the court house.	34
31	Peter Neikirk 2-2-04	citizen	If the information the court puts on the web in anyway can help a criminal steal, then it should not be on the web.	35
32	Cathleen Cather 02-04-04	citizen	Public files should not be available online.	36
33	Gary Huss 2-2-04	citizen	Court records should not be placed Online. If they are, limit access to legitimate reasons only.	37
34	Katy Olson 2-2-04	citizen	Feels strongly that that court records should not be available on the web. Strongly believes in concept of "innocent until proven guilty;" if courts post information on accusations and charges before they are proven, it is damaging to people and their privacy. Has less trouble if courts post rulings or convictions that are final. Focus their resources on other things. As long as people have access in person, that is good enough.	38
35	Linda 2-2-04	Citizen, former court clerk	People who would benefit most from on-line files are those who profit from them for their own business. People who have been in court really would not appreciate that their lives become more a spectacle than they need be. On-line viewing is just is not cost effective; Government departments are already strapped for funding and lack needed personal.	39

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			Adding scanners forces them to find personnel, training, and space for something that only a handful of people benefit from, and government already lack funds and staff. If people really need to know, they can make the trip to the department.	
36	Lee Hacklander 02-04-04	Attorney	Fails to understand the need for providing Internet access to divorce filings. Advises clients to only submit information that is truly necessary to support the issues at hand. Currently, the vast majority of court files go unperused by the public. But if files are made available online, undoubtedly scores of people who have nothing better to do will begin scouring public records via the Internet. Do not allow Internet access to these relatively private records.	40
37	Laura Schacht 02-04-04	Attorney	Agrees with the recommendations of the committee, but has concerns about the publication and accessibility of family law materials. Requests that the committee revisit the minority's concerns and adopt their opinions. Has witnessed first hand through her practice the cruel nature of family matters, and the horrible accusations that are made, which disclose very personal issues. Judges have the difficult task of sorting through the issues raised in affidavits, and are not always able to make "findings" to state that some allegations are false. This is also true when parties settle, rather than give the judge an opportunity to rule. As trends appear to move toward more restrictive access, such as with HIPAA, it seems inappropriate to open the doors wider to the same information through the court system. Further, allegations in family law cases may have implications in the employment arena, for example, if a background search shows an unsubstantiated allegation of abuse is found. Also, reliance on the ability to seal a record or file is not sufficient; because the other party can object to the sealing of the file.	41
38	Paul Erickson 02-04-04	Citizen	Public records, such as court records, should not be made available online. To make personal divorce matters available to the public on paper is bad enough; the idea of putting private matters on the Internet makes me angry.	43
39	Shelly Geurts	Citizen	Expressed concern about the amount of information available online for bankruptcy, which has included SSN, birthdates, addresses, account numbers, and names and ages of children.	44

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	02-04-04		This information should not be available online. I cannot believe the public has not spoken up with outrage about this.	
40	Barbara Golden 02-28-04	State law librarian	Asks that the committee accept the approach currently taken by the state law library with respect to appellate opinions. Opinions are posted on the Internet, and searchable via the court web site, but is blocked from general search engines. Before the decision was made to block other search engines, the library received several complaints from people named in the opinions. After the change was made in November 2002, only one complaint has been received.	45
41	Barbara	Citizen	Has serious concerns about posting all court records on the Internet, especially family court documents, due to what her family has recently been through. The ex-wife of a family member abducted their two children, hid them, and made numerous allegations against the other parent in an attempt to have his time with the children limited or eliminated. Divorce and custody situations are notoriously ugly, and false allegations are quite common as a tactic for controlling the other parent's access to children. Family court information can affect children very deeply; the invasion of privacy would far outweigh any possible benefit. What about the fact that kids are named in all the records? People against whom allegations are made may have to defend themselves for the rest of their lives.	46
42	Raymond Connors 02-06-04	Citizen	Asks that convictions be available on the web, to help tenants and landlords have better information about apartment managers. Has used public access terminals at Hennepin County but had difficulty due to old computers, broken keyboards, and inadequate help.	48
43	Jack Casey 02-06-04	Citizen	If court information is made available on the Internet, it should only be from today forward, just as laws are enacted from a certain day forward. People should have the opportunity to know that the information will be on the Internet before they commit an offense.	49
44	James Rath 02-05-04	Citizen	Would like to see court information on the internet that provides information about judges, referees, and judicial officers, including but not limited to family court personnel and	50

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			guardians ad-litem. Had an experience where a referee did not adjudicate a case within 90 days, and instead took over 127 days. Wants judges and others held accountable.	
45	Theresa Myre 02-06-04	Citizen	There is no reason why individuals need to know anything about other individual's court activities. If people want information, make them work and physically go to the court house. There is no need to provide easy access over the Internet.	51
46	Dave Fahrmann 02-06-04	Citizen	Court documents should not be on the Internet. Had a personal experience and difficulty finding a new job after suing his former employer and after documents appeared on the Internet that stated he was insubordinate in his former position. Claims it ruined his life.	52
47	Sue Abderholden 02-06-04	National Alliance for the Mentally Ill of Minnesota	Do not identify people in commitment records on the Internet, or at a minimum use initials. These records will be used to deny housing and employment to people who have been involved in commitment proceedings.	54
48	Patricia Sieber 02-06-04	Minnesota Disability Law Center	Prefers that civil commitment files not be published at all on the Internet. Alternatively, these records on the Internet should not identify individuals but instead refer to initials only. Civil commitment petitions may involve damaging allegations that are not factual , but are never proven or dis-proven. Court records contain substantial amounts of medical records and other documents relating to an individual's diagnosis and treatment. While existing court rules protect portions of this information, the practical obscurity of paper records has in a major way limited the amount of public access to civil commitment proceedings. If commitment records are on the Internet, they may be used by potential landlords or employers to deny housing or employment opportunities—in contravention of other important laws prohibiting such discrimination, including the Minnesota Human Rights Act and the Americans with Disabilities Act. Added Note: names of committed individuals may otherwise be available: directory information, including name, date admitted, general condition, and date received , regarding those who have been committed to a public facility under the Data Practices Act.	55

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49	Susan Adlis 02-07-04	Citizen	Court records should be available on the Internet, including divorce, marriage, and death records, but with two exceptions: (1) juvenile records should not be accessible because they are confidential; and (2) birth records should not be accessible because the social security numbers may be stolen and used after a person dies. The same argument could be made for death records, but the Minnesota Historical Society already has death records online. It should not be difficult to obtain court records, as there are legitimate uses for them. The Internet would increase the convenience, and the Internet does not pose any more of a threat to privacy than having the records available at the government center.	57
50	Karen Super 02-09-04	Citizen	Has concerns about putting individual's records online who have had charges dismissed. It is wrong to leave this information available after the dismissal, because it may be used against a job applicant in this tight job market. In paper form, a dismissed adult charge should remain open until the appeal times expire and then the record should be sealed.	59
51	Sally Cumiskey 02-09-04	On behalf of Third Judicial District (from Houston and Winona Counties)	Agree with recommendation to publish only a limited amount of records on the Internet, and limit them to documents generated by Court. Agree with the concept of not placing the burden of redaction on court administrators, because redacting SS#'s on CHIPS cases has had a huge impact on staff time. Rule 7 §5: Prefer the second alternative on correction of case records, because it is more formal and gets the judge involved if necessary. Rule 11: Agree with the "willful and malicious" language. Rule 814: Needs clarification. Under (c) Retention, does "juror qualification questionnaire" mean the initial summons/qualifications or the supplemental questionnaire. Regarding the supplemental questionnaire, would it apply to all questionnaires completed by all the jurors summoned, just the ones who were questioned during voir dire, or just the ones who actually heard the case? How long retained? It should be noted that juror social security numbers are only required when a juror receives $600 or more. Rule 313.02(a)(ii): agree that court administrator should not review each pleading for compliance. Exhibit 1: Agree with reasons stated in minority report with respect to unproven allegations.	60
52	Linda	Citizen	I highly object to court records of any kind being posted on the Internet. Even just a name	61

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	Sidney 02-04-04		online could mean loss of housing or employment. I have found my name is the same as three other people who are using the Internet. Respect people's privacy and keep personal information off the Internet.	
53	Anonymous 02-04-04	Citizen	I strongly disagree with putting court proceedings online. The potential abuses like identity theft, exploiting information, or falsely judging innocent people based on incorrect information far outweighs the convenience of being able to log on to do a background check. Have had several problems due to husband having same name as another person, because of mistaken identity. We can defend ourselves when we are in a two-way conversation with a business, but cannot defend ourselves when some bored insomniac logs on at 3AM to read court records for entertainment or to carry out an unlawful pursuit. With respect to divorce, ½ of marriages end in divorce, but that does not make a person a criminal. Such proceedings are no one's business and have no place on the Internet. Look to the heathcare industry as a role model—which guarantees privacy under HIPAA.	62
54	Robert Lynn <no date>	Criminal Rules Committee	Clarifies the intent of the Criminal Rules Committee with respect to proposed changes to Rule 814 on retention of juror questionnaires. Only questionnaires used in voir dire should be retained for the ten-year period. Normally these will be the case-specific questionnaires of the jurors empanelled as authorized by MINN. R. CRIM. P. 26.02, subd. 2(3), not the jury qualification questionnaires authorized by MINN. R. GEN. PRAC. 807. As rule 814 is currently drafted, it is unclear whether the terms "records" and "lists" include these summaries. Our recommendation is that a distinction be made between the juror qualification questionnaires and the summaries drawn from them for the purpose of retention, through an alteration of the proposed amendment to 814(c). (See letter for proposed alternative language.)	63
55	Nancy Killebrew 02-08-04	Citizen, on behalf of victims of domestic	Protect all civil and family court records with the names of victims of domestic violence, even when it's not "proven" in court but documented by police reports. Make public records that contain complaints about judges more easily available. Judges are not held accountable for poor decisions, deviations from their codes of conduct, and rules of civil	65

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		violence	procedure.	
56	Pat McGrath 02-09-04	Citizen	Agrees with online access to court records, but asks that civil commitment records be excluded from online access. His son was committed for mental illness, and now has this stigma for the rest of his life, and may be excluded from areas of employment even though he is fully recovered.	67
57	Christopher Coen, 02-09-04	Citizen	Opposed to court records online because many charges filed by the police are bogus, and making these charges easily accessible by anyone would result in more people losing jobs and housing. In Minneapolis the policy department regularly uses false charges to cover up cases of police brutality, or to retaliate against people who complain or simply ask for an officer's name or badge number. Accusations are easy to make, and often do not represent the truth.	68
58	Anonymous 02-06-04	Citizen	Court information should be, by default, private and not released publicly. I support the direction Robert Sykora suggests in his comments. Information in court records can be used in harmful ways. Public release of information is not required to make people accountable, and accountability should not be used as a justification for the release of information.	69
59	Larry Blackwell 02-09-04	Citizen	Increased access will enhance state commerce. Has a business that would benefit from electronic disclosure of public records. However, don't disclose arrest-without-conviction records because they can be used to unfairly discriminate against persons of color. The Council on Crime and Justice recently found that persons of color are targeted for criminal stops at a disproportionately higher rate than Caucasians.	70
60	Nancy Mischel 02-09-04	Legal Services Advocacy Project	Comment withdrawn by Legal Services Advocacy Project	71
61	Bridget	Jury	Supports the recommendation to seal voir dire questionnaires used in civil cases. It also	72

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	Gernander 02-10-04	Managers Resource Team (JMRT)	supports keeping juror social security numbers private. However, there is an inaccuracy in the report: social security numbers are not required for jurors to be paid, even though a small number of counties continue to collect SSN's. Would like to express support for having only one public access standard for jury qualification questionnaires. Rather than having paragraph (a) govern the first year after the records collected and paragraph (d) govern all subsequent years, it would be a much better standard to simply have paragraph (a) be called public access and keep that standard for jury qualification records for as long as they are kept. There is no reason to have a varying standard for these records. Also relating to Rule 814, accepts retention schedule set forth in paragraph (c), but would like to verify that electronic versions of these records are sufficient. All the information in the jury qualification questionnaire is entered into the jury database, which is used to generate the jury panel lists that are given to the attorneys in advance of voir dire. Does not want to keep paper records for ten years.	
62	Peggy Jellinger 02-09-04	Court reporter	The concept that the public has a right to know all defeats the principles that our country was founded on: that we get second chances in this country. The recommendation takes away hope from citizens and children. What is this going to cost our financially strapped state? The public needs to know those figures. The state should not make money on bulk information that litigants have paid the filing fees on. Court orders tell only part of a story; the entire file should be on line or nothing at all. There will be inequity in who gets harmed the most by the data. There is no way this state can manage this amount of information and be fair. Scrap the entire project.	75
63	Sheila Scott 02-11-04	Attorney	Currently, even though court records are available to the public, they are only available if you have the time or money to go to the court; and in Hennepin County you have to stand in line and figure out how to use the computer, which sometimes do not work. Criminal convictions and sentences should be available online. This is no difference than in small	76

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			towns where the information is published in the paper. Cases that have been dismissed and reduced should be clearly marked. There should be more expungements or a reasonable limit to how long cases remain online; for example, a person convicted of theft of a candy bar when they were 18 shouldn't be punished for this at 35. Most family court matters should be sealed, however divorces should be online, but only the names and date of the divorce. Civil cases should be posted, with party name, type of case, and outcome.	
64	Daniel Hendrickson, 02-06-04	Citizen, ex-con	As an ex-con trying to live a law-abiding life after release from prison is next to impossible because housing and employment is hard to get. Please limit all criminal conviction information online to violent types of crimes, such as assaults, murder, and sex crimes. Other crimes, such as car theft, should not work to prevent someone from getting a job later n life. Job performance and being a good tenant have nothing to do with non-violent crimes. Don't make it more difficult for convicts to turn their lives around.	79
65	Eric Ellman (no date)	Consumer Data Industry Association	Strong interest in maintaining access to public records, including full SSN to the extent they exist in the records. CDIA members obtain court information, including tax liens and releases, wage-earner proceedings, civil judgments (including releases and vacations), arrest records, conviction records, eviction records, orders of support for spouses and children. Members use this information to ensure a safe and sound consumer reporting system and to empower landlords, residential property managers, and employers to provide safe environments for their residents, employees, customers, and guests. Clear public safety need for court records and SSN contained in them. Records are used to determine whether: bus driver applicants have DWI or reckless driving arrests or convictions; day care center worker applicants are pedophiles or registered sex offenders; prospective tenants in apartment building have been arrested for or convicted of a violent crime; and retail clerks or bank tellers have liens or judgments outstanding. Also a national security need; use records to confirm true identity of applicants for pilot license, license to haul hazardous waste, permit to fly a crop duster, work on an airport	S1

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			ramp, or work as a customs officer. FBI makes thousands of requests each year to commercial 0nline databases to obtain similar information. Under federal and state fair credit reporting laws, consumer reporting agencies have been required to maintain reasonable procedures to assure maximum possible accuracy. When a consumer reporting agency provides a consumer report for employment purposes and the report contains public record information that is likely to be adverse to the applicant, the reporting agency must notify the applicant of that fact along with the name and address of the user being supplied with the report. Consumers have a right to dispute information on their credit reports with the consumer reporting agency. Disputes must be resolved within 30 days (or 45 in some cases). If the information cannot be verified, it must be removed in the consumer's favor. Violations of the federal law are subject to private rights of action, and/or enforcement by the Federal Trade Commission and/or state attorneys general. 1997 amendments to federal law also impose accuracy standards on entities that supply data to consumer reporting agencies, including financial institutions, landlords, collection agencies, the federal government, and child support enforcement agencies. These suppliers are liable to the consumer if they continue to report data known to be inaccurate, and they have an affirmative duty to correct and update information.. SSN: Only way to correctly match the arrest, conviction, eviction, lien or judgment with the correct consumer is with use of all nine digits of the SSN. Prohibiting full SSN access jeopardizes public health, safety, and welfare, and increases risks to financial institutions. In U.S. there are 14 million annual address changes, 6 million vacation or second homes, and 3 million divorces annually with attendant name changes. 4.5 million Americans have one of two last names (Smith or Johnson), 14 million have one of ten last names, 26.6 million females have one of ten first names, and 57.7 million males have one of ten first names. These need to be matched with 15 million annual judgments and 8 million annual tax liens. SSN is the single, universal identifier.	

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			SSNs play a big part in terrorism and terrorism investigations (citing several examples). The only way for law enforcement, employers, security companies, and others can hope to sort out legitimate and non-legitimate SSN holders and track them across state lines is through full access to SSNs from as many disparate sources as possible, including court records. Cites Delaware Statistical analysis Center investigation of 242 stalkers who had accumulated an aggregate history of 5,010 arrests and 9,295 charges transcending many jurisdictions. Impossible to match individuals with their records without full SSN access. Association for Children for Enforcement of Support indicates that public record information helped locate over 75% of deadbeat parents they sought. National Directory for New Hires enables the federal Office of Child Support Enforcement to assist states in locating parents with support obligation living in other states. Between 1997 and 2007, the expected return is $64 billion in child support. This also assist states in reducing unemployment and workers compensation fraud. Urges allowing SSN access for civil court records and SSN access for bulk transfers for certain qualified users like consumer reporting agencies and other entities that conform to privacy laws such as Gramm-Leach-Bliley Act, 15 U.S.C. § 6801..	
66	David Jansen 2-13-04	Citizen	Records on a prospective tenant or employee should be available at maybe a dime a page. High profile cases such as Randy Moss or Kirby Puckett should be made available to the public on the web. Advantages of web access are: public has access to far away trials, little cost involved in putting the information out there, and the Minnesota appellate courts give the public web access.	S6
67	P. Johnson 2-13-04	Citizen	Strongly against opening the Internet to people's personal affairs.	S8

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LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Abortion Notification	All trial and appellate court records of actions to determine whether abortion without parental notification is in minor's best interests.	No Public Access.	M.S. 144.343, subd. 6.
Adoption	All court records in adoption proceedings (including a petition or request by adopted person for access to the file or the original birth certificate). SEE ALSO LIMITS ON ACCESS TO VITAL STATISTICS RECORDS	No Public Access until 100th anniversary of the granting of the adoption decree. (NOTE: (1) No access by child except by order under M.S. 259.61; (2) human and social services and child-placing agency reports may not be disclosed to parties except by court order under M.S. 259.53, subd. 3; and (3) in stepparent adoption, court may confirm in writing to parent whose rights would be or have been terminated the fact that an adoption has or has not been granted and, if granted, the date of the adoption decree).	M.S. 260B.171, subd. 4; 260C.171, subd. 2; 259.59, subd. 3; 259.61, 259.89; 144.218, subd. 2; 259.79, subd. 3.
Alternative Dispute Resolution	All records of the proceedings before a neutral, including the neutral's personal notes, records and recollections.	No public Access. (NOTE: notes, records and recollections of the neutral may not be disclosed to the parties.)	Gen.R.Prac. 114.08; M.S. 518.1751, subd. 4a (visitation expediter)
Artificial Insemination	All court records relating to artificial insemination.	No Public Access.	M.S. 257.56.
Child Protection	All juvenile court child protection case records filed before June 28, 1998, in the pilot project sites (Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis—Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District). NOTE: the filing referred to is the filing of individual documents or records, not the initial filing of the case. In some instances this will result in a mixture of publicly accessible and inaccessible records within a single file.	No public access.	Minn.R.Juv. P. 8.02, subd. 1 (effective 7-1-02)

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Child Protection	All juvenile child protection case records filed before July 1, 2002 in sites that were NOT part of the pilot project (see previous frame for list of pilot project sites). NOTE: the filing referred to is the filing of individual documents or records, not the initial filing of the case. In some instances this will result in a mixture of publicly accessible and inaccessible records within a single file.	No public access.	Minn.R.Juv. P. 8.02, subd. 2 (effective 7-1-02)
Child Protection	Electronic Records. Juvenile child protection records maintained in electronic format in court information systems.	No direct public access to information in electronic format unless expressly authorized by the court (e.g., by court order). This is designed to preclude widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also underlies the requirement in rule 8.08 that case titles in the petition and other documents include only the names of the parent or other legal custodian or legal guardian, and exclude the names or initials of the children. Courts may by court order, but are not required to, prepare and release to the public appropriate electronic formats such as calendars that identify cases by the appropriate caption. The prohibition on direct public access to electronic formats does not prohibit disclosure of print outs from computer, such as TCIS activity summary, provided information in the print out is not otherwise off limits to the public (see other frames regarding Child Protection records).	Minn.R.Juv.P. 8.06

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Child Protection	Specific juvenile child protection records (filed after effective date; see above frames for effective dates for pilot and non-pilot counties): (a) transcripts, stenographic notes, and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge; (b) audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child; (c) victim's statements; (d) portions of juvenile protection case records that identify reporters of abuse or neglect; (e) HIV test results; (f) medical records, chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records; (g) sexual offender treatment program reports; (h) portions of photographs that identify a child; (i) applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a Child in Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i); (j) – (m) continued next frame	No public access unless admitted into evidence at a hearing or trial without a protective order. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during a trial or hearing are only those exhibits that have been both offered into evidence and admitted by the court. These must be distinguished from items that are merely attached as exhibits to a petition or other publicly accessible document. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" accessible to the public. NOTE: Under R.Juv.P. 8.04, effective 1-1-04, unless otherwise ordered by the court, the parties have access to items (a) through (m) except items (b), (d) and (e). Whether a person is a party is determined under R.Juv.P. 21; a person can be a “participant” (defined in R.Juv.P. 22) without being a “party.”	Minn.R.Juv.P. 8.04; 8.05.

* = table indicates current law and does not include proposed changes

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Child Protection	Specific juvenile child protection records, cont., (filed after effective date; see above frames for effective dates for pilot and non-pilot counties): (a) – (i) in previous frame (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault; (k) notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to 25 U.S.C. § 1912 (the Indian Child Welfare Act); (l) records or portions of records which the court in exceptional circumstances has deemed to be inaccessible to the public; and (m) records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement.	No public access unless admitted into evidence at a hearing or trial without a protective order. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during a trial or hearing are only those exhibits that have been both offered into evidence and admitted by the court. These must be distinguished from items that are merely attached as exhibits to a petition or other publicly accessible document. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" accessible to the public. NOTE: Under R.Juv.P. 8.04, effective 1-1-04, unless otherwise ordered by the court (see next panel), the parties have access to items (a) through (m) except items (b), (d) and (e). Whether a person is a “party” is determined under R.Juv.P. 21; a person can be a “participant” (defined in R.Juv.P. 22) without being a “party.”	Minn.R.Juv.P. 8.04; 8.05.
Child Protection	Protective Order. Records and other information sealed by court order, but, effective 1-1-04, the protective order itself is accessible to the public. NOTE: Addresses of parties and participants are required to be included in the petition, and a party or participant who is endangered may ask the court to keep their address confidential. Such a request by itself does NOT automatically render the address confidential; the requesting party or participant must obtain a protective order from the court. Minn.R.Juv.P. 8.01; 21.03; 22.03.	No public access to the records that are sealed, but effective 1-1-04, the protective order itself is accessible to the public. NOTE: the court may also preclude access by a party pursuant to a protective order, so read the protective orders carefully.	Minn.R.Juv.P. 8.01, 8.07

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Commitment	Medical Reports. Pre-petition screening report, court appointed examiner's report, and all medical records.	No Public Access except by express order of court.	Rule 21(b), of the Spec.R.Proc. Governing Proceedings under the MN Commitment and Treatment Act (effective 1/1/00); see also Matter of Jarvis, 433 N.W.2d 120 (Minn. App. 1988) (Reports submitted by a party to appellate court in separate, confidential appendix).
Commitment	Motion to Seal; Sealed Records. Request to seal commitment proceeding records, whether or not request is granted, and if request is granted, any records sealed by court order.	No Public Access. NOTE: Be sure that TCIS® activity summary (IACT) on public access mode does not disclose the existence of the motion.	M.S. 253B.23, subd. 9.
Compulsory Treatment	All court records of proceeding for compulsory treatment of habitual narcotics user.	No Public Access.	M.S. 254.09.
Court Services	Pre-Sentence Investigation Report. Report including defendant's personal history, mental and physical exams, criminal history, victim impact statement, sentencing worksheet, criminal history reports, and the driving record ("1045").	No Public Access. NOTE: Not applicable to items submitted separate from PSI report (e.g., the 1045 or victim impact statements); these may be covered elsewhere (see, Confidential Driving Record, Domestic Abuse Impact Statement, and Disposition Records, below).	M.S. 609.115, subds. 4, 6, 609.2244.
Court Services	Domestic Abuse Victim Impact Statement. (typically submitted with domestic abuse PSI, discussed above). Other types of victim impact statements are discussed in Court Services, Disposition Records, below	No Public Access.	M.S. 609.2244

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Court Services	III System Criminal History Records. Results of a search for arrests, convictions, etc., from other states utilizing the Interstate Identification Index system ("III System") maintained by the FBI and accessed via the Criminal Justice Information System (CJIS) maintained by the Minnesota Bureau of Criminal Apprehension. Results of Minnesota only CJIS search (referred to as "Computerized Criminal History" or "CCH"), or a search of other states through the National Law Enforcement Telecommunication System ("NLETS"), are covered under Court Services Catch All, Disposition Records, below.	No Public Access.	28 C.F.R. § 20.33

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LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Court Services Except in child protection cases, which are covered separately above under Child Protection subject area.	Court Services Catch All, Part I of III Assessments. Assessments identifying an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts (substance abuse treatment records, including assessments, are discussed in a separate frame, below).	No Public Access unless admitted into evidence (i.e., marked as exhibit and court records prove that judge formally admitted exhibit into evidence at hearing or trial); provided, however, that the following information on adults is accessible to public: name, age, sex, occupation, status as a parolee, probationer, or participant in diversion program, and location thereof; offense for which the individual was placed under supervision, dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation, or participation and the extent to which those conditions have been or are being meet (e.g. probation violation report accompanying a summons, warrant, order to show cause, or order vacating a stayed sentence; but beware of certain non-accessible items such as identity of a juvenile victim of criminal sexual conduct, discussed separately under criminal records, below); identities of agencies and units within agencies and individuals providing supervision; legal basis for change in supervision, and dates, times and locations associated with change.	Access Rule 4, subd. 1(b)

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Court Services Except in child protection cases, which are covered separately above under Child Protection subject area.	Court Services Catch All, Part II of III Assessments discussed in previous frame. Disposition Assisting Records. Reports and application forms that assist the court in assigning an appropriate sentence or other disposition (excludes Pre-Sentence Investigation Report, covered separately, above). Includes bail evaluations, applications for fine payment agreements (but not the terms of the agreement), probation agreement and probation reports not accompanying a summons, warrant or order (but not the terms of the agreement or other public items listed in the accessibility column to the right), victim impact statements, non-III System criminal history search records (e.g., name change background searches under M.S. 259.11(b) and some guardian/conservator background searches under M.S. 525.545; non-III System searches are either Minnesota only searches for arrests, convictions, etc., on Criminal Justice Information System (CJIS) maintained by the Bureau of Criminal Apprehension, also referred to as "Computerized Criminal History" or "CCH" searches, or searches of other states via the National Law Enforcement Telecommunication System or NLETS; III System Criminal History Records are discussed above), sentencing worksheets revealing prior juvenile offense or prepared on juvenile prosecuted as adult, visitor reports under M.S. 525.55, subd. 2, except the return of service portion of the report, restricted driving record reports obtained from DPS's Datamax system (referred to as form "1045") that are marked "RECORD DISSEMINATION RESTRICTED", and all driving record reports obtained from Department of Public Safety's new DVS web site (www.dps.state.mn.us/esupport).	No Public Access unless admitted into evidence (i.e., marked as exhibit and court records prove that judge formally admitted exhibit into evidence at hearing or trial); provided, however, that the following information on adults is accessible to public: name, age, sex, occupation, status as a parolee, probationer, or participant in diversion program, and location thereof; offense for which the individual was placed under supervision, dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation, or participation and the extent to which those conditions have been or are being meet (e.g. probation violation report accompanying a summons, warrant, order to show cause, or order vacating a stayed sentence; but beware of certain non-accessible items such as identity of a juvenile victim of criminal sexual conduct, discussed separately under criminal records, below); identities of agencies and units within agencies and individuals providing supervision; legal basis for change in supervision, and dates, times and locations associated with change.	Access Rule 4, subd. 1(b) Additional authority applicable to driving record reports: M.S. 171.12, subd. 7; 18 U.S.C. 2721(b).

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Court Services Except in child protection cases, which are covered separately above under Child Protection subject area.	Court Services Catch All, Part III of III Assessments and Disposition Records discussed in previous frames Custody Recommendations. Guardian ad litem (GAL) Reports. Combination of three subsets listed above; includes, in dissolution cases, written GAL reports concerning the best interests of the child, but excludes records of other activities GAL may undertake when given party status, such as: (1) filing pleadings, motions, notices, memoranda, and briefs; (2) conducting and responding to discovery; and (3) requesting hearings, introducing exhibits, subpoenaing witnesses, examining witnesses, and filing appeals. Psychological Evaluations. E.g., in criminal cases (Excludes such evaluations in Commitment cases, which are discussed separately above.)	No Public Access unless admitted into evidence (i.e., marked as exhibit and court records prove that judge formally admitted exhibit into evidence at hearing or trial); provided, however, that the following information on adults is accessible to public: name, age, sex, occupation, status as a parolee, probationer, or participant in diversion program, and location thereof; offense for which the individual was placed under supervision, dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation, or participation and the extent to which those conditions have been or are being meet (e.g. probation violation report accompanying a summons, warrant, order to show cause, or order vacating a stayed sentence; but beware of certain non-accessible items such as identity of a juvenile victim of criminal sexual conduct, discussed separately under criminal records, below); identities of agencies and units within agencies and individuals providing supervision; legal basis for change in supervision, and dates, times and locations associated with change.	Access Rule 4, subd. 1(b)

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Court Services	Predatory Sex Offender Notification and Registration Advisory Forms. Used at sentencing to advise defendants of their obligation to register as a predatory sex offender.	No Public Access. NOTE: Law enforcement is authorized under M.S. 244.052, subd. 4, to release certain information to the public about sex offenders.	M.S. 243.166, subd. 7
Court Services	Substance Abuse Treatment Records (includes assessments).	No Public Access except by consent or court order.	42 U.S.C. § 290dd-2; 42 C.F.R. 2.1-2.67. M.S. 169A.70, subd. 3.
Conceal and Carry Gun Permit Appeals	Hearing Records in Conceal and Carry Gun Permit Appeals, including the transcript, court reporter's stenographic notes and any back-up or primary audio tapes of the hearing, and all exhibits received into evidence at the hearing. NOTE that the public IS entitled to access to the other case records related to the gun permit appeal, including the petition, findings of fact, conclusions of law, the courts order or decision, the writ, and the TCIS/MNCIS register of actions records.	No Public Access.	2003 Minn. Sess. Laws ch. 28, Art. 2, § 17 (codified as M.S. 624.714, subd. 12)
Criminal (see also Court Services Records)	Arrest Warrant; Order Not to File. Warrant, charging instrument, or other supporting evidence or information for which an order not to file has been entered.	No Public Access until execution and return.	R.Crim.P. 33.04.
Criminal	Search Warrant; General. Search warrants and related documents. Note: See also Search Warrant: Order Not to File, below.	No public access until after the search or ten days has expired since issuance of warrant.	R.Crim.P. 33.04; 36.06.
Criminal	Search Warrant; Order Not to File. Warrant, charging instrument, or other supporting evidence, information, or related documents for which an order not to file has been entered.	No Public Access until: (1) commencement of criminal proceeding utilizing evidence obtained in or resulting from the search; or (2) at such other time specified in the order.	R.Crim.P. 33.04; 36.06.
Criminal	Wiretap Warrant. Warrant, application, affidavits, return, supporting evidence or related documents concerning application for, or granting or denial of, a warrant authorizing interception of communications pursuant to M.S. 626A.01-.23.	No Public Access except by court order.	M.S. 626A.08, subd. 2.

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Criminal	Intercept Orders. Orders authorizing use of pen register, trap and trace device, or mobile tracking device. Includes applications and returns.	No Public access except by court order.	M.S. 626A.37, subd. 4(1).
Criminal	Application for Public Defender. Application by defendant seeking appointment of counsel. (This does NOT include requests to proceed in forma pauperis pursuant to M.S. 563.01; 563.01 requests are accessible to the public.)	No Public Access (access by public defender is now permitted).	M.S. 611.17
Criminal	Identity of Juvenile Victim of Sexual Assault. Information in, or relating to, complaints or indictments charging violation of M.S. 609.342, .343, .344, .354, which specifically identifies a victim who is a minor.	No Public Access except by court order. (Does not permit denial of public access to other information in the records, including identity of defendant.)	M.S. 609.3471.
Criminal	Grand Jury Indictment. Applies to indictment and related warrant or summons only. (For all other records relating to grand juries, see Grand Jury Proceedings, below)	No Public Access until defendant is in custody or appears before the court.	R.Crim.P. 18.05; 18.08.
Criminal	Grand Jury Proceedings. All records, except indictment (see Indictment, above), of grand jury proceedings, including transcript and fact that no indictment was returned (often referred to as "no-bill"). Also includes a petition or request by the county attorney to convene a grand jury, and any resulting court order or memo granting or denying the request.	No Public Access. NOTE: No access by defendant unless authorized by court order.	R.Crim.P. 18.05; 18.08; In re Grand Jury of Hennepin County, 271 N.W.2d 817 (Minn. 1978); In re Grand Jury of Wabasha County, 309 Minn. 148, 244 N.W.2d 253 (1976).
Criminal	Hearing on Discovery Issues. Sealed record of "in camera" (i.e. private) proceeding (including related documents and other items) in which denial or regulation of discovery has been granted.	No Public Access.	R.Crim.P. 9.03, subds. 5, 6, 7.
Criminal	Hearing on HIV Testing. Sealed record of "in camera" (i.e. private) proceeding and all related documents regarding HIV test request by victim of sexual assault or any other violent crime. (NOTE: statute contemplates that if request is granted, no court record of the proceeding or the test is to be maintained; consult court order for specific directions.)	No Public Access. NOTE: Consult court order for directions as to disclosure and destruction of record. NOTE ALSO: Be sure that TCIS® activity summary (IACT) on public access mode does not disclose the existence of the motion.	M.S. 611A.19

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Criminal	Hearing Prior to Trial or Outside Presence of Jury. Record (including transcript) of proceeding that has been closed to the public (e.g. due to prejudicial publicity).	No Public Access until completion of trial or disposition without trial.	R.Crim.P. 25.01; 26.03, subd. 6.
Criminal	Order Restricting Access. Records that have been restricted from public access by court order.	No Public Access except pursuant to terms of the order.	R.Crim.P. 25.03.
Criminal	Pardon Extraordinary Granted on or before July 31, 1992. All court records (including index references) relating to a conviction for which a pardon extraordinary has been granted on or before July 31, 1992.	No Public Access. (NOTE: Unsealed file may only be used for purposes of a criminal investigation, prosecution, or sentencing, and should not otherwise be disclosed--recommend resealing file.)	M.S. 638.02; 1991 Minn. Laws ch. 319, sections 26, 32.
Criminal	Expunged Records. All court records, including index references, sealed by court order and relating to: a juvenile prosecuted as an adult following certification to district court under M.S. 260.125; certain controlled substance offenses dismissed or discharged under M.S. 152.18, subd. 1; criminal proceedings not resulting in a conviction.	No Public Access. (Note: Upon request, the existence of the sealed record and the right to have the record unsealed may be disclosed to law enforcement, prosecution, or corrections authorities. Sealed file may be opened for purposes of a criminal investigation, prosecution, or sentencing upon an ex parte court order. No order is required to open a sealed file for purposes evaluating a prospective criminal justice agency employee. Recommend resealing file.)	M.S. 609A.01-.03 (effective May 1, 1996; requests preceding the effective date are governed by M.S. 609.168; 242.31; 152.18, subd. 2).
Criminal	Miscellaneous Expunged Records. All records relating to charges or convictions expunged or sealed by court order to prevent unfairness or to prevent infringement of constitutional right.	No Public Access.	Minn. Const. art. III, section 1.
Criminal	Juror Names and Addresses Sealed by Order. Names and addresses of jurors when access has been restricted by court order. (See also Jury records, below)	No Public Access. NOTE: Access by parties is controlled by court order.	R.Crim.P. 26.02, subd. 2(1) (effective 1-1-99).
Depositions and Discovery (Civil Cases)	Protective Order. Depositions, documents, and other information sealed by court order.	No Public Access.	R.Civ.P. 26.03.

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Dissolution, Custody & Support	Social Security Numbers. All social security numbers contained in petitions, orders, decrees and other documents.	No Public Access.	M.S. 518.146, 518.10, 518.148, 518.171, subd. 1, 518.68, subd. 2, 42 U.S.C. 405(c)(2)(C)(viii).
Dissolution, Custody & Support	Tax Returns.	No Public Access.	M.S. 518.146 (effective 8/1/99)
Dissolution, Custody & Support	Records Sealed to Protect Welfare of Child. Records sealed by court order regarding an interview, report, investigation, or testimony of child involved in custody proceeding.	No Public Access.	M.S. 518.168 (d).
Dissolution, Custody & Support	Records Sealed to Protect Health or Safety of Party or Child. Address or identifying information on party or child, declared not to be disclosed by court order in proceedings under M.S. chapter 518C. (Uniform Interstate Family Support Act).	No access except by order of court.	M.S. 518C.312
Dissolution, Custody & Support	Identifying Information in Interstate Child Custody Proceedings. Identifying information on a party or child if the party alleges in an affidavit or pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of the identifying information; applies to child custody proceedings under M.S. chapter 518D (the Uniform Child Custody Jurisdiction and Enforcement Act).	Statute directs that records shall be sealed and that there shall be no disclosure of identifying information to other party or the public except by order of court.	M.S. 518D.209
Domestic Abuse	General. All court records of action for domestic abuse protection pursuant to M.S. 518B.01, except information regarding petitioner's location or residence (discussed in next panel below). Does NOT include 5th degree domestic assaults or non-518B harassment petitions (e.g., petitions under M.S. 609.748).	No Public Access until temporary court order pursuant to M.S. 518B.01, subds. 5 or 7 is served upon respondent. (CAUTION: Petitions are occasionally denied or withdrawn before they are served, in which case the petition is NOT accessible to the public or to the respondent named in the petition.)	Access Rule 4, subd. 1(a).

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Domestic Abuse (continued)	Petitioner's Address. Information in court records of action for domestic abuse protection pursuant to M.S. 518B.01 regarding the petitioner's location or residence.	If requested by petitioner, no public access; information may be disclosed only to court personnel or law enforcement for purpose of service of process, conducting an investigation, or enforcing an order.	M.S. 518B.01, subd. 3b.
Judge's Notes and Drafts	All notes, memoranda or drafts thereof prepared by a judge, staff attorney, law clerk, legal assistant, or secretary and used in the process of preparing a final decision or order. (Note: "final" means decision or order is not a preliminary draft.) Includes audio tape of conciliation court proceedings. Does not include official minutes prepared pursuant to M.S. 546.24-.25.	No Public Access.	Access Rule 4, subd. 1(c).
Jurors	Juror Identities Sealed in Criminal Case. Names, addresses, telephone numbers, and other identifying information on jurors when access has been restricted by court order in criminal case.	No Public Access. NOTE: Access restrictions might be limited to a specific time frame, so consult the court order. Access by parties is also controlled by the court order.	R.Crim.P. 26.02, subd. 2(1).
Jurors	Sealed Transcript of *In Camera* Juror *Voir Dire* in Criminal Case. The transcript of oral questioning of a potential juror with the public excluded from proceeding, when access to the transcript is restricted by court order in a criminal case.	No Public Access.	R.Crim.P. 26.02, subd. 4(4) (effective 2-1-2004).

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SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Jurors	General Juror Information. Lists of prospective grand and petit juror, and qualification questionnaires returned by jurors. Does not include supplemental juror questionnaire in criminal case (see R.Crim.P. 26.02, subd. 2(3) and form 50), juror names entered on official minutes prepared pursuant to M.S. 546.24-.25 (i.e., witness/juror/exhibit log IS accessible to the public), unless access to the names is restricted by court order (see previous panels). Includes voter registration list that is used as the juror source list. (NOTE: A public information list on voters (essentially the voter registration list minus date of birth) is available from the county auditor or secretary of state.)	No Public Access to social security numbers. No public access to remainder of information except by permission of court upon written request; provided, however, that remainder is accessible to public after all listed jurors have been discharged and one year has elapsed since preparation of juror list.	42 U.S.C. §§ 405(c)(2)(C)(viii), 405(c)(2)(E); Gen.R.Prac. 807(e); 814.
Juvenile Delinquency and EJJ (child protection is addressed separately, above)	General. All juvenile delinquency and extended jurisdiction juvenile (EJJ) court records except "legal records" of delinquency or EJJ proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation. "Legal records" includes petition, summons, notice, findings, orders, decrees, judgments, motions, and documents so designated by the court. "Legal Records" would not include a sentencing worksheet. NOTE: If all felony charges are dismissed prior to hearing or trial, the court may want to issue an order clarifying public access to the "legal records." NOTE ALSO the exception to public access for such legal records that identify a minor victim of sexual conduct (see next panel), reveal any information about HIV testing requested by victim of sexual assault or other violent crime. (see second panel, below), or relate to search warrants (see third panel, below).	No Public Access except by order of the court. NOTE: If a juvenile is referenced for prosecution as an adult, a regular, adult criminal complaint or indictment will eventually be filed (and if not, the matter continues in juvenile court as if no reference occurred). If EJJ status is revoked and the stay of the adult sentence is lifted, the jurisdiction of the juvenile court terminates and subsequent records are generated in adult criminal court. In either case, the public may access only the adult criminal file, subject to the exceptions listed in this table for adult criminal files.	Access Rule 4, subd. 1(d); R.Juv.Ct. 30; M.S. 260B.163, subd. 1; 260B.171, subd. 4.

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Juvenile Delinquency and EJJ (child protection is addressed separately, above)	Information In "Legal Records" of Delinquency and EJJ Proceedings Identifying Juvenile Victim of Sexual Assault Committed by 16+ Year Old. "Legal records" of delinquency and extended jurisdiction juvenile proceedings alleging or proving a felony level violation committed by a juvenile at least 16 years old at the time of violation, is a specific subcategory of juvenile court records that are accessible to the public (see previous panel), except that the court may not disclose any information in the legal records relating to charged violations of M.S. 609.342, .343, .344, .345, .3451 which specifically identifies a victim who is a minor. "Legal records" includes petition, summons, notice, findings, orders, decrees, judgments, motions, and documents so designated by the court.	No Public Access except by order of the court. NOTE: Does not permit denial of public access to other information in the "legal records" of proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation.	M.S. 609.3471.
Juvenile Delinquency and EJJ (child protection is addressed separately, above)	Information in "Legal Records" of Delinquency and EJJ Proceedings Revealing HIV Test Requested by Victim. "Legal records" of delinquency and extended jurisdiction juvenile proceedings alleging or proving a felony level violation committed by a juvenile at least 16 years old at the time of violation, is a specific subcategory of juvenile court records that are accessible to the public (see previous panel), except that the court may not disclose any information in the legal records relating to HIV testing requested by a victim of sexual assault or any other violent crime. (NOTE: statute contemplates that if request is granted, no court record of the proceeding or the test is to be maintained; consult court order for specific directions.)	No Public Access. NOTE: Consult court order for directions as to disclosure and destruction of record. NOTE ALSO: Be sure that TCIS® activity summary (IACT) on public access mode does not disclose the existence of the motion.	M.S. 609A.19

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Juvenile Delinquency and EJJ (child protection is addressed separately, above)	Search Warrant Information In "Legal Records" of Delinquency and EJJ Proceedings. "Legal records" of delinquency and extended jurisdiction juvenile proceedings alleging or proving a felony level violation committed by a juvenile at least 16 years old at the time of violation, is a specific subcategory of juvenile court records that are accessible to the public (see previous panels), except that search warrants and related information that have been designated for filing in juvenile court are accessible to the public only to the same extent that such information is accessible to the public in adult criminal proceedings (see "Search Warrant; General" and "Search Warrant; Order Not to File" under the Criminal Case Records sections, above).	see "Search Warrant; General" and "Search Warrant; Order Not to File" under the Criminal Case Records sections, above	R.Juv.Ct. 4.01, 4.02 (effective September 1, 2003);
Maternity-Paternity	All court records, except "final judgment" (but not findings of fact or social security numbers) and affidavits filed pursuant to M.S. 548.09-.091, of action to determine existence of parent-child relationship. (NOTE: "Final judgment" means an appealable judgment, BUT findings of fact and social security numbers contained in the judgment papers are NOT accessible to the public).	No Public Access. NOTE: Public access allowed only to "final judgment," which means appealable judgment, BUT findings of fact and social security numbers contained in the judgment papers are NOT accessible to the public.	M.S. 518.146, 257.70, 257.66, 42 U.S.C. 405(c)(2)(C)(viii).
Name Change	All records of a name change in connection with a witness and victim protection program. Note: access to criminal history background search records for other change of name proceedings (i.e., those not involving witness or victim protection programs) is covered under Court Services Catch All, above.	No public access to file and no public acknowledgment of file. Court is to issue an order prohibiting all access to the file except that file is accessible to law enforcement, probation, and corrections.	M.S. 259.10, subd. 2.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT R: LIMITS ON PUBLIC ACCESS TO CASE RECORDS*		REV. 1/26/04
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Wills	Sealed wills deposited for safekeeping.	No Public Access. NOTE: Upon testator's death, the court may deliver the will to the appropriate court. Under Gen.R.Prac. 418: (1) a person may withdraw their own will or may in writing authorize another to withdraw the will; (2) a guardian or conservator may examine the will only after presenting a valid photo identification of themselves and a copy of valid letters of guardianship or conservatorship certified within 30 days of the request to examine the will, and the will must be resealed after examination; and (3) no copies of the original will may be made.	M.S. 524.2-515.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Appellate Court Writing Assignments	Information identifying appellate judges or justices assigned to or participating in the preparation of a written decision or opinion.	No Public Access until decision or opinion is released. (See current opinion embargo order.)	Access Rule 5, subd. 4.
Attorney Registration	Attorney registration information submitted by attorneys admitted to practice in Minnesota courts.	No Public Access, but Clerk of Appellate Courts may disclose to public upon request attorney name, address, admission date, continuing legal education category, current status, and license number, provided each inquiry is limited to a single registered attorney. [NOTE: the supreme court has a web site that allows the public to search and verify attorney information one attorney at a time.] Clerk may also disclose to public a complete list of only the name, city and zip code of all registered attorneys.	Rule 9, Rules of Supreme Court for Registration of Attorneys.
Attorney Work Product	Work product of any attorney or law clerk, employed by or representing the judicial branch, that is produced in regular course of business or representation of the judicial branch.	No Public Access.	Access Rule 5, subd. 12.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Bail Bond Agent Application—Criminal History Information	Criminal History Information in Bail Bond Agent Applications: Criminal history reports in bail bond agent applications/applicant files. Certain criminal history information in application files for bail bond agent approval under Gen.R.Prac. 702 containing: records of arrest not followed by conviction; expunged or annulled convictions; and misdemeanor convictions for which no jail sentence can be imposed. (affects portions of BCA report and information supplied by applicant). (Note: Bail bond agents are neither employees nor applicants for employment, so the application information is not covered by the employee/applicant record provisions discussed below.)	No Public Access.	28 C.F.R. §§ 20.33; 50.12 (criminal history reports); M.S. 364.04 (certain criminal history information in licensing application files).
Competitive Bids	Sealed Bids. Includes number of bids received.	No Public Access until bids opened.	Access Rule 5, subd. 8.
Competitive Bids	Trade Secrets. Trade secret information submitted pursuant to judicial branch bid or solicitation request.	No Public Access.	Access Rule 5, subd. 8.
Continuing Education	All records and files of the Office of Continuing Education for State Court Personnel that relate to failure of an active judge to satisfy educational requirements. (See also Employee records, below.)	No Public Access.	Rule 5, Rules of Supreme Court Judicial Education for Members of Judiciary.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Copyrighted Material	Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired, or is in the process of acquiring, a patent or copyright. NOTE: Copyright attaches to a work of authorship from the moment it is placed in a tangible form, whether on paper or in electronic/magnetic format. A copyright notice, e.g. "© 1995" is not necessary. Thus, it should be assumed that a computer program or related record has been copyrighted unless the material is expressly designated as available for public distribution and copying.	No Public Access.	Access Rule 5, subd. 7.
Corre-spondence	Correspondence between individuals and judges. NOTE: This category does NOT include probation reports submitted in criminal cases. Such reports are "case records," not "administrative records," and are addressed in the Access to Case Records Table under the Court Services Catch All.	No Public Access unless made accessible to public by sender or recipient.	Access Rule 5, subd. 3.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Employees	All records of judicial branch employees, volunteers, and independent contractors. (See also Employment Applications, below.)	No Public Access; provided, however, that following data is accessible to public: name (includes full name if known); actual gross salary; salary range; contract fees; actual gross pension; value and nature of employer paid fringe benefits; basis for and amount of remuneration in addition to salary, including expense reimbursement; job title; job description; education and training background; previous work experience (includes past salary if known); date of first and last employment; status of complaints or charges against employee, whether or not it resulted in disciplinary action; final disposition of disciplinary action and supporting documentation (not "final" until all appeals, including veterans preference, exhausted or expired); work location (not email address); work telephone number; honors and awards received; time sheets or comparable data used only to account for work time for payroll purposes, to extent it does not reveal reasons for use of sick leave or other non-public data; and city and county of residence. NOTE: long distance telephone bills paid for by the state or a political subdivision are also accessible to the public under statute, M.S. 10.46.	Access Rule 5, subd. 1.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Judicial Improvement Programs	All records of a judicial improvement program, including surveys.	No Public Access.	In Re Programs on Judicial Improvement, No.s C4-85-1848; C3-90-2360 (Minn. S. Ct. Jan. 11, 1996) (order).
Employment Application	All records on applicants for employment with judicial branch.	No Public Access; provided, however, that following data is accessible to public: veteran status; relevant test scores; rank on eligible list; job history; education and training; work availability; and, after applicant has been certified by appointing authority to be a finalist for a position in public employment, the applicant's name.	Access Rule 5, subd. 2.
Interpreters	Records of the State Court Administrator, Court Interpreter Program Coordinator, and Minnesota Court Interpreter Advisory Committee regarding court interpreters, except the statewide roster, aggregate statistical information released at discretion of Advisory Committee, and a final determination revoking or suspending certification and the facts cited in support of the determination.	No Public Access except by court order.	Rule X, Rules on Certification of Court Interpreters
Jurors	Juror Identities Sealed in Criminal Case. Names, addresses, telephone numbers and other identifying information on jurors when access has been restricted by court order in criminal case.	No Public Access. NOTE: Access restrictions might be limited to a specific time frame, so consult the court order. Access by parties is also controlled by the court order.	R.Crim.P. 26.02, subd. 2(1).
Jurors	Sealed Transcript of *In Camera* Juror *Voir Dire* in Criminal Case. The transcript of oral questioning of a potential juror with the public excluded from proceeding, when access to the transcript is restricted by court order in a criminal case.	No Public Access.	R.Crim.P. 26.02, subd. 4(4) (effective 2-1-2004).

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Jurors	Lists of prospective grand and petit juror, and qualification questionnaires returned by jurors. Does not include supplemental juror questionnaire in criminal case (see R.Crim.P. 26.02, subd. 2(3) and form 50), or juror names entered on official minutes prepared pursuant to M.S. 546.24-.25 (i.e., witness/juror/exhbit list IS accessible to the public) unless access to the names is restricted by court order (see previous panels). Includes voter registration list that is used as the juror source list. (NOTE: A voter information list (essentially the voter registration list minus dates of birth) is available to the public from the county auditor or secretary of state.	No Public Access to social security numbers. No public access to remainder of information except by permission of court upon written request; provided, however, that remainder is accessible to public after all listed jurors have been discharged and one year has elapsed since preparation of juror list.	42 U.S.C. § 405(c)(2)(C)(viii)(I), 405(c)(2)(E); Gen.R.Prac. 807(e); 814.
Juvenile Placement	Names and other information that identifies a particular juvenile, contained in out of state placement reports filed with state court administrator.	No Public Access.	M.S. 260B.235, subd. 8.
Library	Records of state law library which link a patron's name with materials requested or borrowed by patron or a subject about which the patron has requested information.	No Public Access.	Access Rule 5, subd. 10.
Passport	Passport applications and related documents received by court administrators, and lists of applications and documents forwarded to United States Passport Office.	No Public Access.	Access Rule 5, subd. 11; 22 Code of Federal Regulations 51.33.
Security	Records that would be likely to substantially jeopardize security of information, possessions, individuals, or property in possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass, or physical injury. (E.g. security plans or codes.)	No Public Access.	Access Rule 5, subd. 5.
Trade Secrets	Records revealing a common law trade secret or trade secret defined in M.S. 325C.01 that is property of state and maintained by court or court administrator. (E.g. computer program source code.)	No Public Access.	Access Rule 5, subd. 6.
Under Advisement Report	Records and reports and drafts thereof maintained by SJIS, TCIS®, MNCIS and other court information systems for purposes of compliance with M.S. 546.27.	No Public Access.	Access Rule 5, subd. 9.

* = table indicates current law and does not include proposed changes

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT S: LIMITS ON PUBLIC ACCESS TO ADMINISTRATIVE RECORDS*		REV. 12/12/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Wiretap	Reports filed with state court administrator by judges and county attorneys regarding applications for, and granting or denial of, warrants and orders authorizing interception of communications or use of pen registers, trap and trace devices, and mobile tracking devices.	No Public Access; provided, however, that biennial summary prepared by state court administrator and submitted to legislature is accessible to public.	M.S. 626A.17.

* = table indicates current law and does not include proposed changes

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT T: LIMITS ON PUBLIC ACCESS TO VITAL STATISTICS RECORDS*		REV. 8/4/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Birth Registration	Adoption. Prior birth record and adoption decree or other information causing issuance of new record. SEE ALSO LIMITS ON PUBLIC ACCESS TO CASE RECORDS	No Public Access. (NOTE: child may request commissioner of health to disclose original birth record information under M.S. 259.89)	M.S. 144.218, subd. 1; 144.2252 (incorporating M.S. 259.89).
Birth Registration	Illegitimate Child. Birth record and related data indicating birth out of wedlock. [See also Parental, Medical, Health and Other Information in next frame, below.]	No Public Access until the first of the following occurs: (1) public access designated by mother on registration form (births on or after 8/1/91) or affidavit (births prior to 8/1/91); (2) 100 years have elapsed since birth; or (3) 10 years have elapsed since actual or presumed death and 30 years elapsed since creation of record.	M.S. 144.225, subd. 2.
Birth Registration	Parental Medical, Health and Other Information. Information submitted on the Department of Health Record of Live Birth Form that is designated as information for medical and health use only in blocks 28-44 on the second (yellow) page of the form; includes social security numbers of parents and any information from which an identification of risk for disease, disability, or developmental delay in a mother or child can be made.	No Public Access.	M.S. 144.215, subd. 4; 144.225, subd. 2a, 42 U.S.C. § 405(c)(2)(C)(viii).
Birth Registration	Subsequent Marriage of Natural Parents. Prior birth record, marriage record, and other information causing issuance of new record.	No Public Access.	M.S. 144.218, subd. 3.
Birth Registration	Foundling Registration. Report of live born infant of unknown parentage. (Report served as birth record until delayed certificate indicating parentage was filed.)	No Public Access.	M.S. 144.216.
Birth Registration	Incomplete or Incorrect Record. Prior incomplete or incorrect birth record and information causing issuance of new record.	No Public Access.	M.S. 144.218, subd. 4.

LEGAL COUNSEL DIV., STATE COURT ADMIN.	EXHIBIT T: LIMITS ON PUBLIC ACCESS TO VITAL STATISTICS RECORDS*		REV. 8/4/03
SUBJECT AREA	RECORD DESCRIPTION	ACCESSIBILITY	AUTHORITY
Birth Registration	Legitimate Child Records Interspersed With Illegitimate Child Records. Birth records interspersed with records that are not accessible to the public.	No Public Access.	M.S. 144.225, subds. 1, 2.
Birth Registration	Acknowledgement or Court Adjudication of Paternity. Prior birth record, acknowledgement of parentage ("Declaration of Parentage," M.S. 257.34, 257.55, subd. 1(e), executed prior to birth and "Recognition of Parentage," M.S. 257.75, executed after birth) and other information causing issuance of new record.	No Public Access.	M.S. 257.73.
Birth Registration	Certified Copy of Birth Certificate or Statement of No Record Found.	No issuance unless requesting person has a tangible interest as defined in M.S. 144.225, subd. 7.	M.S. 144.225, subd. 7.
Death Registration	Health Risk Data In Fetal Death Reports. Information in fetal death reports from which an identification of risk for disease, disability, or developmental delay in a mother or child can be made.	No public access.	M.S. 144.225, subd. 2a.
Death Registration	Certified Copy of Death Certificate or Statement of No Record Found.	No issuance unless requesting person has a tangible interest as defined in M.S. 144.225, subd. 7.	M.S. 144.225, subd. 7.
Marriage License Application	Social Security Number. Social security numbers included in marriage license applications.	No Public Access	M.S. 144.223 (1997 Supp.) 42 U.S.C. § 405(c)(2)(C)(viii).
Marriage License Application	Illegitimate Child. Marriage license applications that disclose a birth out of wedlock.	No Public Access.	M.S. 144.225, subds. 1, 2.

* = table indicates current law and does not include proposed changes

STATE OF MINNESOTA
STATE PUBLIC DEFENDER

John M. Stuart
State Public Defender

331 Second Avenue South
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September 7, 2004

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Boulevard
St Paul, MN 55155

Dear Mr. Grittner:

Please put my name on the list of presenters for the Supreme Court hearing on the Rules of Public Access to Records of the Judicial Branch. I enclose 12 copies of an outline of what I hope to present on September 21. Thank you.

Sincerely,

John Stuart

STATE OF MINNESOTA
STATE PUBLIC DEFENDER

John M. Stuart
State Public Defender

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Suite 900
Minneapolis, MN 55401

(612) 349-2565
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Outline of Oral Presentation on Rules of Public Access to Records of the Judicial Branch

I. The Court should follow the recommendation to deny internet access to searchable records of unproven criminal accusations:

A. Public defender data shows at least 15,000 accusations per year, against indigent people, disproportionately people of color, are simply dismissed.

B. These individuals should not have their applications for jobs and housing endangered by the dissemination of data showing them to have been accused.

II. The Court should not allow bulk distribution of searchable records of unproven accusations:

A. The Court is a steward of the lists of names of persons compelled to respond to criminal charges. These lists should not be disseminated once they are used for adjudicatory purposes, unless distribution serves a public value more important than the privacy of the individuals involved.

B. Bulk distribution to data harvesters has no public value that outweighs the needs of thousands ofMinnesotans, innocent of wrong-doing, to keep their names clear as they seek housing and employment.

FIDELIFACTS

FIDELIFACTS/METROPOLITAN NEW YORK, INC. (LIC-NY & NJ)
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Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Martin Luther King Jr. Blvd
St Paul, MN 55155

RE: Amendments to rules of public access to records of the Judicial Branch
C4-85-1848

Dear Mr. Grittner:

My company has been conducting background checks on job applicants for firms ranging in size from fortune 500 firms to small 1-25-person operations since 1961. Part of our job is to determine if the job applicant has a criminal conviction history and if so, how serious it might be. This is especially important in checking persons in the health care field, finance, and related occupations. (We all know what happened in NJ not too long ago – a nurse with a criminal history has admitted killing some 12 or more patients.)

Information about criminal records can ONLY be accessed by the general public through a search of public records in courthouses, or, depending on the state involved, through a check of statewide criminal records through the State police or the equivalent. On all job applicants, we are already armed with the applicant's name, address, date of birth and SS# and have written permission to conduct these checks.

In the past, all such searches were conducted by hand checks of all types of court documents that required a lot of manpower, both on the part of the courts, and for firms such as ours. With the advent of the Internet, such searches that took weeks to complete with any degree of accuracy can be done in as little as a day or less, depending on the accuracy of the court records.

The key identifier in all criminal court records is the **NAME** of the defendant combined with the defendant's **DATE OF BIRTH**. To a lesser extent, the SS# or address is used.

Should the State of MN decide to redact the date of birth, which is a personal identifier, it might as well redact the name of the defendant – because without the ability to sort through all the John Jones and James Smiths by date of birth, no one will be able to quickly and accurately conduct a thorough criminal check – much to the delight of convicted sex offenders, rapists, robbers and the like.

The SS# is a nice identifier to have, but as mentioned before, it has not been used in many jurisdictions to date and not having it will not cause a problem as long as the date of birth is still in the record and on-line. If there are concerns about the use of an SS#, then redact the first 5-numbers of

the SS#. The name, date of birth and the last 4 numbers of an SS# would be sufficient to prevent alleged abuses of privacy anyway and would still help in making a positive identification. Without some means to differentiate between all the John Smiths and Jane Does in a record system, there is no sense in even putting it on-line because a name only database is USELESS.

Suppose a housewife with 3 small kids is trying to check the background of a potential caregiver at home, but hasn't the time or means to travel to a courthouse to run a record check. She then tries to check the person through the on-line system. But, what good will it do her if all there are on the system are names of persons with criminal records. Absolutely no good at all.

None of us in this business want to make mistakes by wrongly identifying someone as a convicted felon because the name is the same as the subject we are checking but there are no other identifiers. I am afraid that is what will happen sooner or later if all identifiers other than the name are deleted.

I know that one of the concerns is the so-called fear of identity theft. However, has anyone yet come up with a case of identity theft that resulted from a search on on-line criminal record databases? I have yet to hear of such a case. It is more likely that such thefts will occur when a relative uses another's identity, or someone loses a wallet and has their mail stolen from a mailbox.

So, I urge you to keep the records both public AND useful. By retaining the dates of birth, and even the addresses – the records are useful. If that information is deleted, then don't even bother with an on-line system – why waste taxpayers money for something that is of no use to anyone?

Sincerely,

Thomas W. Norton
President

September 2, 2004

To:
Fred Grittner
Clerk of the Appellate Courts
Minnesota Judicial Center, Suite 305
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Dear Mr. Grittner:

This is a written statement in response to the "proposed amendments to the Rules of Public Access to Records of the Judicial Branch". I am not requesting to make an oral presentation.

This purpose of this written response is to address one misconception that appeared in the report in various formats: that you can effectively post something online while at the same time preventing it from becoming archived by someone/thing else. This response is to not argue for or against public access to records, but rather to point out that there really isn't a middle ground. The records are either online and available to both the public *and* indexing software, or it's simply not online available to the public.

While a person can post content online and prevent 'polite' search engines like Google from indexing the content quite easily, it doesn't mean that it's not *potentially* searchable by any other number of automated data collection software--either now or in the future.

The reality is that anything posted online--so that anyone can physically view the content--can be potentially indexed by some indexing software somewhere out there. The more valuable the content for commercial purposes, the more likely that a tool will be built to grab the content.

Respectable search engines like Google *do* obey requests that the website developer places on the website to not index specific content. This is called a robots.txt file. [1] However, while Google and other mainstream search engines will respect this, there is nothing that *requires* them to respect this (other than consumer goodwill). And there are plenty of web crawlers and screen scrapers that, if they wanted the information, could easily index it.

The report, under section "Using Technology to Minimize Automated Harvesting" mentions several options to minimize the automated harvesting of information. Most of these assumptions are correct when speaking of search engines like Google, but provide no real hurdle that would prevent competent commercial data harvesters/data brokers from getting to the content. The term "practical obscurity" was mentioned, however, obscurity used as security will do nothing to stop the commercial data harvester and could likely introduce annoyances to the public user.

To address a few of the specific suggestions to prevent data harvesting:

- **"A combination of random, non-predictable file names"**

  To access a file, there needs to be a link to the file. Hence, an indexing process could easily obtain the filename from the link to it.

- **"nontext, image only format"**

  While a non-text format makes indexing more difficult, it is far from impossible with technologies such as Optical Character Recognition that have been around for some time. In addition, a image only format is completely inaccessible to those that must rely on screen readers to access web content. As a government entity, we need to be cognizant of accessibility issues and section 508 compliance[2]

- **"a 'prove-you-are-human log-in procedure' between each calendar file request theoretically can prevent automated searching devices from simply harvesting preconviction records"**

  While this has been a method used with some success it has recently been proved to be circumventable [3] as well. In addition, such a tool would deny access to a sight impaired person or anyone using a text-based browser.[4] Also, these methods are normally used for massive numbers of small, individual data items where manually going to each and every page would be exhausting for a human. With a relatively small number of court calendars, it wouldn't be terribly difficult for a human to log in daily to give the indexing tool access.

In summary, any attempt to make a document less machine readable also makes it less accessible to the human reader. Anyone that wants content will figure out a way to get to it, so it does little to deter the commercial enterprise that is after the information.

Sincerely,

Darrel Austin, Web Analyst
MN Supreme Court
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Footnotes:

[1] http://www.robotstxt.org/wc/robots.html

[2] http://section508.gov/ ...pertains to federal sites and vendors, but is something all sites should strive for.

[3] This security method is also known as a captcha: http://en.wikipedia.org/wiki/Captcha
The university of California at Berkley has written a software program that can break some of the more basic Captcha methods with a 92% accuracy rate: http://www.cs.berkeley.edu/%7Emori/gimpy/gimpy.html

[4] to accomodate sight impaired users, additional technology could be implemented that would allow for an audio phrase to be used.

CDIA
CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity
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September 8, 2004

The Honorable Kathleen A. Blatz
Chief Justice, Minnesota Supreme Court
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: C4-85-1848, Access to Records of the Judicial Branch

Dear Chief Justice Blatz:

I write on behalf of the Consumer Data Industry Association (CDIA) to offer comments on the above captioned matter. Our specific concerns relate to the unavailability to the public of Social Security Numbers (SSNs) in civil and criminal records and restrictions on the bulk access of data for commercial purposes.

I. General Background

Founded in 1906, CDIA, formerly known as Associated Credit Bureaus, is the international trade association that represents more than 400 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services. CDIA and its members have a strong interest in maintaining access to public records, including full Social Security numbers (SSNs) to the extent they exist in such records.

From court records CDIA members obtain information such as tax liens and releases, wage-earner proceedings, civil judgments, including releases or vacations of those judgments, and records of arrest, conviction, and eviction. Court records are also used to obtain orders of support for spouses and children. The information obtained is used to ensure a safe and sound consumer reporting system, as well as to empower landlords, residential property managers, and employers to make decisions based on full, accurate and impartial information and to provide safe environments for their residents, employees, customers, and their guests.[1]

[1] In a report to Congress in 1997, the FTC wrote that

> [m]any of the uses [of look-up services, i.e. those that provide information about consumers to users] ultimately benefit consumers. Look-up services that serve consumers, not just businesses, enable individuals to find information for any of the uses outlined in this section, without having to hire an intermediary to do it for them. By using these look-up services...consumers can independently...verify land title in the course of a real estate transaction, or verify the validity of licenses of medical or other professionals. Furthermore, consumers indirectly benefit from this industry in that fraud prevention in the corporate sector helps to keep

There is a clear public safety need for court records and the SSNs contained therein. Court records obtained by CDIA members are used to determine if an applicant for a school bus driver position has been arrested for or convicted of DWI or reckless driving; if an applicant to work at a day care center is a pedophile or a registered sex offender; if a prospective tenant in an apartment building has been arrested for or convicted of a violent crime; or if a retail clerk or bank teller has liens or judgments outstanding. The court records collected by CDIA members also further vital national security interests. For example, records obtained by CDIA members are used to confirm the background and true identity of an applicant for a pilot license, a license to haul hazardous waste, a permit to fly a crop duster, to work on an airport ramp, or to work as a customs officer.

Then-FBI Director Louis Freeh testified before Congress in 1999 and noted that in 1998, his agency made more than 53,000 inquiries to commercial on-line databases "to obtain public source information regarding individuals, businesses, and organizations that are subjects of investigations." This information, according to Director Freeh, "assisted in the arrests of 393 fugitives, the identification of more than $37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning."[2] The importance of court record access cannot be understated or underestimated for public safety needs.

II. The Fair Credit Reporting Act

A. Consumer Reporting Agencies

CDIA members are governed by the federal Fair Credit Reporting Act (FCRA)[3] and the Minnesota credit reporting law.[4] The Federal act, adopted in 1970 and substantially amended in 1997 and 2003, is a comprehensive body of regulation and represents the first national privacy law in the United States. Nearly half the states have credit reporting laws as well. Since the adoption of the FCRA three decades ago, consumer reporting agencies have been required to maintain reasonable procedures to assure maximum possible accuracy.[5] Consumer reporting agencies, as part of the accuracy duties imposed by the FCRA, are required to make reasonable efforts to identify new prospective users of consumer reports and the uses requested.[6] When a consumer reporting agency provides a consumer report for employment purposes and that report contains public record information likely to be adverse to the applicant, the consumer reporting agency must notify the consumer of that fact along with the name and address of the user that is being supplied the consumer report. Federal law also requires that, if applicable, consumer reporting agencies must "maintain strict procedures designed" to ensure the currency of public record information.[7]

Consumers have a right to dispute information on their credit reports with consumer reporting agencies. The FCRA requires dispute resolution in not more than 30 days (45 days in certain circumstances).[8] If a dispute cannot be verified the information must be removed in the consumer's favor.[9]

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consumer prices down. Moreover, society as a whole may benefit to the extent that this industry enables the media to more timely and accurately report the news.

Federal Trade Commission, Individual Reference Services, Rep. to Congress (Dec. 1997) (citations omitted).

[2] Senate Comm. on Appropriations Subcomm. for the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies, 106th Cong. (March 24, 1999) (Statement of Louis J. Freeh, Director of the Federal Bureau of Investigation).

[3] 15 U.S.C. § 1681 *et seq.* The FCRA was recently amended by the Fair Accurate Credit Transactions Act of 2003 (FACTA), Pub. L. 108-159.

[4] Minn. § 13C.001 *et seq.*

[5] 15 U.S.C. § 1681e(b).

[6] *Id.*, § 1681e(a).

[7] *Id.*, § 1681k.

[8] *Id.*, § 1681i. The majority of reinvestigations are completed in five days or less and 70% are resolved in ten days or less.

A consumer reporting agency that violates any provision of the FCRA is subject to private rights of action,[10] enforcement by the FTC,[11] state attorneys general,[12] or all three.

B. Data Furnishers

Data furnishers are those entities that report data to consumer reporting agencies and may include financial institutions, landlords, collection agencies, the federal government and child support enforcement agencies. In addition to the accuracy standards set by the FCRA on consumer reporting agencies since 1970, data furnishers also have accuracy standards to which they must adhere as established by the 1997 amendments to the FCRA. Data furnishers are prohibited from furnishing data they know is inaccurate and they have an affirmative duty to correct and update information.[13] Furnishers also are liable to consumers if they continue to report data known to be inaccurate.[14]

III. Social Security Numbers, Generally

The only way to correctly match the arrest, conviction, eviction, lien or judgment with the correct consumer is through the use of all nine digits of the Social Security number. Full SSN access provides benefits not just to consumer reporting agencies, but also to consumers who rely on a safe and sound credit system,[15] consumers who have come to expect safe working and living environments, and to governments that have an obligation to provide security and promote general welfare.

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[9] *Id.*, § 1681i(a)(5).
[10] *Id.*, § 1681n-p.
[11] *Id.*, § 1681s(a).
[12] *Id.*, § 1681s(c). *See, id.*, § 14-1218 (Commissioner of Financial Regulation is empowered to enforce state law).
[13] *Id.*, § 1681s-2.
[14] *Id.*, § 1681s-2(b). *See also Nelson v. Chase Manhattan Mortgage Corp.*, 282 F. 3d 1057 (9thth Cir.).
[15] A memorandum issued to CEOs under the subject "Consumer Credit Reporting Practices" from the Federal Financial Institutions Examination Council ("FFIEC") on January 18, 2000 stated that

> [t]he Agencies [Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and the Office of Thrift Supervision] note that both financial institutions and their customers generally have been well served by the long-established, voluntary self-reporting mechanism in place within the industry.

Additionally,

> Comptroller of the Currency John Hawke, Jr. testified before Congress in 1999 that information exchanges serve a 'useful and critical market function' that 'benefits consumers and businesses alike.' Consumer credit markets provide a case in point. The current U.S. economic boom has significantly raised the standard of living for U.S. citizens through the availability of over $5 trillion in outstanding mortgages and other consumer loans. Consumer credit finances homes and cars, funds college educations, and provides the credit cards that consumers use everyday to purchase goods and services. The 'almost universal reporting' of personal credit histories (under the rules of the Fair Credit Reporting Act) is, in the words of economist Walter Kitchenman, the 'foundation' of consumer credit in the United States and a 'secret ingredient of the U.S. economy's resilience.' Studies have shown that the comprehensive credit reporting environment in this country has given U.S. consumers access to more credit, from a greater variety of sources, more quickly, and at lower cost than consumers anywhere else in the world.

Fred H. Cate, Michael E. Staten, *The Value of Information-Sharing*, The National Retail Federation's, Protecting Privacy in the New Millennium Series (available at http://www.netcaucus.org/books/privacy2001/) (citations omitted).

Without full SSN access consumer reporting agencies would face significant accuracy hurdles which could very well jeopardize public health, safety, and welfare. Reduced accuracy also increases the risk to financial institutions and leads to a slow erosion of safe and sound banking practices.[16]

While all CDIA members manage very large databases, the largest members maintain approximately 200 million consumer reports and update 2 billion pieces of information every month. There are 14 million annual address changes in the U.S., 6 million vacation or second homes, and 3 million marriages and divorces annually with attendant name changes. In addition, 4.5 million Americans have one of two last names (Smith or Johnson), 14 million have one of ten last names, 26.6 million females have one of ten first names and 57.7 million males have one of ten first and last names.

Even with all the identifying information consumer reporting agencies have to handle, while maintaining their FCRA accuracy standards, the fast and efficient consumer reporting system has been referred to as a "miracle."[17] Factor in on top of the common names, address changes, and name changes the fact that each year there are 15 million judgments ordered and 8 million tax liens filed annually in the United States. It bears repeating that the single best piece of information to correctly match the arrest, conviction, eviction, lien or judgment with the correct consumer is through the use of all nine digits of the Social Security number.

The Social Security number is *the* single universal identifier for Americans. The SSN is what allows a robust consumer reporting (and thus a vibrant credit) system, it is what allows rapid decision-making in employment and residential application situations, and it has enormous public safety uses.

On November 1, 2001, Jim Huse, Inspector General of the Social Security Administration said that "The SSN is used legitimately in so many areas of our lives that it is impossible to think that we can turn back the clock and reserve its use to tracking earnings and paying benefits, the uses for which it was originally designed."[18] Six weeks later, it was noted that "[a]t least seven of the [September 11th] hijackers...obtained Virginia state ID cards, which would serve as identification to board a plane, even though they lived in Maryland motels. 'If we can't be sure when interacting that someone is who they purport to be, where are we?'[19]

The national security implications for full SSN access are coming to light like never before. The *Los Angeles Times* recently reported that

> [f]ederal investigators hunting for potential terrorists have been poring over hundreds of fraudulent Social Security numbers generated by a Southern California ring that catered mostly to Middle Eastern immigrants. Three people have pleaded guilty in the scheme, broken up before the Sept. 11 attacks, including a Jordanian national who worked in security at Los Angeles International Airport and a U.S. government employee who tapped a secure federal computer to procure the government-issued cards...Over a 14-month period beginning in early 1999, about 1,000 Social Security numbers were sold to illegal immigrants and foreign nationals, authorities say * * * But at least two of the names used on the cards match those of individuals indicted in Los Angeles weeks after the September attacks on charges of Social Security and immigration fraud, records show * * * Among

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[16] *Id.* ("Institutions rely heavily on such data...[and] their ability to make prudent credit decisions is enhanced by greater completeness of credit bureau files").

[17] FTC Chairman Tim Muris referred to the "miracle of instant credit" whereby a consumer can walk in to an auto dealer and "can borrow $10,000 or more from a complete stranger, and actually drive away in a new car in an hour or less." Muris also noted that this "miracle is only possible because of our credit reporting system." FTC Chairman Tim Muris, Speech before the Privacy 2001 Conference in Cleveland, Ohio (Oct. 4, 2001) (text available at http://www.ftc.gov).

[18] House Ways & Means Subcommittee on Social Security, 107th Cong. (Nov. 1, 2001) (testimony of: James G. Huse, Jr., Inspector General of the Social Security Administration).

[19] Robert O'Harrow Jr. & Jonathan Krim, *National ID Card Gaining Support,* Washington Post, Dec. 7, 2001, at A1 (quoting James Huse, Inspector General of the Social Security Administration).

> the intriguing leads in the case files are several names on the fraudulent cards that, while common in the Middle East, are similar to aliases used by some of the Sept. 11 skyjackers. Confidential investigative records obtained by The Times after the East Coast attacks, for example, indicate that the skyjackers' suspected ringleader, Mohamed Atta, used numerous variations of his name, including Mohamed Mohamed El Amir Awad * * * [SSNs] are often used to secure jobs by immigrants who are prohibited from working while in the U.S. * * * Agents also received a tip that an unidentified LAX employee with a contact inside the Downey Social Security office was selling cards * * * at least some of the fraudulent cards may have been used in other states, including Florida, New Jersey and Massachusetts. The government's worry is that even a few cards could have fallen into the hands of people who aided the September skyjackers or are plotting future attacks. 'Obviously,' one law enforcement official said, '[we need] to make sure no terrorists are running around with ... identities that are not theirs.'[20]

The only way law enforcement, employers, security companies, and others can ever hope to sort out legitimate and non-legitimate SSN holders and track individuals across state lines is through full access to SSNs from as many disparate sources as possible, including court records.

On a smaller scale, consider the sample of 242 stalkers in Delaware between May 1992 and June 1994 by the Delaware Statistical Analysis Center. Further investigation found that these 242 individuals had "accumulated an aggregated history of 5,010 arrests and 9,295 charges."[21] It is safe to presume that these charges and arrests transcended dozens, perhaps even hundreds, of different jurisdictions and it is impossible to think that requisite tracing, authenticating and identifying those with court records (criminal or civil) can be accomplished without full SSN access. It is credible to believe that failure to have full SSN access could cause significant public safety harms while gaining little if any appreciable benefit to those whose SSNs that are not available.

The value of SSNs has been proven by government agencies as well to promote general welfare. Conversely, the loss of SSNs would be harmful to millions of Americans who, more than many, need the money that comes from locating individuals like delinquent parents. The Association for Children for Enforcement of Support reported that public record information provided through commercial vendors helped locate over 75 percent of the "deadbeat parents" they sought.[22]

One can look to the National Directory of New Hires (NDNH), heavily dependant on SSNs for matching, to illustrate the points made above. Since over 30% of child support cases involve parents who do not live in the same state as their children, creating the NDNH and matching data against it enables the federal Office of Child Support Enforcement (OCSE) to assist states in locating parents who are living in other states. Upon receipt of new hire information from other states, state child support enforcement agencies take the steps necessary to establish paternity, establish a child support order or enforce existing orders. Between October 1, 1997 and June 11, 1998, the National Directory of New Hires had just over one million matches and between 1997 and 2007 the New Hire reporting is expected to bring in over $6.4 billion in child support.[23] Not only does the new hire program assist in locating delinquent parents, it also assists states in reducing unemployment and workers' compensation fraud.[24]

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[20] Rich Connell, Greg Krikorian, Agents Tracking Fake Social Security Cards Probe: Terrorist attacks prompt scrutiny of those who bought numbers from Southland ring, Los Angeles Times, April 4, 2002, <www.latimes.com>.

[21] Department of Justice Violence Against Women Grants Office, Stalking and Domestic Violence: Third Ann. Rep. 33-34 (1998) (citing Department of Justice National Violence Against Women Survey).

[22] House Comm. on Banking and Financial Services, 105th Cong., (July 28, 1998) (statement of Robert Glass).

[23] U.S. Department of Health and Human Services, Administration for Children & Families, Office of Child Support Enforcement.

[24] U.S. Department of Health and Human Services, Administration for Children & Families, Office of Child Support Enforcement (visited March 25, 2002) <http://www.acf.dhhs.gov/programs/cse/newhire/nh/nhbr/3benefit.htm>. In 1998 Pennsylvania identified 4,289 overpayments with a dollar value of $2.3 million, "solely through the use of this

The loss of SSNs reduces the ability to authenticate and identify. The digits in the Social Security number are sequenced such a way that the numbers and the placement in the sequence have meaning and relevance.

V. Conclusion

The use of Social Security numbers provides safety and security to lenders, employers, apartment residents, airline passengers, school children, nursing home residents, and more. SSNs are an effective tool for law enforcement and a valuable safety net for governments to locate delinquent parents, unemployment and workers compensation fraudsters. SSNs provide convenience for businesses and consumers alike. Denying access to SSNs dramatically reduces the accuracy in consumer reporting and other databases, which in turn, makes matching for all of the previously enumerated purposes more difficult and potentially dangerous. We urge the Court to (a) allow SSN access for civil court records and (b) allow SSN access via bulk transfers for certain qualified users like consumer reporting agencies and other entities that conform to privacy laws, including the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*

We hope these comments have been helpful. Please do not hesitate to contact us with any questions or comments.

Sincerely,

Eric J. Ellman
Director and Counsel, Government Relations

process." U.S. Department of Health and Human Services, Administration for Children & Families, Office of Child Support Enforcement, The Unemployment Insurance Crossmatch Project, July 13, 1999.

Minnesota State Law Library
FIRST RUNG ON THE LADDER OF JUSTICE

Barbara L. Golden
State Law Librarian
651-297-2084
barb.golden@courts.state.mn.us

September 9, 2004

Fred Grittner
Clerk of the Appellate Courts
Minnesota Judicial Center, Room 305
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: **PROPOSED AMENDMENTS TO THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH**, C4-85-1848

Dear Mr. Grittner:

Enclosed for filing, please find twelve copies of proposed amendments related to the Final Report of the Advisory Committee on the Rules of Public Access to Records of the Judicial Branch. These amendments clarify the Library's position under the proposed rules and establish an exception to the Rules that allows the State Law Library to publish appellate court briefs on the Internet.

The Library has been working toward posting appellate briefs on our website for several years as we believe this is a valuable resource that should be freely available to everyone. Our current plan is to post only briefs (no appendices) for published cases at the point that the slip opinion is released. We are still examining ways to handle redaction using our current resources, but we believe it will be possible to do so in the near future.

I am not requesting to make an oral presentation at the hearing.

I have also transmitted to you under separate cover the electronic Word version of the attached proposal.

Sincerely yours,

Barbara Golden

Barbara Golden
State Law Librarian

Enc.

[Set below is the State Law Library's proposed amendment to Rule 3.]

Subd. 3. Court. "Court" means the Supreme Court, the Court of Appeals, District, Juvenile, Family, Conciliation, County and Probate Court, and any other court established as part of the judicial branch of the state. "Court" shall also include the State Law Library.

[Set below is a portion of the rules as proposed by the Advisory Committee. The State Law Library's proposed amendment is underlined.]

Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.

* * *

Subd. 2. Remote Access to Electronic Records.

(a) **Remotely Accessible Electronic Records.** Except as otherwise provided in Rule 4 and parts (b) and (c) of this subdivision 2, a court administrative office that maintains the following electronic case records must provide remote electronic access to those records to the extent that the office has the resources and technical capacity to do so.

(1) **register of actions** (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);

(2) **calendars** (lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [MINN. STAT. § 485.11]);

(3) **indexes** (alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [MINN. STAT. § 485.08]);

(4) **judgment docket** (alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [MINN. STAT. § 485.073)]);

(5) **judgments, orders, appellate opinions, and notices prepared by the court.**

All other electronic case records that are accessible to the public under Rule 4 shall not be made remotely accessible but shall be made accessible in either electronic or in paper form at the courthouse. Provided, however, the State Law Library shall provide remote access to appellate court briefs to the extent that the office has the resources and technical capacity to do so.

* * *

Sept. 10, 2004

To: The Members of the Minnesota Supreme Court
From: Nancy Lauritsen
Re: Internet access to family law records

I am the divorced mother of a 13-year-old daughter.

I believe that family law records should not be accessible to the public on the Internet. The protection of children's privacy is my concern.

Kids Google one another. It's a game for them. It's what they do in the computer lab at school, when they've finished their homework. Placing a child's family law records on the Internet gives information to peers who may not know how to handle that information. They could use it to harass, intimidate or victimize children of divorced families.

The decision to share with children the adult information contained in the family law records belongs to the parents, not to the kids, not to their peers. Our Hennepin County mediator and our daughter's child psychologist were very, very firm with us about keeping adult information from our daughter. My daughter doesn't even know that there are family law records in existence, because we did the right thing in not telling her about them. This would be completely out of our control if you decide to place this information on the Internet.

If an adult has a valid reason for looking at a family law record, they can easily visit the Records Center. I did this in preparation for writing this statement to the Court. It took about 10 minutes to sign in and wait for the file. The clerk was courteous and efficient.

Many children of divorce have already experienced more heartbreak than some people will experience in a lifetime. As parents we spend our time helping them through it so they can move on with their lives. Making what they understand to be the private history of their family's dissolution into a public Internet site may be difficult for some kids. They're kids. They don't yet have the resources that adults do. They are still in their formative years. They often have tender hearts which haven't healed yet, and which break easily all over again.

Our Hennepin County mediator said that sometimes it is better to set aside notions of right and wrong, and to think of unintended consequences. Unintended consequences to children are a major risk to consider when placing family law records on the Internet.

I have learned the hard way that there is only so much parents can do to help their children through divorce. Much of the work is up to them. One thing we can do is to prevent situations which we believe could cause additional distress. Therefore, it is without reservation and with full conviction that I recommend that you do not place family law records on the Internet.

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

IN RE: PROPOSED AMENDMENTS TO
THE RULES OF PUBLIC ACCESS TO
RECORDS OF THE JUDICIAL BRANCH

MATERIAL SUBMITTED FOR CONSIDERATION AT PUBLIC HEARING

The undersigned, Hon. George T. Stephenson, Ramsey County District Court, respectfully requests that the following written comments be made a part of the record at the Court's September 21, 2004 hearing in the above-captioned matter..

I strongly believe that among the most important goals of the criminal justice system is the restoration of offenders to our communities as law-abiding, contributing members. I think everyone will agree that, the majority of criminal offenders are not charged with felony-level offenses, not charged with crimes of violence; the majority pose minimal risk to public safety, and are not likely to serve a lengthy term of incarceration. Restoring such offenders to our communities is and should be the primary objective of the criminal justice system.

I also strongly believe that the difficulties people face in finding and maintaining employment and affordable housing have a definite impact upon crime. Housing and employment are often difficult to obtain, even for those who have never been convicted or accused of crimes. Criminal justice system practitioners know from experience that people who are unemployed and/or without stable housing are disproportionately represented among criminal defendants in Minnesota courts. Common sense tells us that finding housing and employment are even more difficult for those who have actually been convicted of crimes and I frequently hear from people who appear in court that they are denied employment or housing because of a criminal conviction on their records.

I have previously indicated that I have no issue with the electronic dissemination of post-conviction information. This information pertains to those who have either admitted culpability or who have been found culpable in a criminal case. A person convicted of a crime should expect that the fact of his/her conviction will be made known to potential employers and landlords. While this often results in causing difficulty for convicted individuals in finding stable housing and employment, it is not unreasonable to consider this as another cost of doing business if your business is breaking the law.

I have also previously indicated that for the limited purpose of deterring prostitution-related activity that has blighted certain St. Paul neighborhoods, and with the encouragement of community residents and activists, I support the posting of prostitution-related, pre-conviction information on the St. Paul Police Department website.

My concern, however, is that the dissemination of pre-conviction, criminal accusation information being proposed here is not narrowly tailored to address a specific community concern. Unlike St. Paul's anti-prostitution program, the broader dissemination of criminal accusation information does not contemplate a focused, coordinated effort by law enforcement officers, community members, health-care professionals, and the Court to deter specific criminal behavior. This broader dissemination of information has undefined goals and is potentially unlimited in its use. Further, the proposal fails to adequately consider the potential harm this will cause accused, non-convicted individuals.

Those of us who work in the criminal justice system know that a great number of cases are disposed of by dismissal, by reduction of the charge, or by other agreements that allow a person to avoid having a conviction on his/her record. Such dispositions are arrived at with the imprimatur of the Court and/or by agreement between the State and the defendant. Still other defendants have their cases resolved at trial resulting in an acquittal of all charges or a conviction of less serious charges after trial.

What benefit is derived by disseminating pre-conviction information as opposed to post-conviction information? Does the court wish to further disadvantage those who find themselves in the difficult position of defending themselves against criminal charges, charges of which they are presumed innocent, as they search for employment or housing? Because the great majority of the cases handled in Minnesota's criminal courts involve people who are represented by this State's Public Defenders' offices, we know that economically disadvantaged people are disproportionately represented among defendants in our criminal courts. People of color are also disproportionately represented among the unemployed and the homeless. And, people of color are disproportionately represented among those who find themselves accused of crimes.

Does the benefit data harvesters and their clients reap outweigh the harm all communities in this State suffer by increasing the difficulty people face as they seek housing and employment, as they seek to become law-abiding, contributing members to our communities?

My comments are not intended to suggest that I believe this proposal is racist. I do not. Rather, I strongly believe that those who would support this proposal have not recently been so unfortunate as to be without stable employment or affordable housing. I strongly urge that the Court NOT allow the electronic dissemination of pre-conviction, criminal accusation information.

Respectfully Submitted,

George T. Stephenson

The Honorable George T. Stephenson
Ramsey County District Court

LEGAL RIGHTS CENTER, INC.
1611 Park Avenue South
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Fax: (612) 337-0797
hizek@legalrightscenter.org

September 8, 2004

Fred Grittner
Clerk of the Appelate Courts
Minnesota Judicial Center, Suite 305
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: **Request to make oral presentation for September 21 hearing on Report of Advisory Committee on Rules of Public Access to Records of the Judicial Branch**

Dear Mr. Grittner:

I write to request permission to make an oral presentation at the September 21 hearing regarding the final report of the Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch.

Enclosed are twelve copies of material to be presented.

Thank you and the Court for your kind consideration.

Sincerely yours,

Hersch Izek
Staff Attorney

Enc.

CC: Justice Paul Anderson

Hersch Izek

I have been a staff attorney for the Legal Rights Center for the past 3 years with a total of 14 years of criminal defense work on behalf of the indigent and minorities. The following is an outline of my proposed testimony.

OUTLINE OF ORAL STATEMENT TO THE SUPREME COURT RE: FINAL REPORT OF THE ADVISORY COMMITTEE ON RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

1. Confusion by landlords as to what the "public record" actually shows.
2. Confusion by employers as to what the "public record" actually shows.
3. How "public record" confusion affects the poor, indigent, and minorities.
4. How errors in a "public record" affects the poor, indigent, and minorities.
5. Issues of morality and ethics as they relate to the "public records".

Gordon C. Stewart
5667 Birch Trail
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gordoncstewart@hotmail.com

September 7, 2004

Fred Grittner
Clerk of the Appelate Courts
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25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: **Request to make oral presentation for September 21 hearing on Report of Advisory Committee on Rules of Public Access to Records of the Judicial Branch**

Dear Mr. Grittner:

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Enclosed are twelve copies of material to be presented.

Thank you and the Court for your kind consideration.

Sincerely yours,

Gordon C. Stewart

Enc.

CC: Hon. Paul H. Anderson

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OUTLINE OF ORAL STATEMENT TO THE SUPREME COURT RE: FINAL REPORT OF THE ADVISORY COMMITTEE ON RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

1. Information regarding experience at Legal Rights Center, Inc. as it relates to:
   - Race and poverty;
   - Employment and housing

2. Protection of presumption of innocence and public failure to distinguish between a criminal charge and a conviction

3. Commendation of Advisory Committee for recommendation to limit pre-conviction material on world-wide web

4. Support for recommendations of Exhibit K (Bulk Data Alternative 3) on grounds that
   - Alternative 3 best protects the principle of the presumption of innocence;
   - Supreme Court is the final guardian of this principle;
   - Adoption of Exhibit K will hold inviolable the Court's integrity in truth and in public perception;
   - Supreme Court must not allow others (data harvesters) to do what it is unwilling to do itself;
   - Information that would be released by data harvesters is too often inaccurately entered, further harming not only the accused but those not accused (Exhibit K);

5. Consistent with the Court's intentions to eliminate racial bias, the Court must stand firm, lest it be complicit in creating a class of the permanently unemployed.

LAW OFFICES OF
SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES, INC.

Administrative/Program Support Office
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Our new address is: 166 E. 4th Street, Suite 200
St. Paul, MN 55101

September 10, 2004

RE: Proposed Amendments to the Rules of Public Access to Records of the Judicial Branch
C4-85-1848

To The Honorable Justices of the Minnesota Supreme Court:

I am writing on behalf of the clients of Southern Minnesota Regional Legal Services, in opposition to the proposed rule change that will allow court documents containing personal family information to be posted on the internet. There is no public policy that can override the profound privacy interest at stake. Furthermore, making family law court documents fully accessible on the internet will have a chilling effect on the court's ability to obtain complete information when making decisions in the best interests of children.

We support the Family Law Records minority report, attached to the Final Report as Appendix G. In a marriage dissolution, the only document that should be posted on the internet is a Certificate of Dissolution. Similar certificates should be created for custody and other family law matters. The rules should specify that no records referencing psychological or medical history of the parents or their treatment of children should be posted on the internet. If anything more than a Certificate of Dissolution is going to be posted, then every party should be notified that court documents will be on-line unless they file a request for exemption. A simple form should be available for this purpose. Granting the request for exemption from internet posting should be automatic, or at least a rebuttable presumption.

Limiting posting to judgments and court orders is not sufficient in family law matters. Any time custody is contested the courts are required to make detailed finding on 13 "best interests" factors, including such things as the child's preference, domestic abuse, and the medical and psychological health of the parties. Until 20 or 25 years ago, a dissolution judgment was a separate document from the Findings of Fact, Conclusion of Law and Order for Judgment. The Judgment and Decree basically restated the conclusions of law. Then the courts streamlined the process by combining the two documents into one. Those judgments older than 25 years could probably be posted without revealing too much personal information. Perhaps, it is time for the courts to return to the old practice of separating the judgment and findings into separate documents.

Children are not parties in family law proceedings, yet much personal information abut them is included in court orders. Just today, I read a recent Judgment and Decree that included a finding about an eight year old boy's problem with bed wetting. How will he feel when a schoolmate discovers that information posted on the internet?

In cases where there has been domestic abuse, we are very concerned that full internet access will deter victims from giving the court accurate information, especially in custody cases. That means judges will not have the information they need to make the best decisions for children. Women will think much harder before disclosing humiliating and degrading things that have occurred if they think their co-workers, neighbors and family will be able to read all about it with a click of the mouse. Who would want the whole world to know that your husband dumped the dinner you cooked over your head? Or that he raped you? Even where victims are comfortable with letting people know these things, they are not going to want their children and their children's classmates to be able to sit at their computer and read about it. While there are many public policy reasons to put abusers' actions into the public arena for all to see, having it all available on the internet is likely to increase feelings of shame for many victims.

Abusers, on the other hand, will be happy to include all the dirt they can think of or make up. Some of this is likely to make its way into court orders. This will become yet another avenue for re-victimization.

We see many cases where a woman's history of childhood sexual abuse has come out in the context of custody cases – either because the father claims she can't parent because she's so damaged by childhood abuse, or because she discloses it in a psychological evaluation or to explain her actions and reactions. The victim should have control over whether anyone other than those involved in deciding custody should have access to this information. If the perpetrator of the childhood abuse finds out she is talking about it, she may well be subject to new threats and harassment.

Thank you for your consideration of these comments.

Sincerely,

Janet C. Werness

Janet C. Werness
Attorney at Law

JCW/mlg

Minneapolis Area Synod of the Evangelical Lutheran Church in America

tel 612.870.3610 fax 612.870.0170
info@mpls-synod.org www.mpls-synod.org
122 W. Franklin Ave., Ste. 600, Minneapolis, MN 55404-2474

To: State of Minnesota in Supreme Court September 9, 2004

Re: Order For Hearing To Consider Proposed Amendments To The Rules Of Public Access To Records Of The Judicial Branch

My name is Craig Johnson. I am the Bishop of the Minneapolis Area Synod of the Evangelical Lutheran Church in America. This church in Minneapolis has 230,000 baptized members in its ranks.

I would like to share my deep concerns over the possibility of the courts allowing unrestricted pre-accusation data to data harvesters. It is my belief that the net effect of such action on the lives of individuals so listed would be de facto conviction in their public and economic lives. Rental agencies, housing, potential employers and others would make decisions about individuals simply on the basis of arrest – not on conviction or plea.

This decision would adversely affect an inordinately large number of poor, minority and innocent populations. The effect would be conviction in the court of public opinion even prior to the court's full process of justice.

I believe this to be no justice. The right of standing innocent until found guilty by a court (a long-held American principle) is undermined.

When the Church reflects upon social issues, racism, oppression and justice, we first go to the Holy Scriptures. As I think about this issue, I am drawn to the prophets of ancient Israel. Their major work was to tell political and religious leaders the truth about what was happening in their society.

They spoke on God's behalf about the failure to care for widows and orphans. They spoke about the rich setting up systems that exploit the poor. They spoke about justice at the gate. When courts were not attentive to real justice but justice only for the rich, the society was in danger.

The measure of the society for the prophet was built upon how ancient Israel took care of the most vulnerable.

The action of putting arrests without or prior to convictions on the web site will create a system where innocent people will be shamed and marginalized. They will very likely be unable to find housing and work if this site is used for wrong purposes.

We are here to protect the innocent, to remember the poor and to work toward a just society. I am convinced that this proposed action will work exactly the opposite to what we are called to do.

Most Sincerely,

Craig E. Johnson
Bishop

STATE OF MINNESOTA
COUNCIL ON BLACK MINNESOTANS
Wright Building • Suite 426
2233 University Avenue • St. Paul, MN 55114 • (651) 642-0811 • 643-3580 FAX

September 10, 2004

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King Blvd.
Saint Paul, Minnesota 55155

Dear Mr. Grittner;

The State Council on Black Minnesotans respectfully requests that a representative be allow to make an oral presentation before the Minnesota Supreme Court on September 21, 2004. The issue being addressed is "Criminal Accusation Information on the World-wide Web and its Impact on Population of Color – Particularly African American Youth". It is anticipated that Roger W. Banks, the Council's Research/Policy Analyst will be making this presentation.

The requested twelve copies of the written presentation have been submitted.

Should you need additional information or have any questions, please contact me at 651-642-0811 or roger.banks@state.mn.us .

Thank you very much for your consideration and cooperation.

Sincerely,

Lester R. Collins

Lester R. Collins, Executive Director
State Council on Black Minnesotans

State Council on Black Minnesotans
MN Supreme Court Presentation – September 21, 2004
Criminal Accusation Information on the World –wide Web Hearing

The State Council on Black Minnesotans appreciates the opportunity to express its opinions and perceptions regarding the issues being discussed before the Minnesota Supreme Court today. These are critical issues that, once decided, will have a tremendous impact on the people of Minnesota, particularly its populations of color and American Indians. But more importantly, the impending decision will define the true nature and underlying philosophy of the state's judicial system; particularly in regards to the pursuit and acquisition of equal justice on the part of its people of color. We can only hope that these issues will be resolved in a non-biased and equitable fashion.

While it is our fervent hope that truth and justice will prevail, we are cognizant of the fact that racism continues to be practiced in Minnesota. And, that the negative consequences of racism continue to be disproportionately felt by African Americans.

The final report of the Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch is replete with statistics and qualitative information that delineate the extent to which racial bias exists in the Minnesota Criminal Justice System. It cites conditions identified in the Racial Biased Task Force report of ten years ago. And, it cites statistics from the court's own data collection and reporting system. The Racial Profiling Research Study (mandated by the Minnesota Legislature - conducted by over fifty jurisdictions - and reported by the MN Council on Crime and Justice and the Institute on Race and Poverty of the University of Minnesota) reveals the extent to which the practice of racial profiling by Minnesota law enforcement officers is a serious state-wide problem.

The major premise of the arguments presented to the previous Advisory Committee hearing in support of putting arrest records on the world-wide web had 1st Amendment rights of the media as their basis. One testifier stated that "trying to solve social problems by keeping information off the Internet is poor public policy...our system of government operates best when it is open to public scrutiny". The Council on Black Minnesotans could agree with this statement... if the media would stop racial profiling and if all allegations of police misconduct and racial profiling would also be placed in the Internet. Two reports issued by the U.S. Civil Rights Commission, and separated by ten years – the latest being issued in April 2004, substantiated the fact that racism is alive and well in the Minnesotas media.

While racial bias continues to be a significant part of the equality and justice issue, it is our perspective that there are other influencing factors. A principal one being the practice of continued economic exploitation of persons of African heritage – which is very closely related to the issue of racism.

There is a long history regarding the use of public policy to exploit African Americans. It was the pronouncements contained in the Papal Bull of 1453 that provided the rationale for slavery

and the economic exploitation of Blacks in the western hemisphere. After the Civil War, law enforcement and judicial officers were partners in the promotion and preservation of "de facto slavery"; that is, the promotion of the practice of using captive and free labor. Former slaves were arrested and convicted indiscriminately and were forced to work off their sentences. Proceeds of their efforts went to the exploiters.

Today, we have observed that persons of color are subsidizing the criminal justice system through fees, fines, racial profiling and disproportionately high arrest levels. The practice of building and maintaining "industries" on the backs of populations of color is pervasive and is not limited to the criminal justice system. For example, one only needs to examine the racial disparities found in out-of-home placement care and its associated "white" foster care industry. And, one only has to review the recent study conducted by Professor Ed Goetz of the Hubert. H. Humphrey Institute to get an understanding of the extent to which non-whites continue to be exploited. This study focused on the application fees paid by persons seeking rental housing. It was determined that the application fees paid by whites averaged $76.00. Non-whites, on the other hand, paid application fees averaging $236.00.

All this has been said to draw attention to the fact that allowing unrestricted used of data distributed to bulk data harvesters will continue the practice of economic exploitation of African Americans. Information harvesters will sell arrest information on persons presumed to be innocent to prospective landlords and employers. As a result, individuals will be punished irrespective of their innocence. This practice, given current arrest trends, is tantamount of. giving our African American youth a life sentence. Housing and employment, most often than not, will be denied. This recommendation will not only unjustly impede to ability of individual to secure equal access to housing and employment, it will open up our court system to unnecessary litigation.

On the other hand, the Council on Black Minnesotans agrees with and supports the recommendation of the court's Advisory Committee to encourage its own web site managers to take steps to "discourage bulk harvesting of data and using names to search preconviction data".

The Council on Black Minnesotans is interested in ensuring that the judicial system of the state of Minnesota does not repeat the mistakes that have been made historically. We need to move forward. And, we offer our assistance in this endeavor.

Roger W. Banks, Research/Policy Analyst
State Council on Black Minnesotans
651-642-0811
roger.banks@state.mn.us

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

IN RE: PROPOSED AMENDMENTS TO
THE RULES OF PUBLIC ACCESS TO
RECORDS OF THE JUDICIAL BRANCH

REQUEST TO MAKE ORAL PRESENTATION

The undersigned, City Council Member Don Samuels, Ward 3, City of Minneapolis, requests opportunity to make an oral presentation at the Court's September 21, 2004 hearing in the above-captioned matter.

Dated:

Respectfully submitted,

Don Samuels
Council Member, Ward 3
City of Minneapolis
350 South Fifth Street
City Hall, Room 307
Minneapolis, MN 55415

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

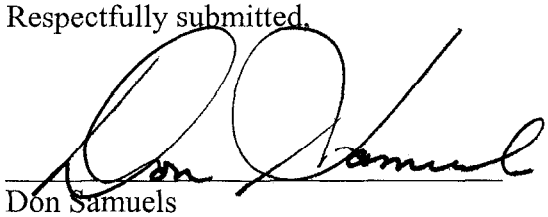
IN RE: PROPOSED AMENDMENTS TO
THE RULES OF PUBLIC ACCESS TO
RECORDS OF THE JUDICIAL BRANCH

MATERIAL TO BE PRESENTED AT PUBLIC HEARING

The undersigned, City Council Member Don Samuels, Ward 3, City of Minneapolis, if granted the opportunity to make oral presentation at the Court's September 21, 2004 hearing in the above-captioned matter, will present information about the social consequences and racial impact likely to occur if the court uses the Internet to disseminate, or provides to private vendors to so disseminate, criminal accusation information about people presumed to be innocent.

Dated:

Respectfully submitted,



Don Samuels
Council Member, Ward 3
City of Minneapolis
350 South Fifth Street
City Hall, Room 307
Minneapolis, MN 55415

"(Samuels) Has moonlighting business appearing before corporate leaders discussing racism. After several hours in a trusting environment, those leaders admit that they do not see black people, don't look into their eyes, or don't see them as human. Most people would not admit these things, they act them out. Racism is ambient. We breathe it in, absorb its influences, and breath it out and perpetrate it, especially people who have power, like the police. When an arrest is false, those who are the victims of it must pay a permanent price. Its not just crime and punishment, it becomes suspicion and punishment. Proposed rule would exacerbate and project the punishment into the future.

Was personally arrested twice, once in his early twenties for robbery, but was innocent and charges were dropped. If some enterprising individual captured that fact and frozen it in cyberspace, it would be haunting him for the rest of his life. Second arrest was for disorderly conduct and trespassing, and the charges were dropped. A Star Tribune Reporter discovered this and in an interview asked his wife "what do you think about your husband being arrested?" If he had kept that information from her, it would have been a challenge to the trust in their relationship. But that is a reporter. How about somebody who wants him to lose the next election? These things continue to sting. Asks committee to not do anything that would exacerbate this problem for people who look like him.

Q: City of Minneapolis has routine practice of selling arrest information; what do we do about that? A: One bad turn does not deserve another. Arrest data from the city does not have the imprimatur of the court and is not as subjected to being data harvested as court records, and arrest data is not being published over the Internet. Media and others do not need Internet access to court records to conduct studies and learn trends on racial issues. They do that already without Internet access.

Q: If I am aware that a person has been arrested through arrest data that the city of Minneapolis has provided to a data harvester and I want to check what happened to that, isn't it better if I am able to access that information as easily as possible? A: It is fair to have the ultimate disposition of cases released on the Internet.

Q: Many have testified that it is wrong to have the charge out there if ultimately the charge is dismissed, but wouldn't the rules as proposed allow you to see both the charge and the disposition? A: in some cases having the ultimate resolution available is fair, but the court has to very carefully weigh whether it wants the charges out there before resolution of the case by way of calendars and other records that are searchable by name by data harvesters."

"Some advisory committee members counter that there is a difference between using private sector resources to compile and resell public information and using taxpayer dollars to do the same thing. Some commentators believe that the court's imprimatur, its tremendous power and trust, give its records commercial value (public hearing comments of John Stuart, State Public Defender), and that this distinguishes court records from other government records such as law enforcement records."

"Those favoring limited Internet publication of records believe that: (1) there is a difference between "public" records and "publishing" records on the Internet; (2) publication of only certain records on the Internet is an expansion of existing public access at the courthouse and not a limitation on public access at all; (3) limited information should be placed on the Internet only after procedures and rules are in place to protect privacy interests; (4) just because technology enabling Internet access is available does not mean that it should be used for all matters; (5) if the first approach is taken (i.e., allowing all public, paper records to be published on the Internet), there will be a backlash of public opinion that will likely sweep broad categories of information completely out of public view; (6) relying on legislation prohibiting misuse and vigorous enforcement of those laws is itself illusory; (7) the public currently has a good understanding of what is going on in the courts without adding more Internet access; and (8) similar data accessible through commercial data brokers and even other government entities, such as law enforcement) does not carry the imprimatur of the court.

"Proponents of keeping preconviction records off the Internet point out that while judges and lawyers can distinguish between a charge and a conviction, such important distinctions are not made by the general public or in the world of housing and employment."

"Proponents of keeping preconviction records off the Internet also argue that publishing preconviction court records on the Internet: (1) will undermine the efforts of the Court's Implementation Committee on Multicultural Diversity and Fairness in the Courts;[30] (2) will degrade the presumption of innocence which the courts have a constitutional duty to protect; (3) will shame and marginalize the innocent instead of protecting them; (4) will increase our racial and class divide rather then narrow it; (5) will make the court a part of the wider web of injustices that it seeks to eliminate; (6) is both immoral and un-American; and (7) is unnecessary for public interest research purposes as many data sources currently exist to support public interest research."

"When it was pointed out by advisory committee members that cities currently sell arrest information in bulk to commercial data brokers who in turn sell the information through subscription services, and that some jails post their current list of detainees on the Internet, these proponents countered that: (1) two wrongs do not make a right; (2) law enforcement data lacks the imprimatur of the court; (3) law enforcement data is only available from local offices while statewide compilations of such records are accorded privacy by statute; (4) aside from jail detainees and special projects, cities are not posting arrest information on the Internet."

C4-85-1848

STATE OF MINNESOTA

IN SUPREME COURT

Written Statement Concerning Proposed Amendments to the Rules of Public Access to Records of the Judicial Branch

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Minnesota Conference of Chief Judges

By Lucy A. Wieland
Chief Judge, 4th Judicial District
Member, Conference of Chief Judges
Chair, CCJ Technology Workgroup

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INTRODUCTION

The Minnesota Conference of Chief Judges (hereinafter "CCJ") makes the following statements regarding the proposed amendments to the Rules of Public Access to Records of the Judicial Branch.

CCJ appreciates the hard work and excellent product of the Advisory Committee on Rules of Public Access to Records of the Judicial Branch, as set forth in its Final Report, dated June 28, 2004. CCJ recognizes that issues of public access are complex and multi-faceted, and that modifications to existing rules to allow for remote access to case records may have widespread impact.

The Rules of Public Access to Records of the Judicial Branch and any amendments thereto (hereinafter "the Rules") have a direct and significant impact on the operations of the district courts throughout 87 Minnesota Counties. The Rules impact the daily practices and limited resources of the district courts because they are carried out, on a daily basis, by local district court clerks and judges.

For these reasons, the CCJ reviewed and discussed the Rules and Final Report and hereby presents a written statement with alternative recommendations on select rule provisions. The focus of CCJ's review was the impact of the Rules on technology, resources, and existing practices of district courts. Further, throughout its review, CCJ discussed at length the various alternative proposals, including philosophical differences and the impact of the proposals on society. In the end, CCJ decided to restrict its recommendations to those areas that had a direct and negative impact on trial court operations.

The foregoing statement is organized by rule number and contains discussion and proposed modified language. The proposed modified language is intended in the spirit of the corresponding discussion. However, if the Court prefers alternative language, CCJ would support such language as long as it addresses CCJ's stated concerns.

Access Rule 8, subd. 2(f). Delayed Application.

Recommendation:

An exception is needed to delay the application of the rules to existing court case management systems that may not be in compliance, until such time as MNCIS is implemented.

Background:

The Minnesota courts are currently in the process of implementing a new court information system (MNCIS) to replace existing case management systems in the district courts. MNCIS will be in compliance with the new rules when they become effective. However, not all district courts will be converted to MNCIS at the time the new rules become effective.

For example, many district courts will still be using the TCIS case management system and Hennepin may still be using the SIP system. TCIS and SIP are not in compliance with the proposed rules. TCIS-produced calendars that contain pre-conviction information in searchable form are posted on the Internet for agency and public use. Further, SIP provides remote subscription services to private entities and the information provided includes pre-conviction information and other data that may be in violation of the proposed rules. There may also be other areas of non-compliance.

The Minnesota courts have limited resources to devote to the implementation of MNCIS and CCJ does not want these resources diverted to the modification of old systems. Further, the cost and complexity of modifying the Hennepin SIP system may be so great that certain functions would have to be shut down instead of modified if the new rules require immediate compliance. However, the shutdown of SIP's subscription access service would have a negative impact on criminal justice agencies that also rely on this service.

Proposed Language:

Subd. 2. Remote Access to Electronic Records.

(f) **Delayed Application.** To reduce the burden and costs of modifying existing case management systems, the remote access rules under Rule 8, subd. 2, shall only apply to the individual district courts after they fully migrate case management to MNCIS (the Minnesota Court Information System).

Access Rule 8, subd. 2(a). Remotely Accessible Electronic Records

Recommendation:

A provision is needed to allow certain groups to have remote access to party pleadings and other filed documents, under an access agreement. The Judicial Conference, or other judicial body with policy-making authority, should be designated to identify the types of groups allowed under access agreements and corresponding usage terms, as needed to implement its programs.

Background:

Despite the Advisory Committee's recommendation to take a "go slow" approach, proposed Rule 8, subd. 2(a) is too restrictive and may create a barrier for providing party pleadings and other documents to implement certain CCJ programs. For example, the rules as proposed would not allow the implementation of a viable electronic filing system in district courts because party pleadings are only available through remote access by court order. A viable electronic filing system would include the ability of attorneys and parties to remotely view electronically filed documents on a case. Requiring a court order for every case would be very burdensome. Other special circumstances may also be identified by the CCJ as it implements other programs and addresses operational needs in the district courts.

Rather than require a rule change for a specific use of remote access to party pleadings, the Judicial Conference, or other judicial body with policy-making authority, should define the circumstances under which access agreements may be implemented to authorize remote access to party pleadings.

Proposed Language:

Subd. 2. Remote Access to Electronic Records.

(a) **Remotely Accessible Electronic Records.** Except as otherwise provided in Rule 4 and parts (b) and (c) of this subdivision 2, a court administrative office that maintains the following electronic case records must provide remote electronic access to those records to the extent that the office has the resources and technical capacity to do so.

(1) **register of actions** (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);

(2) **calendars** (lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [MINN. STAT. § 485.11]);

(3) **indexes** (alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [MINN. STAT. § 485.08]);

(4) **judgment docket** (alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [MINN. STAT. § 485.073)]);

(5) **judgments, orders, appellate opinions, and notices prepared by the court;**

(6) **party pleadings, motion papers, and other filings, with the limitation that documents under this part (6) shall only be accessible through an access agreement, as defined by the Judicial Conference.**[1]

[1] Or other judicial body with policy-making authority.

Access Rule 8, subd. 2(b). Certain Data Elements Not To Be Disclosed

Recommendation:

A modification is needed to allow better access to "party street address" in the context of judgment dockets.

Background:

Proposed Rule 8, subd. 2(b) is too restrictive and may create a barrier for the public to obtain complete judgment information because it does not allow the public to view party street address on the judgment docket. Either the street address should be displayed on all judgment dockets through remote access or the street address should be allowed through remote access under an access agreement. At the very least, street address should be available to the credit industry and banks that need this information to conduct business, through an access agreement.

If access agreements are implemented, the Judicial Conference, or other judicial body with policy-making authority, should be designated to define the circumstances under which access agreements may be used to authorize remote access to party addresses.

Proposed Language:

Subd. 2. Remote Access to Electronic Records.

. . .

(b) **Certain Data Elements Not To Be Disclosed.** Notwithstanding Rule 8, subd. 2 (a), the public shall not have remote access to the following data elements in an electronic case record with regard to parties or their family members, jurors, witnesses, or victims of a criminal or delinquent act:

(1) social security numbers [and employer identification numbers];
(2) street addresses, except that the street address of parties should be available by access agreement as defined by the Judicial Conference.[2]
(3) telephone numbers;
(4) financial account numbers; and
(5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that specifically identifies the individual or from which the identity of the individual could be ascertained.

[2] Or other judicial body with policy-making authority.

Access Rule 8, subd. 2(c). Preconviction Criminal Records

Recommendation:

A modification is needed to clarify the effort required to keep preconviction criminal records from being searched by automated tools.

Background:

The Final Report proposes that preconviction criminal records be remotely accessible only by using technology that ensures, "to the extent feasible," that records are not searchable by defendant name using automated tools. After requesting input from the Information Technology Division regarding technology options available today to comply with this rule, the CCJ concluded that clarity is needed regarding the extent of the effort and resources required to comply with the rule.

Currently many courts post court calendars on the Internet for access by attorneys, parties, and the general public, which reduces the burden on court staff in responding to phone calls. The posted criminal calendars contain preconviction information, including defendant name. The existence of these calendars on the Internet in their current text-based form renders them searchable and in violation of the proposed rule. Consequently, for these calendars to continue to be available on the Internet, a technology approach must be identified to ensure that the records are not searchable by defendant name using automated tools. Removing the calendars from the Internet is not an option for local district courts, due to limited staff.

The current rule leaves unanswered: How much technology protection is required to block search attempts? Who should decide which approach to use, how much to spend, and whether the final approach is adequate to comply with the rule? As with most technology decisions, many technical options are available—some more effective than others and some more costly than others. The CCJ is concerned that without further clarity, limited resources of the district courts may be wasted in an effort to take the most secure approach, without balancing costs.

Therefore, CCJ recommends that the Court adopt language that requires only reasonable efforts and proportionate resources to satisfy the rule. Further, CCJ recommends language to clarify that the selected approach need not prevent ALL automated tools from searching the preconviction records but, rather, that the selected approach prevent *a majority of known, mainstream automated tools* from searching the records, as determined by the Information Technology Division of the Minnesota Supreme Court. To require more would be to create a large and non-proportionate expenditure area that would require continual research and development to keep up with all new and obscure technologies that potentially would penetrate the selected approach.

Proposed Language:

Subd. 2. Remote Access to Electronic Records.

(c) **Preconviction Criminal Records.** ~~Preconviction criminal records shall be made remotely accessible only by using technology~~ The Information Technology Division of the Supreme Court shall make reasonable efforts and expend reasonable and proportionate resources to prevent preconviction criminal records from being electronically searched by defendant name by the majority of known, mainstream automated tools. ~~which, to the extent feasible, ensures that records are not searchable by defendant name using automated tools~~. A "preconviction criminal record" is a record for which there is no "conviction" as defined in Minnesota Statutes, section 609.02, subd. 5 (2003).

Access Rule 8, subd. 3. Bulk Distribution of Electronic Case Records.

Recommendation:

The CCJ recommends that the Court adopt either Bulk Data Alternative 1 or Bulk Data Alternative 2. Either one is satisfactory to the CCJ, as long as other CCJ recommendations in this Written Statement are adopted. However, if the other CCJ recommendations are not adopted, then the CCJ recommends the most unrestrictive approach to bulk data, which is Bulk Data Alternative 2.

Background:

The CCJ has articulated concern in other sections of this Written Statement regarding provisions that are too restrictive or that no longer allow the district courts to continue current practices. For example, the CCJ recommendation regarding Access Rule 8, subd. 2(b), supra, would allow the district courts to continue to provide "party address" through remote access (under an access agreement), which has been a practice of the Fourth Judicial District for approximately 10 years. If this and other recommendations of the CCJ are adopted, then the CCJ is satisfied with the adoption of either Alternative 1 or Alternative 2 on bulk data. However, if the recommendations of the CCJ are not adopted, then the CCJ recommends the least restrictive approach to bulk data so that there exists at least one means of obtaining electronic access to all public data, to prevent congestion at the courthouse. Fourth District statistics show that in one month's time over 198,000 hits were received from the private sector through the 4th District's current subscription service. It would be unacceptable for this many requestors to come to the courthouse to obtain information that is not available remotely.

Rule 9 – ACCESS TO ATTORNEY REGISTRATION RECORDS

Recommendation:

A new provision is needed under Rule 9 to allow less restrictive disclosure of attorney contact information in connection with cases in case management systems.

Background:

Rule 9, which governs Access to Attorney Registration Records, contains restrictions on the disclosure of information from the attorney registration system. Rule 9 allows disclosure of the following data when inquiry and disclosure is limited to a single registered attorney: name, address, admission date, CLE category, current status, and license number. For all other requests, Rule 9 allows disclosure of only name, city, and zip code. Some attorneys provide their business address to the attorney registration system and some provide their home address.

The CCJ is in agreement with Rule 9 as it applies to the attorney registration system, but not as it applies to the use of attorney registration information in case management systems when case management systems obtain attorney information from the attorney registration system. When an attorney represents a party in a case, attorney information is filed on public documents. The CCJ believes that when attorney information is public in connection with a case, it should not be as restricted as provided under Rule 9, even if such information is obtained from the attorney registration system for convenience by court staff. CCJ recommends that when attorney information is used in connection with a case, it be free from the restrictions of Rule 9, except that case data provided in bulk should be in compliance with Rule 9(B).

MNCIS is designed to retrieve attorney information from the attorney registration system when incomplete information is provided. However, MNCIS does allow an attorney to file different information in connection with a case than that retained in the attorney registration system. In this circumstance, the attorney registration data is not used. Consequently, attorneys may provide their home address to the attorney registration system and a different business address on an individual case.

Rule 9 constrains the design of MNCIS and other resulting databases by, for example, prohibiting the display of the street address for two attorneys at one time in connection with multiple cases and the display of attorney phone number in connection with a single case. Recently, the 4th Judicial District requested that attorney name, address, and phone number be added to the register of actions in MNCIS. Historically, the 4th Judicial District has included phone number on its register of actions and was not in violation of Rule 9 because it did not pull information from the attorney registration system. Rule 9 prevents carrying this practice forward into MNCIS.

Proposed Language:

Rule 9 Rules of the Supreme Court for Registration of Attorneys

. . .

E. Use in Case Management Systems

Attorney registration data may be imported into case management systems for the purpose of linking attorneys to cases and storing accurate identification information. When such data is imported into a case management system, it may thereafter be disclosed in connection with corresponding case information. Distribution of bulk data from case management systems must be in compliance with Rule 9-B.

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

OFFICE OF
APPELLATE COURTS

NOV 2 9 2004

FILED

Lucy A. Wieland
Chief Judge
Hennepin County Government Center
Minneapolis, MN 55487-0422
612/348-9808

(seal)

November 24, 2004

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

RE: **TIME SENSITIVE**
Statement Concerning Proposed Amendments to the Rules of Public Access to Records of the Judicial Branch
C4-85-1848

Mr. Grittner:

On behalf of the Minnesota Conference of Chief Judges and the Technology Planning Committee of the Minnesota Supreme Court, please accept the attached Written Statement on Proposed Amendments to the Rules of Public Access to Records. I understand that the deadline has passed for submitting public comments, but this Written Statement contains very important recommendations from the Conference of Chief Judges and the Technology Planning Committee on issues that remain unaddressed by the proposed rules as submitted by the Supreme Court Advisory Committee on Public Access to Records of the Judicial Branch.

Please forward these on to the Supreme Court for deliberation.

Thank you for your consideration of this matter.

Respectfully,

/s/Lucy A. Wieland
Chief Judge, 4th Judicial District
Member, Conference of Chief Judges
Chair, CCJ Technology Workgroup

Joined by P. Hunter Anderson
District Judge, 10th Judicial District
Chair, Technology Planning Committee

LAW/sjl

Attachment (12 copies)

C4-85-1848

STATE OF MINNESOTA

IN SUPREME COURT

Written Statement Concerning Proposed Amendments to the Rules of Public Access to Records of the Judicial Branch

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Minnesota Conference of Chief Judges

By Lucy A. Wieland
Chief Judge, 4th Judicial District
Member, Conference of Chief Judges
Chair, CCJ Technology Workgroup

Technology Planning Committee of the Minnesota Judicial Branch

By P. Hunter Anderson
District Judge, 10th Judicial District
Chair, Technology Planning Committee

Introduction

The Minnesota Conference of Chief Judges (hereinafter "CCJ"), together with the Technology Planning Committee (hereinafter "TPC") provides this Written Statement regarding the proposed amendments to the Rules of Public Access to Records of the Judicial Branch. Despite this late hour of the Court's deliberation on the proposed amendments, the CCJ and TPC urge the Court to consider the recommendation provided herein regarding remote access to confidential case records by Minnesota criminal justice agencies.

Recommendation

A new rule is needed to authorize certain Minnesota criminal justice government agencies to have remote and bulk access to certain confidential case records, on a statewide basis. We recommend an amendment to proposed Access Rule 8, subd. 4, *Criminal Justice & Other Government Agencies*, as follows:

Proposed Language

Subd. 4. Criminal Justice and Other Government Agencies.

(a) Criminal justice agencies, including public defense agencies, and other state or local government agencies may obtain remote and bulk case record access where access to the records in any format by such agency is authorized by law.

(b) Statewide Access to Confidential Case Records. Minnesota county attorneys, Minnesota state public defenders, Minnesota state and local corrections agencies, and Minnesota state and local social services agencies may obtain remote and bulk access to statewide confidential case records in MNCIS that are classified as Civil Domestic Violence, Juvenile, and Parent/Child Relationships cases if the recipient of the records:

1) executes a nondisclosure agreement in form and content approved by the state court administrator; and

2) the custodian of the records reasonably determines that the recipient has a legitimate need for the records and disclosure to the recipient will not compromise the confidentiality of any of the records.

Background

For the past decade or more, certain Minnesota criminal justice government agencies have been granted remote access to local confidential case records on TCIS, via district court order. For example, county attorneys have been given remote access to local juvenile case records on TCIS, based on a district court order from the county in which the individual county attorneys reside. The reason for authorizing such access is that these agencies need information in the court case records to perform their governmental functions. Remote access has been provided because, without it, these agencies would be calling the courts on a daily and perhaps hourly basis to obtain the information they need.

Because MNCIS has statewide capabilities, and because these statewide capabilities were a factor in obtaining legislative funding for MNCIS with the promise of providing statewide access to other Minnesota criminal justice agencies, the traditional practice of authorizing access to local confidential case records by district court order does not properly address the current and future need for authorizing agency access to statewide confidential case records. For example, a district court order is not sufficient to authorize a county attorney to access statewide juvenile case records.

In the past, when statewide access to confidential case records was needed, a Supreme Court order was obtained. For example, the Minnesota Board of Public Defense made a case for remote/bulk access to statewide juvenile case records through the TCIS Data Pass (a nightly data transfer) back in 2001. After receiving support from the TPC, the request was forwarded to the Supreme Court and a court order was issued, authorizing such access.

In the past, very few requests for remote access to statewide confidential case records were made, primarily due to TCIS limitations. Today, with the statewide capabilities of MNCIS, we are receiving many more requests for remote access to statewide confidential case records from Minnesota government agencies, and we anticipate these numbers to increase. Under traditional business practices, we would anticipate forwarding to the Supreme Court for review at least five to eight requests per county, which would trigger approximately 435 to 696 Supreme Court orders, if approved.

Our recommendation is to promulgate a court rule that would authorize certain Minnesota criminal justice agencies to have remote access to certain statewide confidential case records, without requiring an individual Supreme Court order for each. The proposed language does not cover all the requests we anticipate, but it does cover the core requests that the CCJ and TPC agree should be approved. Included in the proposed language are a list of agencies and a list of case classifications on MNCIS. Under this recommendation, any other requests for remote access to statewide confidential case records would fall back under the traditional process of obtaining a Supreme Court order. Further, any requests for remote access to local confidential case records, such as we expect from law enforcement in most counties, would continue to be authorized by local district court order.

We urge the Court to seriously consider this or a similar rule, to help reduce the administrative burden that would be required of the Minnesota Courts to process the large number of requests for remote access to statewide confidential case records that we anticipate from Minnesota criminal justice agencies.

WATCH

September 10, 2004

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

RE: Rules of Public Access to Records

Dear Mr. Grittner:

I respectfully request the opportunity to make an oral presentation before the Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch. Along with this request, I have submitted WATCH's written statement.

Thank you for your consideration.

Sincerely,

Marna Anderson

Marna Anderson
Executive Director

WATCH

September 9, 2004

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

RE: Rules of Public Access to Records

Dear Mr. Grittner:

WATCH is a volunteer-based court monitoring and research organization that follows cases of family and sexual violence and provides feedback to the justice system. Founded in Minneapolis in 1992, WATCH works to improve the justice system's response to cases of domestic abuse, child abuse and sexual assault.

> **The mission of WATCH is to make the justice system more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public.**

WATCH trains citizens to monitor and represent the public in courtroom hearings. We believe that open courtrooms are an important function in our democracy. The public's presence reminds members of the judiciary and other court personnel that they are accountable to the public. Equally important to our democracy is an informed public that has access to information on how justice is being carried out and how the law is being applied in their communities. Court monitoring gives citizens the access they need to their courts and provides an organized forum for ongoing and productive dialogue between citizens, the judiciary and other members of the criminal justice system.

While we promote through our mission and programming the need for an informed and involved public, we are concerned about publishing all court records on the Internet. There is reason to believe that expanding public access to court records through the use of the Internet could result in unintended harm for crime victims, in particular, victims of domestic abuse. The offender chronologies we have gathered in our years monitoring Hennepin County Courts indicate that perpetrators of domestic violence will go to great lengths to contact their victims and to continue committing abuses against them. Publishing all court documents on the Internet would ease the ability of offenders to locate, threaten and commit further acts of violence against those they have already harmed. For this reason, we do not support making all court documents available to the public through the Internet.

Suite 465 Northstar East, 608 2nd Ave. S., Minneapolis, MN 55402, (612) 341-2747, F: (612) 339-1171, watch@watchmn.org

The work of WATCH would not be impeded by limiting access to court records online. We are able to access the courthouse records as needed and use them to inform the public of how cases of violence against women and children are handled in Hennepin County District Court. We do not believe that our request to limit access of court records contradicts our mission to create a more informed and involved public.

I would appreciate the opportunity to make a presentation to the Minnesota Supreme Court on September 21, 2004 on this topic.

Sincerely,

Marna Anderson

Marna Anderson,
Executive Director

Minnesota Coalition for Battered Women

1821 University Avenue West
Suite S-112
St. Paul, MN 55104

Voice: 651-646-6177
Fax: 651-646-1527
Email: mcbw@mcbw.org

September 10, 2004

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, Minnesota 55155

Dear Mr. Grittner,

I am writing to request the opportunity to make an oral presentation at the Minnesota Supreme Court hearing scheduled on September 21, 2004 to consider the final report by the Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch.

Attached you will find my the written statement on behalf of the Minnesota Coalition for Battered women that I would present at the hearing.

Enclosed you will find 12 copies of both this letter of request to make and oral presentation at the hearing and the written statement of the material to be presented.

Sincerely,

Cyndi Cook

Cyndi Cook, Executive Director

Date: September 10, 2004

To: The Minnesota Supreme Court

From: Cyndi Cook, Executive Director, Minnesota Coalition for Battered Women

Re: Written Statement and Recommendations Related to the Proposed Amendments of the Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch

Because the proposed amendments to the Rules of Public Access to Records of the Judicial Branch could have a dramatic impact on the lives of battered women and their children, the Minnesota Coalition for Battered Women is grateful for the opportunity to submit its comments and recommendations to the Minnesota Supreme Court.

The following remarks are based in part on the expertise of the Coalition's member battered women's programs across the state and input from national organizations on the issue, including the National Network to End Domestic Violence. They are also, most importantly, grounded in the Coalition's twenty-five year history of working on behalf of battered women and in the combined experience of the countless battered women who have guided its work, both directly and through the Coalition's member programs.

Comments

The Coalition has a number of concerns related to the ways in which the proposed amendment could impact the safety of battered women and their children. From making it possible for batterers to find their escaped victims for quickly and easily-- to discouraging battered women from participating in the justice system--these rule changes have the potential to create a system that not only does not protect the community, but in fact creates dangers for individuals who attempt to use it.

When battered women and their children escape the batterer, often their most effective and essential tool in protecting their safety is anonymity. As we know, most battered women and children who are killed by the batterer are murdered either in the act of leaving or after they have left. Immediate safety in many communities is, in fact, provided through safehome networks, in which individuals volunteer their homes to house battered women and their children as they escape. The protective quality of these safehomes is dependent on the fact that nobody except the local battered women's program knows where they are. This concept of protection through anonymity is carried into long-term plans, as women often move with their children to new communities in an effort to hide from the batterer. Again, their safety is dependant on his inability to find out where they are.

The existence of a battered woman's name on a court website, regardless of the type of case involved, could enable the batterer to find his victim. While efforts would certainly

be made to utilize technology and other means to make it difficult to do successful internet searches by name, unfortunately, opposing technology also exists that allows individuals to bypass these safeguards. Because our lives are so often touched by the court system, it would be extremely difficult for women to completely protect themselves. For example, a victim could move to Minnesota from another state, purchase property, file the appropriate paperwork with the court, and be found through internet records related to the court filing.

Unfortunately, even with attempts to shape the rule change so that various kinds of information would not be available remotely, as we know all too well, mistakes will still happen. We only have to look at the recent case in Colorado involving Kobe Bryant to see the ways in which mistakes in making information available can have a dramatic impact on the outcome of the case, and more importantly on victims and witnesses involved. Knowing that these mistakes will occur, safety concerns are again magnified. While the mistakes may be corrected and information removed from the internet, because of archiving sites and other technology, it would be all too easy for a batterer, again, to find his victim.

These are just a few of the ways in which remote access to court information could directly impact the safety of battered women and their children. Unfortunately, this remote access could impact safety indirectly as well. It is highly likely that as victims and witnesses become aware that the court will be publishing information on the internet, they will decide against accessing the justice system. This is due both to immediate safety concerns, and to embarrassment and shame about having intimate details of the violence they have experienced posted on the web for friends, family, co-workers, and others to see. Battering has long been a crime kept behind closed doors. A powerful tactic used by men who batter is to convince a woman that she is to blame for his violence and "deserves what she gets." He will often humiliate her by doing everything from insulting her and putting her down to forcing her to do the most debasing acts imaginable. A petitioner for a civil protection order must describe these details in order to receive relief. Women who are battered already have an extremely difficult time overcoming all of what has happened to them and coming forward for help. If battered women also have to worry about the details of their experience becoming more easily and immediately accessible to the public, the likelihood that they will ever seek the help of the court system for protection will be dramatically decreased.

Recommendations

The following recommendations include some proposed by the National Network to End Domestic Violence related to the draft model policy governing electronic access to court records in response to a request for public comment issued by the National Center for State Courts and the Justice Management Institute.

- Information related to civil protection, family law, domestic violence, sexual assault, and stalking cases should be excluded from remote access.
- Information about domestic violence and sexual assault victims' and witnesses' identities, addresses, phone numbers, and e-mail information should be excluded.

- Individuals should have the right to restrict access to their names in docket listings, and be informed of that right.
- Individuals should have the right to petition the court to exclude all records related to any court proceeding, and be informed of that right. The use of pseudonyms, initials, docket numbers, or summary information, would make this possible.
- If the court denies the petition to exclude records from remote access, the victim must be allowed to withdraw the filing without having information posted. In some cases, victims may have to choose safety and privacy over using the court system.
- The courts must provide robust notification to litigants, victims, witnesses, and the community, including victim advocacy groups. Clear signs posted throughout the courthouse, brochures given to witnesses when called to appear, as well as verbal notification from the bench would be components of this notification. This is particularly important for pro se litigants.
- Process for preventing and remedying failures to properly exclude information must be implemented before beginning to post information to the internet.
- Courts should regularly audit their processes, preferably involving outside, neutral entities to check for errors and to correct problems.
- All court staff, including judges, should be required to participate in training on any electronic system to reduce errors and assist in granting petitioners appropriate restrictions.
- The burden for excluding information from public access should not depend on a specific request. Courts should weigh potential harm to the individual against public interest concerns and use their discretion to exclude information where necessary.

Again, the Minnesota Coalition for Battered Women is grateful for the opportunity to provide input to the Minnesota Supreme Court related to the proposed amendments to the Rules of Public Access to Records of the Judicial Branch. As always, the Coalition would be happy to assist the Court in any way possible, and would welcome the opportunity to further discussion around these issues.

Respectfully submitted by:
Cyndi Cook, Executive Director
Minnesota Coalition for Battered Women
1821 University Ave. West, Suite S-112
St. Paul, MN 55104
(651) 646-6177
ccook@mcbw.org

UNIVERSITY OF MINNESOTA

Jane E. Kirtley
Silha Professor of Media Ethics and Law
Director, Silha Center for the Study of Media Ethics and Law

Silha Center for the Study of Media Ethics and Law
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Office: 612-625-9038
Fax: 612-626-8012
E-mail: kirtl001@umn.edu

September 2, 2004

OFFICE OF
APPELLATE COURTS

SEP 2 2004

FILED

Frederick Grittner, Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

RE: Request to make an oral presentation at the public hearing to consider proposed amendments to the rules of public access to records of the judicial branch, C4-85-1848

Dear Mr. Grittner:

On behalf of the Silha Center for the Study of Media Ethics and Law, I respectfully request the opportunity to make an oral presentation at the public hearing in the above-referenced matter on September 21, 2004.

Enclosed for filing, please find 12 copies of this request, together with 12 copies of my written statement.

I appreciate your consideration of this request, and look forward to hearing from you. I can be reached at 612 625 9038, or by e-mail at kirtl001@tc.umn.edu.

Very truly yours,

Jane E. Kirtley

Jane E. Kirtley
Silha Professor of Media Ethics and Law
Director, Silha Center for the Study of Media Ethics and Law

Enclosures

STATE OF MINNESOTA
IN SUPREME COURT
No. C4-85-1848

Comments of the Silha Center for the Study of Media Ethics and Law on the Proposed Rules of Public Access to Records of the Judicial Branch

The Silha Center for the Study of Media Ethics and Law submits the following comments to the Supreme Court of Minnesota in response to the notice for a public hearing to consider the proposed amendments to the Rules of Public Access to Records of the Judicial Branch ("Rules of Public Access") as set forth in the Final Report of the Advisory Committee to the Supreme Court of Minnesota ("Final Report").

The Silha Center for the Study of Media Ethics and Law is a research center located within the School of Journalism and Mass Communication at the University of Minnesota. Its primary mission is to conduct research on, and promote understanding of, legal and ethical issues affecting the mass media. The Silha Center also sponsors an annual lecture series; hosts forums, conferences and symposia; produces the *Silha Bulletin*, a quarterly newsletter, and other publications; and provides information about media law and ethics to the public.

INTRODUCTION

The Silha Center again applauds the underlying presumption in the Final Report on the Rules of Public Access that court records are public documents that should be accessible to the public. The Silha Center also reiterates the points addressed in its written comments and the oral presentation by Professor Jane Kirtley on the Preliminary Report of the Advisory Committee.

- Information that is public in one format should not become confidential when it is converted to another format.

- Redacting court records is feasible using current technology.
- Remote access to court records would reduce administrative burdens on court administrators, not increase them.
- Public access to court records must be equal and widely available to ensure that the public can gain full and accurate knowledge of court activities.
- Open and broad public access to court records ensures public oversight and scrutiny of the judiciary.

The Silha Center also urges that the Rules of Public Access be modified to provide broader remote public access to court records.

- Potential misuse of records should not limit public access to court records.
- All court records publicly available should also be available for bulk distribution electronically.

ANALYSIS

I. COURT RECORDS AVAILABLE TO THE PUBLIC IN ONE MEDIUM SHOULD BE AVAILABLE TO THE PUBLIC BY REMOTE ACCESS.

The proposed Rules of Public Access limit remote access to court documents, even though they are publicly available in other mediums. Rule 8, subd. 1(a). The Rules of Public Access allow remote access to only five specific types of records: registers of actions; calendars; indexes; judgment dockets; and judgments, orders, appellate opinions and notices prepared by the court. Rule 8, subd. 1(a)(1)- (5). Preconviction records are also proposed to be made available online. However, the proposed Rules of Public Access would require implementation of technology to block the use of automated tools to search preconviction records by defendant name. Rule 8, subd. 1(c).

a. Remote Access will Benefit Members of Minority Communities, Which Include Concerned Citizens and Victims, as well as Accused Perpetrators of Crimes.

Among the justifications for restricting remote access to court records publicly available at the courthouse, the Final Report discusses the possible disproportionate impact that preconviction records might have on communities of color. *Final Report*, 12-14. It is true, as the Final Report states, that minorities are disproportionately arrested, prosecuted and convicted of longer sentences than whites. *Id.* at 12, 13. It is also possible that landlords and employers might improperly use preconviction records to deny housing and employment opportunities.

However, the Advisory Committee did not discuss the fact that minorities are also more likely to be the victims of crimes than are whites. According to the 1999 Annual Crime Report released by the Saint Paul Police Department, 65% of homicide victims in the city of Saint Paul were African-American and 7% were Asian, while only 7% were white. *1999 Crime Report*, Saint Paul Police Department, 11 (2000). In 1998, 42% of homicide victims were African-American while 29% were Asian and another 29% were white. *Id.* According to the 2000 United States Census, African-Americans comprised approximately 11% of the population of Saint Paul while Asians accounted for 12% of the population. *1990 to 2000 St. Paul Census Comparison Report*, Saint Paul Police Department, Research and Development Unit (2001). Similar percentages existed for other violent crimes including aggravated assault, robbery and rape in the city of Saint Paul. *1999 Crime Report*, at 13-17. Likewise, similar disparities in the proportion of homicide victims across the state of Minnesota exist. See *Minnesota Homicides 1985 to 1997*, Minnesota Planning, 13, 14 (1999).

Placing many or all court records online allows all individuals to access those records relatively easily and inexpensively. Minorities, who are disproportionately affected by crime, would directly benefit from this broad online access to court records. Greater online access would empower minority victims of crime, providing them with information on the progress and disposition of cases affecting them and their communities while also facilitating a better understanding of and respect for the judicial system.

b. Greater Public Access to Court Records Strengthens and Improves the Judicial System, and Should Not be Abridged Based on Concerns about Potential Misuse.

A full and clear public understanding of the judicial system cannot exist unless the public has complete and broad access to court records. Remote access to court records makes them more widely available at lower cost to the public. Concerns over the potential misuse of court records should not result in denial of access to those records.

Decisions on how best to regulate use of court records obtained by remote access are best left to the Legislature, because this area can be both complex and dynamic. As Exhibit I on Bulk Data Alternative 1 in the Final Report points out, several laws at both the federal and state level already impose requirements for the use of records possessed by a third party, such as the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and the Minnesota Credit Reporting Law, Minn. Stat. §§ 13C.001-.04 (2003). *Id.* at 16, FN 119. Similar laws governing the use of preconviction records could be drafted to impose similar requirements on those using preconviction records. At the same time, the Court's own Rules on Public Access should allow the broadest possible public remote access.

Public access to preconviction records can help to identify problems in the judicial system. Information on disproportionate arrest and prosecution rates of minorities can help shed

light on these issues and educate the public. A better understanding of the judicial system and potential problems within it empowers members of the public to actively engage in overseeing judicial institutions, while also enabling them to work as knowledgeable partners to strengthen the system. Access to presumptively public records should not be curtailed because of theoretical concerns about undefined "misuse."

II. BULK DATA ALTERNATIVE 2 OF THE FINAL REPORT PROVIDES THE BETTER SOLUTION TO DEALING WITH ELECTRONIC BULK DATA.

In the Final Report, the Advisory Committee states that it "believes that it is appropriate and sufficient to note that the recommendation regarding what court records should be released in bulk format is contested and that the committee is closely divided on the issue." *Final Report*, 19. This division resulted in three proposed alternatives for handling the bulk distribution of electronic case records. The second alternative closely tracks the language of the bulk distribution rule set out in Section 4.30 of the Conference of Chief Justices and Conference of State Court Administrator Guidelines for Policy Development by State Courts ("CCJ/COSCA Guidelines"), which the Advisory Committee was charged with considering, and is the best of the three proposed alternatives.

The Advisory Committee's Final Report mentions that the preliminary report of the committee endorsed making only those records publicly available on the Internet available for bulk distribution to the public. The first and third alternatives embody this view on bulk data and unduly restrict access to only those records already remotely accessible. This perpetuates unequal access to such records and does nothing to ensure that the records, once obtained, are used properly.

Moreover these alternatives create more problems than solutions. Commercial brokers already have the ability and resources to collect bulk data directly from the courthouses. This

results in data being made available to the public online through third parties, typically for a fee, because individuals cannot collect such records themselves without great expenditure of both time and money. Making only select information available for release in bulk format over the Internet, as the first and third bulk data alternatives recommend, helps to perpetuate this unequal access to court records. It would ensure that only commercial data brokers will continue to collect and distribute many bulk records. Moreover, there would be no safeguards on the use of that bulk data and no guarantees as to the accuracy or currency of those records.

A rule allowing broad access to bulk records through the Internet can help remedy these problems. Instead of requiring many bulk records to be obtained in person and in paper form, making all bulk data publicly available online would allow the transmission of those records at very little cost. Limiting access to court records because of concerns over the potential misuse of those records is bad policy.

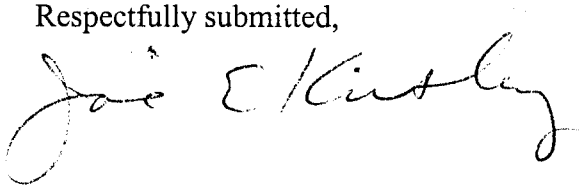
If the misuse of records presents a genuine threat, then other forums are better suited to regulate the use of those records. As discussed above, courts should provide broad public access to court records and allow the Legislature to take necessary steps to correct any potential misuse of those records. In this case, the Legislature could consider taking steps to restrict the use of court records obtained in bulk. The Legislature might also consider imposing statutory requirements on how often bulk data must be updated by third parties holding such data. As discussed in the Commentary to Section 4.30 of the CCJ/COSCA Guidelines, liability for improper release or use of bulk court records could be established by law as well.

CONCLUSION

The Silha Center respectfully requests the Supreme Court to adopt Rules of Public Access that allow broader public access to court records online. Even though the judicial system

arguably has a disproportionate adverse impact on minorities, an easily-accessible system better addresses those issues by encouraging public oversight and enabling a more thorough public understanding of the judicial system. Both the judicial system and individual citizens benefit from increased transparency. In addition, bulk distribution of all court records by remote access allows broader public access to those records. Although the potential misuse of such data may create legitimate concerns, limiting access to court records because of such theoretical concerns is questionable public policy. All court records that are publicly available should be available by remote access as well. Rather than preempting lawful access, the court should leave to the Legislature to decide how best to create any liability for subsequent use of court records.

Respectfully submitted,



Jane E. Kirtley, Director and Silha Professor of Media Ethics and Law
Andrew Deutsch, Silha Research Assistant

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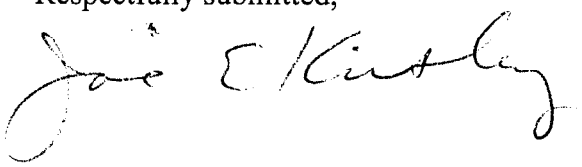
September 2, 2004

arguably has a disproportionate adverse impact on minorities, an easily-accessible system better addresses those issues by encouraging public oversight and enabling a more thorough public understanding of the judicial system. Both the judicial system and individual citizens benefit from increased transparency. In addition, bulk distribution of all court records by remote access allows broader public access to those records. Although the potential misuse of such data may create legitimate concerns, limiting access to court records because of such theoretical concerns is questionable public policy. All court records that are publicly available should be available by remote access as well. Rather than preempting lawful access, the court should leave to the Legislature to decide how best to create any liability for subsequent use of court records.

Respectfully submitted,



Jane E. Kirtley, Director and Silha Professor of Media Ethics and Law
Andrew Deutsch, Silha Research Assistant

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kirtl001@tc.umn.edu

September 2, 2004

September 10, 2004

To: Members of the Minnesota Supreme Court
From: Rich Neumeister
Re: Rules of Public Access

I am interested to present an oral presentation on September 21, 2004 before the Minnesota Supreme Court on the Rules of Public Access to Records of the Judicial Branch.

Respectfully,
Rich Neumeister

Rich Neumeister
345 Wabasha Ave.
St. Paul, Mn.
55102

Attached
written statement

9/10/04

I wrote a statement for the Committee. This is available in summary form on pages 157-159 of the Final Report.

What I want to emphasize in my oral presentation are the following

① The minority reports filed as exhibits G + H in the final report.

② To emphasize a selection of a person in the judicial districts to be the compliance offical for that district.

Memorandum

To: Justices of the Minnesota Supreme Court

From: William A. Hansen

Date: 9/10/2004

Re: Proposed Amendments To The Rules Of Public Access To Records Of The Judicial Branch.

My wife and I operate about 315 rental units in the Stevens Square and Loring Park areas of Minneapolis. These are inner city neighborhoods, thus resident screening is an extremely important activity for us. We have been in this business since 1970 and believe that we are very familiar with screening techniques. My wife has even instructed other landlords on screening techniques. We have learned the hard way that it only takes one bad apple to upset the equilibrium of an entire building. Keeping those bad apples out is of extreme importance to us and to our residents. Therefore, I strongly object to the essence of these proposed rule changes.

A little history is in order. During the early 1990's both the New York Times and the Wall Street Journal referred to us a Murderapolis. Screening techniques were very limited and usually involved calls to other landlords for references, and a trip to the courthouse to attempt to locate unlawful detainer filings.. One could also use professional screening companies as they had databases. Then, along came the Internet revolution and the associated on line capabilities. The world has changed.

Our screening techniques have changed dramatically. We check unlawful detainers on the web. We can also run a credit check from our office, and, in most cases we can run a criminal history from our office. Losing any of these capabilities will not only affect our operation, but will soon adversely affect livability in the entire city. At the present time it is difficult for the troublemakers to hide their proclivities due to the information that is publicly available. If we lose the on line capabilities we presently possess I fear the results.

Being a criminal is not a protected class. I have included with this memorandum a 5-page printout of the record of just one individual with whom I had extensive contact during the 1990's. Most of his bouts with the law resulted in the dismissal of the charges. An examination of the record indicates that most of the dismissals had nothing to do with guilt or innocence, but were for other reasons. I include this

record for the purpose of emphasizing that we need arrests, not only convictions. If we find an individual who has, for example, a 5th degree assault charge, and an arrest for disturbing the peace, we will not rent to them .It is obvious that this person does not care about societies rules. If that person doesn't care about societies rules they certainly are not going to care about our rules.

I see no good reason to restrict access to this data. We have been using "Hennepin County Online" almost since its inception. In an era where law enforcement can post arrest records of, and pictures of "Johns", on line, allowing public remote access to criminal information is quite reasonable. I can see no difference between allowing access to the information at the courthouse verses remote access to the same data!

My daughter lived in one of our buildings for about a year and one half. I wanted her to be safe. I feel the same way about all of our residents as well as my employees.. Would you want one of your children or anybody else whom you care about living next door to somebody who doesn't care about societies rules?

We live in an electronic world. Information is disseminated in many ways, and the on-line world is an incredible way to acquire information. I believe that if information is readily available in the public domain, access should be granted, not restricted.

Thank you for your consideration.

OPTION: HENNEPIN COUNTY CRIMINAL COURT 09/09/04
RETRIEVE TOTAL COURT RECORD SEARCH 11:11:01
TRX: 6IF KEY: HALL,DONALD RON SS$061
NAME: HALL,DONALD RON SEX: _ DOB: __ __ __ CORP: _

NAME	SID/FCH	SEX	DOB	OFFENSE	STATUS	CASE
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	07/19/94	C 94060686
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	07/23/94	C 94062635
JACKSON,NATHANIEL HAMILTON	00468611	M	05/03/54	FALSE INFO	07/27/94	C 94063234
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	08/23/94	C 94072714
HALL,DON RONNIE	00468611	M	03/31/57	LOITERING	08/23/94	C 94073008
HALL,DON RONNIE	00468611	M	03/31/57	LURK WITH	08/25/94	C 94073962
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	09/01/94	C 94076126
HALL,DON RONNIE	00468611	M	03/31/57	LOITERING	09/15/94	C 94080022
HALL,DON RONNIE	00468611	M	03/31/57	5TH D POSS	09/29/94	C 94084578
HALL,DON RONNIE	00468611	M	03/31/57	LURK WITH	10/05/94	C 94086670
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	10/06/94	C 94086815
HALL,DON RONNIE	00468611	M	03/31/57	LURK WITH	10/08/94	C 94087440
HALL,DON RONNIE	00468611	M	03/31/57	LURK WITH	10/20/94	C 94091512
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	10/21/94	C 94091757
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	11/08/94	C 94096847
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	11/15/94	C 94099137
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	11/20/94	C 94100587

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OPTION: HENNEPIN COUNTY CRIMINAL COURT 09/09/04
RETRIEVE TOTAL COURT RECORD SEARCH 11:10:52
TRX: 6IF KEY: HALL,DONALD RON SS$061
NAME: HALL,DONALD RON SEX: _ DOB: __ __ __ CORP: _

NAME	SIP/FCH	SEX	DOB	OFFENSE	STATUS	CASE
HALL,DON RONNIE	00468611	M	03/31/57	5TH DEG-PO	03/02/92 C	92016884
HALL,DON RONNIE	00468611	M	03/31/57	DISORDERLY	05/05/92 C	92035308
HALL,DON RONNIE	00468611	M	03/31/57	THEFT-MISD	05/15/92 C	92038020
HALL,DONALD RONNIE	00468611		00/00/00	ATTEMPTED	05/17/92 C	92038244
HALL,DONALD RONNIE	00468611		00/00/00	THEFT	08/06/92 C	92061125
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	05/09/93 C	93034414
HALL,DON RONNIE	00468611	M	03/31/57	LOITERING	08/24/93 C	93075749
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	09/15/93 C	93082559
HALL,DON RONNIE	00468611	M	03/31/57	POSSESS DR	09/21/93 C	93084474
HALL,DON RONNIE	00468611	M	03/31/57	5TH D POSS	11/23/93 C	93085390
HALL,DON RONNIE	00468611	M	03/31/57	5TH D POSS	10/04/93 C	93088218
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	10/30/93 C	93096740
JACKSON,NATHANIEL HAMILTON	00468611	M	05/03/54	THEFT	04/08/93 C	93102117
HALL,DON RONNIE	00468611	M	03/31/57	5TH D POSS	01/12/94 C	94003279
HALL,DON RONNIE	00468611	M	03/31/57	POSSESS DR	02/11/94 C	94011308
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	06/03/94 C	94045632
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	07/15/94 C	94060320

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OPTION: HENNEPIN COUNTY CRIMINAL COURT 09/09/04
RETRIEVE TOTAL COURT RECORD SEARCH 11:11:09
TRX: 6IF KEY: HALL,DONALD RON SS$061
NAME: HALL,DONALD RON SEX: DOB: CORP:

NAME	SIP/FCH	SEX	DOB	OFFENSE		STATUS	CASE	
HALL,DON RONNIE	00468611	M	03/31/57	POSSESS'N	01/17/95	C	95004539	Plead Guilty
HALL,DON RONNIE	00468611	M	03/31/57	5TH D POSS	01/20/95	C	95005976	
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	01/28/95	C	95008283	
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	02/01/95	C	95009545	
HALL,DON RONNIE	00468611	M	03/31/57	THEFT 201-	01/17/96	C	96005384	
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	04/01/96	C	96026634	
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	06/04/96	C	96046621	
HALL,DON RONNIE	00468611	M	03/31/57	POSSESS DR	10/07/96	C	96087326	Dismissed
HALL,DON RONNIE	00468611	M	03/31/57	3RD D SALE	01/10/97	C	97011686	
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	10/23/97	C	97096069	
HALL,DON RONNIE	00468611	M	03/31/57	CONTROLLED	11/03/97	C	97099530	
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	04/18/98	C	98039343	Dismissed.
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	11/08/98	C	98113331	
HALL,DON RONNIE	00468611	M	03/31/57	WALK IN ST	11/30/98	C	98119788	Dismissed
HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I	12/09/98	C	98122559	
HALL,DON RONNIE	00468611	M	03/31/57	FAIL TO OB	12/19/98	C	98126272	
HALL,DON RONNIE	00468611	M	03/31/57	INTERFERE	12/21/98	C	98126818	closed

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OPTION: HENNEPIN COUNTY CRIMINAL COURT 09/09/04
RETRIEVE TOTAL COURT RECORD SEARCH 11:10:44
TRX: 6IF KEY: HALL,DONALD RON SS$061
NAME: HALL,DONALD RON SEX: _ DOB: __ __ __ CORP: _

NAME	SID/FCH	SEX	DOB	OFFENSE		STATUS	CASE
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	LOITER	01/09/98	D	98014692
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	POSSION DR	01/07/98	D	98014693
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	LOITER W/I	02/19/98	D	98016663
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	POSSESSION	02/17/98	D	98017154
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	VAGRANCY	02/11/98	D	98017155
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	POSSESSION	02/05/98	D	98017156
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	LOITERING	05/11/98	C	98055165
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	LOITER W/I	04/02/98	C	98055252
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	LOITER W/I	04/14/98	C	98055253
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	PARK CLOSE	04/10/98	C	98055254
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	DRUG 3RD D	07/08/98	D	98068278
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	CONTROLLED	03/05/99	C	99021660
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	DRUG 5TH D	03/24/99	C	99028456
JACKSON,NATHANIEL HAMILTON	00393717	M	05/03/54	LOITER	01/12/00	C	00004072
HALL,DON RONNIE	00468611	M	03/31/57	POSSESS DR	06/08/91	C	91041018
HALL,DON RONNIE	00468611	M	03/31/57	LURK/PURCH	07/26/91	C	91053887
HALL,DON RONNIE	00468611	M	03/31/57	FALSE INFO	01/10/92	C	92002534

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OPTION: . . HENNEPIN COUNTY CRIMINAL COURT 09/09/04
RETRIEVE TOTAL COURT RECORD SEARCH 11:11:54
TRX: 6IF KEY: HALL,DONALD RON SS$061
NAME: HALL,DONALD RON SEX: DOB: CORP:

	NAME	SID/FCH	SEX	DOB	-----OFFENSE-----	STATUS	CASE
_	HALL,DON RONNIE	00468611	M	03/31/57	LOITER W/I 12/22/98	C	98127282
_	HALL,DONALD RONNIE	00663643	M	03/31/57	LOITERING 03/16/96	C	96023182
_	HALL,DONALD RONNIE	00663643	M	03/31/57	DISOR COND 02/21/00	C	00058716

MESSAGE: END OF NAMES

STATE OF MINNESOTA

IN SUPREME COURT

No. C4-85-1848

In re: Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch

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Public Comments on behalf of Star Tribune

to

Final Report (June 28, 2004) of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch

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Submission of Written Comments and Request to Participate at Hearing

Pursuant to the July 8, 2004, Order of the Minnesota Supreme Court establishing a procedure for public comment on the Final Report (June 28, 2004) of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch, Star Tribune submits these written comments. The following comments do not address every particular positive or negative aspect of the Advisory Committee Report, but will note features of particular concern to the Star Tribune. Star Tribune also requests an opportunity to provide oral comment at the public hearing on September 21, 2004.

Star Tribune is a division of The McClatchy Company and publisher of Minnesota's largest-circulation daily and Sunday newspaper, the *Star Tribune*. Based in the Twin Cities, it reports on court cases throughout the State of Minnesota and utilizes judicial records in the course of broader reporting upon other issues of public interest and concern.

Introduction

Star Tribune commends the members of the Advisory Committee for their extensive efforts and hard work. Their Final Report reflects the many perspectives with which they were presented, and summarizes the competing viewpoints for this Court's ultimate consideration.

The Final Report generally protects and preserves the policy and presumption of open access to judicial records in the courthouse. Unfortunately, its approach to remote electronic access and bulk records too often reverses that presumption of public access and would prohibit courts from disseminating most public records in remote or bulk fashion.

The fundamental presumptive right of public access to judicial records and proceedings has deep roots both in the common law and in the First Amendment. Minneapolis Star & Tribune Company v. Schumacher, 392 N.W.2d 197, 202-04 (Minn. 1986).[1] In The Hartford Courant Company v. Pellegrino, 371 F.3d 49, 2004 F.3d 1837055 (2d Cir. 2004), the Second Circuit held that the First Amendment right of public access to judicial proceedings extended to civil and criminal court docket sheets, explaining that:

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[1] The constitutional basis for public access to judicial records distinguishes the present situation from the restrictions on statutory rights of access to executive branch records such as those mentioned in the Advisory Report at 8-9 n.6 and those that were challenged in Los Angeles Police Department v. United Reporting Publishing Corporation, 528 U.S. 32 (1999) (in order to obtain arrest data from state or local law enforcement agency under state statute, person requesting data had to declare that request was being made for journalistic, scholarly, political, governmental, or investigative purposes, and would not be used directly or indirectly to sell a product or service), and United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (under exception to federal Freedom of Information Act applicable to investigatory records compiled for law enforcement purposes where production of records could reasonably be expected to constitute an unwarranted invasion of personal privacy, FBI and Department of Justice could deny journalist's request for "rap sheet" criminal identification compilation on specific individual).

> ... the ability of the public and press to attend civil and criminal cases would be merely theoretical if the information provided by docket sheets were inaccessible. In this respect, docket sheets provide a kind of index to judicial proceedings and documents, and endow the public and press with the capacity to exercise their rights guaranteed by the First Amendment. ... Sealed docket sheets would also frustrate the ability of the press and the public to inspect those documents, such as transcripts, that we have held presumptively open.

371 F.3d at 59-60. In sharp contrast to the Second Circuit, the primary purpose of the Advisory Committee's approach to remote access and bulk data in its Final Report appears to be to impede broader public access to judicial records that are not only presumptively open, but actually open, in the courthouse. This approach confuses form with substance and ignores or misapplies the legal principles governing public access to the contents of judicial records.

The Advisory Committee confuses form with substance when it restricts remote and bulk data access to court records because of concerns about misuse of the contents of those public records. Star Tribune recognizes that remote electronic access and bulk data are simply forms of access to public documents, and does not contend that the First Amendment guarantees any particular form of access to public data. Government may impose reasonable content-neutral time, place, and manner restrictions on the exercise of First Amendment rights without violating the Constitution. See Reno v. American Civil Liberties Union, 521 U.S. 844, 868 (1997) (Communications Decency Act – which applied broadly to the entire universe of cyberspace and whose purpose was to protect children from the primary effects of "indecent" and "patently offensive" speech – was a content-based blanket restriction on speech and could not be properly analyzed as a form of time, place, and manner regulation"). Courts have discretion to set reasonable hours and locations for public access to their records, just as other government entities have discretion to set the locations and hours of

operation of their libraries or other resources. Providing remote electronic access to some but not all judicial records might reflect constitutionally permissible discretionary decisions about allocations of resources and the manner of responses to public inquiries. For example, Proposed Rule 8 subd. 2(a) lists five categories of records and provides that "a court administrative office that maintains the following electronic case records must provide remote electronic access to those records to the extent that the office has the resources and technical capacity to do so." Thus, despite the mandatory term "must," these five categories – documents in which many members of the public would have the greatest interest – will be provided remotely only if the court office already maintains case records in electronic form and only "to the extent that the office has the resources and technical capacity to do so."

Rule 8 might have continued this discretionary approach by providing that additional electronic case records "may" be provided in remote fashion. Instead, as proposed by the Advisory Committee's Final Report, it affirmatively prohibits remote and bulk data access. It actively interferes with access to government records, not only as obtained from statewide compilations, but also as sought to be obtained from the custodian of the original records.

By imposing these prohibitions based upon the content of the other records, the rules proposed by the Final Report would violate the First Amendment. Improper purpose can transform a reasonable discretionary choice into an unconstitutional effort to limit First Amendment rights of access to information. For example, a library can make resource decisions about what books it will buy, but a library – even a school library – cannot remove

books because their contents have generated controversy or otherwise have become objectionable to authorities.[2]

In limited circumstances, of course, courts can deny access to their proceedings and records based upon the harm that would result from disclosure of the information contained in those proceedings or records. The standard for this denial of First Amendment rights of access requires that any restriction of access is essential to serve a compelling governmental interest and is narrowly tailored to serve that interest. Minneapolis Star & Tribune Company

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[2] E.g., Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 870-72 (1982) (school board members "rightly possess significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner. ... Thus whether petitioners' removal of books from their school libraries denied respondents [students] their First Amendment rights [to receive information and ideas] depends upon the motivations behind petitioners' actions. If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decision, then petitioners have exercised their discretion in violation of the Constitution. ... In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books ... .") (emphasis in original); Minarcini v. Strongville City School District, 541 F.2d 577, 581-82 (6th Cir. 1976) ("A library is a storehouse of knowledge. When created for a public school it is an important privilege created by the state for the benefit of the students in the school. That privilege is not subject to being withdrawn by succeeding school boards whose members might desire to 'winnow' the library for books the content of which occasioned their displeasure or disapproval. Of course, a copy of a book may wear out. Some books may become obsolete. Shelf space alone may at some point require some selection of books to be retained and books to be disposed of. No such rationale is involved in this case, however. ... Neither the State of Ohio nor the Strongsville School Board was under any federal constitutional compulsion to provide a library for the Strongsville High School or to choose any particular books. Once having created such a privilege for the benefit of its students, however, neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members."). Of course, analogies between libraries and court files are imperfect. While public access to libraries is a privilege, public access to judicial records is a constitutional right. Similarly, while libraries necessarily exercise a large degree of discretion over the materials they add to their collections, court files are the joint product of information-disclosing decisions made separately by parties, witnesses, and court officers.

v. Schumacher, 392 N.W.2d at 203; Hartford Courant, 371 F.3d at 63; Press-Enterprise Co. v. Superior Court of California, Riverside County, 464 U.S. 501, 510 (1984).

The Advisory Committee's recommendations to favor "practical obscurity" by creating artificial barriers to remote or bulk access to judicial records do not serve a compelling interest, and the broad content-based rules it proposes are not "narrowly tailored." This becomes starkly apparent with a single hypothetical: What if someone proposed that (1) the register of actions, calendars, indexes, judgment docket, and judgments, orders, appellate opinions, and notices prepared by the court would be accessible at the courthouse during regular office hours, but (2) any other case records would be accessible at the courthouse only between 1:00 p.m. and 2:00 p.m. in a room monitored by court personnel, because of concerns that making these other records more widely accessible could enable identity theft, invade personal privacy, or encourage misuse of preconviction criminal records? Simply to articulate such a draconian approach demonstrates that it could never withstand constitutional scrutiny, because its very purpose is to frustrate meaningful public access. This Court accordingly should reject the Advisory Committee's similar content-based restrictions on remote electronic and bulk access to public judicial records.

Comment 1: The Rules of Public Access should affirmatively embrace public access rather than focus upon the perceived problems of remote and bulk access to court records, and should not prohibit remote and bulk access to court records that are public at the courthouse.

In its order of January 23, 2003, the Minnesota Supreme Court directed the Advisory Committee to consider the national report entitled *Public Access to Court Records: Guidelines for Policy Development by State Courts*, prepared by the Conference of Chief

Justices and Conference of State Court Administrators ("*CCJ/COSCA Guidelines*"). Those *CCJ/COSCA Guidelines* begin with recognition of two essential premises:

- Courts should retain the traditional policy that court records are presumptively open to public access; and
- As a general rule access should not change depending upon whether the court record is in paper or electronic form. Whether there should be access should be the same regardless of the form of the record, although the manner of access may vary.

The current Rules of Public Access to Records of the Judicial Branch ("the Rules") state these premises clearly in Rules 2 and 3 subd. 5. Unlike its counterpart in the State of New York,[3] the Minnesota Advisory Committee has retreated from those premises by incorporating in Rule 2 the new restrictions in Rule 8 that actively prohibit remote or bulk access to certain otherwise public records.

"A trial is a public event. What transpires in the court room is public property." Craig v. Harney, 331 U.S. 367, 374 (1947). "Not only do [court] records often concern issues in which the public has an interest, in which event concealing the records disserves the values protected by the free-speech and free- press clauses of the First Amendment, but also the public cannot monitor judicial performance adequately if the records of judicial proceedings are secret." Jessup v. Luther , 277 F.3d 926, 928 (7th Cir. 2002). Public access

[3] See Report to the Chief Judge of the State of New York, Commission on Public Access to Court Records, February 2004 (attached hereto as Exhibit A).

to court records in both criminal and civil cases is not merely a matter of court rule; it arises from common-law and constitutional rights. Minneapolis Star & Tribune Company v. Schumacher, 392 N.W.2d 197, 202-04 (Minn. 1986). A right of access to court records is presumed, and can be overcome only by a compelling governmental interest and only through a restriction that is narrowly tailored to meet that governmental interest. Id.

The proposed additions to Rule 8 betray the traditional recognition that "a well-informed populace is essential to the vitality of our democratic form of government." Prior Lake American v. Mader, 642 N.W.2d 729, 735 (Minn. 2002). In Minnesota, the public elects the judiciary as well as the legislative and chief executive officials, and the words of James Madison two centuries ago apply equally to all three branches of government:

> A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

(Quoted in Prior Lake American, id. at 735 n.5.) As the Supreme Court noted in Richmond Newspapers, Inc. v. Virginia, 488 U.S. 555, 572 (1980): "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."

Technology has played a central role in empowering the people with knowledge. Gutenberg's printing press brought religious knowledge to the masses. Benjamin Franklin proselytized for a national postal system that would bind the new United States of America together. Newspapers, telegraphs, telephones, radio, and television have all preceded the internet in increasing the ease, efficiency, and economy of public access to all manner of information.

America has entered the Electronic Age. In the very near future, the vast majority of all judicial records, including filings, exhibits and transcripts, will be submitted and maintained electronically. Technology for redacting and protecting certain limited personal information in such records already exists to some extent, and surely will become better and more efficient in the near future. To miss the opportunity to develop guidelines now for that day, is short-sighted and not a sound use of public funds. Minnesota courts should use the electronic advancements to serve the public good, to pave the way for even greater public access to and confidence in the judicial process, and to provide the public with opportunities for more complete access and the press with opportunities for more complete reporting.

Affording the public remote access to some court records will provide practical access greater than currently exists as to those records. That is a positive step. It is sensible to prioritize court resources by making remote access first available for materials that are likely to currently or most quickly exist in electronic form: the registers of actions, calendars, indexes, judgment dockets, and judicial orders and opinions listed in Proposed Rule 8 subd. 2 (a) (1)-(5).

At present, there may be little practical purpose – or even a practical cost inefficiency or obstacle, or administrative burdens – to converting every court record to electronic form and placing it on the internet. However, if a record already exists in electronic form and is public in the courthouse, courts should be able to release that record to the public both as part of a bulk request and remotely at specific request as an individual record. The prohibitions/restrictions in proposed Rules 8 subd. 2(a) (last paragraph) (remote access) and subd. 3 (bulk access) impede that sort of access. A "go-slow" approach should not become a "do not go" or "go backwards" approach.

Unfortunately, "go backwards" is what Rule 8 all too easily could become. For example, the broad definition of "remote access" in Rule 8 subd. 2(d) ("'Remotely accessible' means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility.") could be construed to apply even to fax copies or individual e-mails, both of which involve some form of electronic copying. Applying "remote access" rules to faxing, combined with the Rule 8 subd. 2(a) mandatory prohibitions on remote access to most public court records, would strip court clerks of their current ability to accommodate a reporter's request for a faxed copy of a brief, affidavit, proposed order, or even notice of motion. Star Tribune utilizes this method of cooperative information-gathering many times each month. The rule as proposed by the Advisory Committee's Final Report is an unwarranted impediment to timely reporting.

Comment 2: Remote access to court records will improve news reporting on matters of public interest and concern.

Judicial records are of critical importance to the public and to the news media. To suggest that the public and the news media are not harmed, and that access is not limited, as long as access to complete case records is still available at the courthouse and if only court generated records are available remotely on the internet is to ignore the reality of the news and public information business. Journalists today strive to keep up with the daily and sometimes hourly news cycles with the most complete information that can be obtained and reported to the public. The public is most definitely harmed without remote access to records when the courthouse is closed and/or a far distance from the media's offices.

Judicial records on the internet will provide the opportunity for more timely, complete, fair and accurate reporting. Star Tribune offers the following examples from its own recent experiences:

- In July 2003, Leanna Warner of Chisholm, Minnesota, was reported missing. Broadcast reports in the early hours of the little girl's disappearance hinted broadly at problems in the home. Star Tribune reporters spent several days to get access to a restraining order, and copies of police reports that were included as evidence in that court proceeding, that together helped clarify the picture by showing that none of the problems involved serious physical violence. Earlier access to those records would have helped the newspaper more quickly determine that the circumstances did not warrant intense scrutiny of the parents in that case.
- In the spring and summer of 2002, the Star Tribune, like many newspapers around the state and the country, was reporting on issues of clergy abuse. There were allegations and rumors of various criminal cases concerning one particular order of priests, but Star Tribune had no way of learning just how extensive – or how rare – such cases really were without checking every county. After days of reporting and travel to three outstate counties and several metro counties, reporters found just one case. It was impossible to know whether that was the full extent of such cases. Computer access to judicial records would have helped locate other cases involving priests from the order. However, without online access to complete records, the newspaper still would not likely have been able to provide important information to the public, such as the age of any alleged abuse victim,

whether the alleged abuse occurred in a church setting or elsewhere, or other details that would be of vital concern to parents, other potential victims, church and government officials, and others.

- In December 1999, a Star Tribune reporter raced to a house fire in Lonsdale, Minnesota, where authorities found six bodies – all six people had been shot. There was no information available about what might have set off the killings and the fire. Were all six murdered or was this a murder-suicide? If it was murder-suicide, why did it happen? One key to the case was discovered, tucked inside a file at the Rice County Courthouse. In the months prior to the fire, the homeowner – who was one of those found dead – had run up thousands of dollars in credit-card debt, failed to pay child support to a former wife and had defaulted on his mortgage. A mortgage company also had begun foreclosure proceedings on his property. Several days after the fire, authorities concluded that these personal financial problems were the reason the man killed himself and his family. The Star Tribune got lucky in this case – a reporter had scrambled to the Rice County Courthouse and found the record in the course of most of a full day. If judicial files were available online, the information likely would have been uncovered without such a significant expenditure of effort and reliance upon luck.
- On January 27, 2004, Minnesota Lottery executive director George Andersen was found dead outside his home, apparently as a result self-inflicted knife wounds (a preliminary autopsy later revealed that the actual cause of death was hypothermia from exposure to the cold weather, rather than directly from the knife wounds). A

key issue in the investigation into his death has been an ongoing audit of the lottery's operation. A day after Mr. Andersen was found, a Star Tribune reporter checked court records in Ramsey County and discovered a lawsuit that was the basis for a central focus in the audit. The file included the judge's decision dismissing some portions of the suit because the judge found the claims to be unsubstantiated. Reporters had been unable to do such research the day the news of Mr. Andersen's death broke because the records were only accessible during business hours. Had the case been filed in a county farther from the newspaper offices, reporters might never have found the case.

- Remote electronic access or at least access to court records statewide from one courthouse would have allowed Star Tribune reporters to check the history of school janitor William Arthur Gay after he was charged in October 2003 with sexually abusing one child in Bloomington. According to court documents, Gay admitted to molesting at least a dozen other girls when investigators asked about one elementary student's report that he touched her inappropriately. Gay had worked in the district since 1994 and district officials said he underwent the standard background and reference checks. Having access to court records elsewhere in the state might have shown that something went undetected from an earlier employer.

In any hard-hitting investigation, Star Tribune is concerned that it may not have all of the facts, or may not have considered every possible angle, or that some exculpatory information may exist in a court file in a remote county. Even apparently single-incident stories would benefit from an ability to remotely access court files. If a school bus driver

runs over a child in the metro area, Star Tribune reporters would like to be able to check court files throughout the state to determine whether the driver has a record of reckless driving.

If Star Tribune cannot access judicial records statewide and find out what charges and allegations underlie any actions located, it cannot do as complete a job as it desires to do of reporting to the public information of general interest and concern. And Star Tribune is the largest newspaper in this State, with offices and news bureaus in St. Paul, Minneapolis and Duluth and with resources far greater than scores of other local and regional newspapers throughout the State. The many local and regional press around the state, which must cope with much more limited funds and personnel, could improve their own coverage if they had online access to judicial records.

Star Tribune respectfully submits that the reporting statewide, by large and small newspapers and broadcast new operations alike, will become more timely, complete, fair and accurate with online access to judicial records.

Comment 3: Remote access to court records should include identifiers of names, street addresses, and telephone numbers.

Proposed Rule 8 subd. 2 (b) would prohibit remote access to certain "data elements" that are available at the courthouse. Star Tribune has no objection to this restriction as to social security numbers and financial account numbers. However, remote access to names, street addresses, and telephone numbers should be available.

To the extent that the Advisory Committee's recommendation to deny remote access is based upon concerns about identity theft, those concerns are exaggerated as to street

addresses and telephone numbers. That information already is available in far greater compilations such as telephone directories.

On the other hand, making such personal identifiers remotely available along with the names of parties and other court participants will help ensure the accuracy of media reports and prevent confusion by members of the general public who remotely access available court information by name. By deliberately withholding such details, courts will only aid and abet the sort of mistaken identity report that occurred in Thorson v. Albert Lea Pub. Co., 190 Minn. 200, 251 N.W. 177 (1933) (newspaper held liable for inadvertently misidentifying plaintiff when it included his address in report of arrest of identically named criminal suspect, after finding only the plaintiff's address under that name in phone directory; no other person with that name lived in the city or county of the arrest or was listed in any of three city directories that the reporter consulted). Mistakes may be inevitable, but Minnesota courts should not deliberately devise a system that makes them more likely or more frequent.

Comment 4: Bulk access to court records will improve news reporting on matters of public interest and concern.

In addition to its reports on individual cases of public interest and concern, Star Tribune reports on trends in civil actions, trends in criminal prosecutions and convictions, courthouse backlog, judicial workload and budget issues, just to name a few. Trends, in breach of contract and collection suits or domestic abuse actions are often important to understanding the state of our economy and the state of our moral compass, respectively.

Star Tribune, the news media generally as well as academics and others are increasingly relying on computer assisted reporting to identify these and other important

trends. Available technology now offers opportunities to compare, connect and analyze data as never before, and the public has benefited greatly from these opportunities.

The Advisory Committee Report recommends that bulk distribution of electronic case records be available only as to those records which it proposes be available by remote access. This is far too limited and far greater a restriction than necessary, and one that cannot withstand common law or constitutional scrutiny. Star Tribune agrees with the Minority Report's conclusion (Ex. J – submitted by members Hannah and Weissman) that the Advisory Committee's recommended limitations on disclosure of bulk data would never withstand the "strict scrutiny" or "balancing of interests" test applicable to such restrictions.[4] Moreover, the restrictions in the first sentence of Rule 8 Subd. 3 are inconsistent with and far more restrictive than the definition of bulk access contained in the final sentence in Subd. 3, that "Bulk distribution 'means distribution of all, or a significant subset, of the court's electronic case records". Exhibit A: Advisory Committee Discussion Draft Of Proposed Changes To The Rules Of Public Access To Records Of The Judicial Branch, Rule 8 Subd. 3. The Committee appears to have adopted the definition of bulk distribution from the *CCJ/COSCA Guidelines* for Public Access to Court Records but not the broader access provision contained in those guidelines. Star Tribune supports Bulk Data Alternative 2, for the reasons stated in the *CCJ/COSCA Guidelines* and recommended in the Minority Report

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[4] Restricting access to bulk data stored in electronic form because of concerns over the possible "misuse" of those data, as pointed out in the Minority Report (Ex, J), renders those data non-public, as a practical matter, and goes against both common law and constitutional mandates of access to court data. Advisory Committee Report at 90 (Minority Report Ex. J), citing Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197, 202 (Minn. 1986), and Richmond Newspapers, Inc.v. Virginia, 448 U.S. 555 (1980).

(Ex. J). That alternative has the additional virtue of consistency with the recommendation of the Data Policy Subcommittee of the Technology Planning Committee, Section 4.30.

Bulk Data Alternative 3 would prove unworkable for journalistic purposes, because of its broad requirement that anyone receiving preconviction criminal records in bulk format agree to "not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data" (emphasis added). No news organization could agree not to disclose data contained in preconviction criminal records about specific individuals when necessary or appropriate in the context of particular news reports, especially when that data already is public in individual court files both remotely and at the courthouse. Bulk Data Alternative 3 would have the consequence – whether intended or unintended – of denying access to bulk data on preconviction criminal records to anyone who might have reasons to disclose data contained in even a single preconviction criminal record obtained from an individual file.

Comment 5: Bulk and remote access to court records should include access to documents generated by parties, attorneys, and others who are not court employees.

Star Tribune submits that the Committee has not struck the proper balance between access to judicial records and certain privacy interests. Star Tribune acknowledges that legitimate privacy interests exist, but the Committee seems to embrace far too many anecdotal fears raised by privacy advocates, some of whom have long opposed any kind of public records. The Advisory Report's proposals would impose greater obstacles to remote and bulk access to data in state court files than currently exist in the federal system.

Under the federal PACER (Public Access to Court Electronic Records) program, http://pacer.psc.uscourts.gov, the public has remote access to a virtual clerk's office. For a

moderate fee, the public can access participating District, Circuit and Bankruptcy Court files, through a nationwide party case index. One can retrieve dockets and case summaries as well as all documents in the case file that have been filed in electronic form or have been scanned into the system. PACER makes both civil and criminal files available to the public on the internet, for most federal courts. At the Eighth Circuit's website, http://www.ca8.uscourts.gov, one can download for free briefs and even audio-visual records of appellate arguments in almost every recent case.

However laudable and understandable may be the Advisory Committee's desire to protect victims of abuse, the principle of openness upon which America's and Minnesota's society and government are grounded, and the critical need to promote public trust and confidence in the courts, retain higher legal significance under the constitutional and common-law presumptions of public access.

The Advisory Committee has concluded that criminal charges against adults, but for the conviction record itself, shall not be made available to the public by remote access on the internet. Some Advisory Committee members do not think internet access is appropriate because some of this data (but certainly not all) is available from the BCA for a fee. Others apparently believe that it will "ruin innocent lives", and that "it is wrong to use ... tax dollars to publish or abet others who publish, unsubstantiated allegations and that somehow such publication "can result in a disparate impact on communities of color." Concerns about unsubstantiated criminal allegations are more appropriately directed to the prosecutorial arm of government, whose members are responsible for prosecuting only those individuals about whom they believe the charges are warranted. Public access to these public documents should not be restricted based on some assumption that state prosecutors are wrongly

charging individuals with crimes. If improper charges are being brought, the public should know about that so the problem can be corrected.

"[T]he public has a right to be informed of all actions and deliberations made in connection with activities ultimately geared to affect the public interest. ... Moreover, the public's input and its knowledge of the bases for the decisions of its elected officials lie at the heart of a democratic government." Prior Lake American, 642 N.W.2d at 741 (emphasis added). Although this Court there was speaking in the context of the Open Meeting Law and meetings of a city council, the need for public "knowledge of the bases" of decisions of elected officials is equally applicable to the pleadings, arguments, and evidence that underlie judicial decisions; absent compelling reasons to keep some information sealed, the public should have unfettered access to the information itself and not merely to a court's characterization of the information.

Comment 6: "Practical obscurity" is a problem, not a virtue.

The Advisory Committee Report at 8 & n.6 lauds the concept of "practical obscurity," which protects documents located in court files that are technically open to public inspection and copying but which are located in remote courthouses or courthouses other than where the subject resides or works, and as such they are for all practical purposes hidden from public view. This system is too often exploited by those with sufficient funds or crafty lawyers. Even when it is not deliberately exploited, it is an unnecessary obstacle to public understanding and access to information.

The Star Tribune believes that the Advisory Committee has missed a golden opportunity to eliminate "practical obscurity," at least as to many categories of documents that are publicly available today and which would remain publicly available under the

Advisory Committee recommendations, but only by a visit to and search of dozens of courthouses throughout the State, during the hours that each courthouse clerk's office is open.

Vague or generalized concerns about privacy should not be, and traditionally have not been, an excuse for denying public access to judicial records. Civil Procedure Rule 26 (federal and state) provides for protective orders only in specific cases and upon a showing of "good cause." "Many a litigant would prefer that the subject of the case – how much it agreed to pay for the construction of a pipeline, how many tons of coal its plant uses per day, and so on – be kept from the curious (including its business rivals and customers), but the tradition that litigation is open to the public is of very long standing." Union Oil Co. v. Level, 220 F.3d 562, 567 (7th Cir. 2000).

In In re Providence Journal Co., Inc., 293 F.3d 1 (1st Cir. 2002), the court held that a determination whether to deny public access to particular material "requires specific findings; the First Amendment right of public access is too precious to be foreclosed by conclusory assertions or unsupported speculation," id. at 13, and that the "district court's refusal to consider redaction on a document-by-document basis is insupportable ... [because] the First Amendment requires consideration of the feasibility of redaction on a document-by-document basis," id. at 15.

Under the common law right of access, "each case involves a weighing of the policies in favor of openness against the interests of the litigant in sealing the record." In re Rahr Malting Co., 632 N.W.2d 572, 576 (Minn. 2001). This is largely a matter of trial court discretion, id., and the trial court should give the party seeking closure an opportunity "to explain in sufficient detail the nature of the information it seeks to protect and the

consequences of disclosure," id. at 577. In light of "the strong presumption in favor of open proceedings," however, "[c]onclusory allegations of harm do not support a finding that data constitutes a trade secret" or otherwise deserves protection. Id. at 576.

"In order to override the common law right of access, the party seeking the closure of a hearing or the sealing of part of the judicial record 'bears the burden of showing that the material is the kind of information that courts will protect' and that 'disclosure will work a clearly defined and serious injury to the party seeking closure.' ... In delineating the injury to be prevented, specificity is essential. ... Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient." In re Cendant Corp., 260 F.3d 183, 194 (3d Cir. 2001); accord, Citizens First Nat'l Bank v. Cincinnati Ins. Co., 178 F.3d 943, 946 (7th Cir. 1999) ("Most cases endorse a presumption of public access to discovery materials, ... and therefore require the district court to make a determination of good cause before he may enter the order.").

Injury to reputation by government disclosure of information – even information that is both false and defamatory – is not a constitutionally protected liberty interest. Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1, 6-7 (2003); Paul v. Davis, 424 U.S. 693 (1976). The Advisory Committee Report gives a weight to "privacy" and "embarrassment" interests that court after court has found insufficient to justify sealing specific court records. "The private litigants' interest in protecting their vanity or their commercial self-interest ... is not ... grounds for keeping the information under seal." Procter & Gamble Co. v. Bankers Trust Company, BT, 78 F.3d 219, 225 (6th Cir. 1996). "The mere fact a person may suffer embarrassment or damage to his reputation as a result of allegations in a pleading does not justify sealing the court file." Skolnick v. Altheimer & Gray, 730 N.E.2d 4, 18 (Ill. 2000).

See also In re Kowalski, 16 Media L. Rep. 2018, 2020 (Minn. App. 1989) (invalidating restrictive orders in guardianship dispute between parents and lesbian lover of adult ward); Lund v. Lund, 20 Media L. Rep. 1775 (Minn. App. 1992) (opening records in divorce proceeding), rev. denied (Minn. Sept. 15, 1992), application for stay denied, U.S. Order A-219 (Sept. 22, 1992) (Blackmun, J.)[5]; Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165, 1180 (6th Cir. 1983) ("common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know"), cert. denied, 465 U.S. 1100 (1984); In re Coordinated Pretrial Proceedings in Petroleum Products Anti-Trust Litigation, 101 F.R.D. 34, 40 (C.D. Cal. 1984) ("It is not the duty of federal courts to accommodate the public relations interests of litigants."); Doe v. Heitler, 26 P.3d 539, 544 (Colo. Ct. App. 2001) ("A claim that a court file contains extremely personal, private, and

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[5] In Lund, the Minnesota Court of Appeals affirmed a district court order unsealing records in a divorce proceeding, and applied the same general rules of presumptive public access as in any other court proceeding. Lund clearly confirmed that the general presumption of public access fully applies in divorce proceedings. Lund is consistent with cases from other jurisdictions. See, e.g., In re Purcell, 879 P.2d 468, 469 (Colo. App. 1994); Barron v. Florida Freedom Newspapers, Inc., 531 So.2d 113 (Fla. 1988); George W. Prescott Publishing Co. v. Register of Probate, 479 N.E.2d 658 (Mass. 1985); Lutz v. Lutz, 20 Media L. Rep. 2029 (Mich. Cir. Ct. 1992); Petition of Keene Sentinel, 612 A.2d 911, 915-16 (N.H. 1992) (opening prior divorce records of incumbent congressman running for re-election; courts "are public forums. A private citizen seeking a divorce in this State must unavoidably do so in a public forum, and consequently many private family and marital matters become public."); Ex parte Weston, 19 Media L. Rep. 1737, 1743, 1991 WL 322233 (S.C. Fam. Ct. 1991). Thus, the Final Report properly rejects a Minority Report (Ex. G) urging greater protection for records in marriage dissolution proceedings.

The Minnesota Supreme Court has long affirmed the public's role in divorce proceedings. "Marriage is a civil contract, to which there are three parties: the husband, the wife, and the State; and while a suit for divorce upon its face is a mere controversy between the parties to the record, yet the public occupies the position of a third party." Kasal v. Kasal, 35 N.W.2d 745, 746 (Minn. 1949) (emphasis added); 16 DUNNELL'S MINNESOTA DIGEST, *Dissolution of marriage* § 1.01 (4th ed. 1992).

confidential matters is generally insufficient to constitute a privacy interest in warranting the sealing of the file."); In re Motion of Atlanta Journal Constitution, 519 S.E.2d 909, 911 (Ga. 1999) ("By their nature, civil lawsuits quite often cause litigants to experience an invasion of privacy and resulting embarrassment, yet that fact alone does not permit trial courts to routinely seal court records. In an order sealing a court record, a trial court must set forth factual findings that explain how a privacy invasion that may be suffered by a party or parties seeking to seal a record differs from the type of privacy invasion that is suffered by all parties in civil suits.").

"Trade secrets" likewise is not a magical incantation that displaces the right of access. In re Providian Credit Card Cases, 116 Cal. Rptr. 2d 833, 838 (Cal. Ct. App. 2002) ("The mere presence of claimed trade secrets does not carry a mandatory confidentiality requirement."); In re Rahr Malting Co., 632 N.W.2d at 576.

Agreement among the parties does not eliminate the need for the district court to independently consider the legal and factual bases for protecting data from public access. "[S]imply because a party requests that access be restricted does not mean that the court may automatically do so. The court must make its own legal determination in each case." Schumacher, 392 N.W.2d at 206; Lund v. Lund, 20 Media L. Rep. at 1775 (Minn. App. Sept. 14, 1992) (parties' agreement "is not dispositive, because the trial court must make a legal determination regarding the propriety of restricting public access"); see also San Jose Mercury News, Inc. v. U.S. District Court, 187 F.3d 1096, 1101 (9th Cir. 1999) ("[T]o the extent the Defendants relied on the stipulated protective order in making the decision to forgo a motion for reconsideration, such reliance was unreasonable. The right of access to court documents belongs to the public, and the Plaintiffs were in no position to bargain that

right away."); Citizens First National Bank of Princeton v. Cincinnati Insurance Co., 178 F.3d 943, 945 (7th Cir. 1999) ("The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). ... He may not rubber stamp a stipulation to seal the record."). In Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986), the Supreme Court held that "members of the public have a First Amendment right to insist upon access to the transcript of a preliminary hearing during the period before the public trial, even though the accused, the prosecutor, and the trial judge have all agreed to the sealing of the transcript in order to assure a fair trial." 478 U.S. at 15 (Stevens, J., dissenting and characterizing majority decision).

The fact that remote access to judicial records would increase the ease and extent of public access to those records does not qualitatively affect the privacy interest in the contents of those records. In Smith v. Doe, 538 U.S. 84 (2003), the United States Supreme Court upheld Alaska's version of Meghan's Law (requiring convicted sexual offenders to register with state, and providing information to the public about offenders, including their names, aliases, photographs and physical descriptions, addresses, places of employment, date of birth, crimes of which they were convicted and dates of convictions, license and description of motor vehicles) against a challenge that the stigma of publicity amounted to retroactive punishment forbidden by the Ex Post Facto Clause for those convicted prior to the statute's enactment. The Supreme Court held that because the stigma "results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public," that stigma was not punitive. 538 U.S. at 98-99. Significantly, in the context of the present consideration of remote access to Minnesota

judicial records, the Supreme Court stated that the "fact that [a state] posts the information on the Internet does not alter our conclusion." 538 U.S. at 99. The Internet simply "makes the document search more efficient, cost effective, and convenient for [the State's] citizenry." Id.

Comment 7: Any cost to individual members of the public, to academics, to members of the news media, and similar users of access to and copying of court records should be minimized.

Minnesota's courts should provide remote and bulk access to court records as an enhancement of the public's right of access to such material, and secondarily as an offset or reduction of the administrative costs of providing in-person access to those same records at the courthouse. The Twenty-fourth Amendment prohibits poll taxes upon the exercise of the fundamental democratic right to vote. The First Amendment prohibits licensing fees for exercising rights of expression unless those fees are limited to nominal actual administrative costs. See, e.g., Forsyth County v. Nationalist Movement, 505 U.S. 123, 136 (1992) (invalidating fee for parade permit) ("A tax based on the content of speech does not become more constitutional because it is a small tax."); Murdock v. Pennsylvania, 319 U.S. 105 (1943) (invalidating flat license fee on distributors of religious literature); Jacobsen v. Crivaro, 851 F.2d 1067, 1071 (8th Cir. 1988) (newsracks) ("While it is true that ordinarily a governmental entity cannot profit by imposing a licensing fee on a First Amendment right, ... fees that cover only the administrative costs of the license are permissible."). In the same spirit, it would be unseemly, short-sighted, and unconstitutional for Minnesota courts to transform the public's exercise of its fundamental right of access to government records into a source of revenue.

Star Tribune accordingly is concerned about statement in the Advisory Committee Report at 29 that a "majority of the advisory committee believes that bulk data should not be put on the Internet but should be sold for commercial (i.e., revenue generating) fees." At the very least, the courts should continue the current policy of the State Court Administrator's Office, with respect to providing bulk data in electronic form, to waive all but the copy costs for media and educational and noncommercial scientific institutions whose primary purpose is scholarly or scientific research, as stated in the Advisory Committee Report at 28.

Comment 8: The immunity provisions of proposed Rule 11 should be reworded.

The Advisory Committee's comments make clear that the purpose of Rule 11 is to prevent delays in the release of court information by immunizing record custodians from liability for inadvertent error in the release of data. Because a denial of access must be accompanied by an explanation for the denial, under existing Rule 7 subd. 3, inadvertent errors are far less likely in that situation. In addition, the remedy for improper denial of access is most likely to be an order requiring release of the data, with little or no monetary liability. The stated purpose of Rule 11 therefore can be better advanced by rewording the rule to read: "Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for the release of information in the course of the custodian's duties of providing access under these rules."

Comment 9: Proposed General Practice Rule 313.04 should be revised to avoid reversing the presumption of public access.

Proposed new Rule 313.05 to the Rules of General Practice for the District Court provides a procedure for seeking access to certain financial source documents. A rule clarifying the procedure is appropriate. Unfortunately, the proposal departs from the case

law cited in the Advisory Committee Comments. The process established by case law, as acknowledged in the words of the Advisory Committee Comments, "requires the court to balance the competing interest involved. *See, e.g., Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986) (when party seeks to restrict access to settlement documents and transcripts of settlement hearings made part of civil court file by statute, court must balance interests favoring access, along with presumption in favor of access, against those asserted for restricting access)." Schumacher held that the balancing test must consider the strong presumption in favor of public access. 392 N.W.2d at 205-06 ("When a party seeks to restrict access to settlement documents and transcripts of settlement hearings, the court must balance the interests favoring access, along with the presumption in favor of access, against those asserted for restricting access. In order to overcome the presumption in favor of access, a party must show strong countervailing reasons why access should be restricted. Absent such a showing, a court may not restrict access to settlement documents and transcripts that have been filed with the court.").

Proposed rule 313.05(c), however, would provide that "The court shall allow access to Sealed Financial Source Documents, or relevant portions of the documents, if the court finds that the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or dependent children." This language would improperly shift the burden of proof and persuasion to the person seeking access to the data. The rule should recognize that even after a protective order has been entered, "[t]he burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the protective order; any other conclusion would turn Rule 26(c) on its head." Leucadia, Inc. v. Applied Extrusion Technologies, Inc. ,

998 F.2d 157, 166 (3d Cir. 1991) (emphasis added); see also Bank of America Nat'l Trust & Savings Ass'n v. Hotel Rittenhouse Assocs., 800 F.2d 339, 344 (3d Cir. 1986); Pratt & Whitney Canada, Inc. v. United States, 14 Cl.Ct. 268, 275 (1988); In re Coordinated Pretrial Proceedings in Petroleum Products Anti-Trust Litigation, 101 F.R.D. 34, 42 (C.D. Cal. 1984) (each holding that the burden remains on the party advocating the protective order).

As with any protective order under Minn.R.Civ.Proc. 26.03, the burden of proof and the burden of persuasion should remain with the proponent of sealing any court record.

In those circumstances where a party or person has shown that sealing or redaction is justified, Star Tribune strongly agrees with the conclusion in the Final Advisory Report at 37 that: "it is appropriate to place the redaction burden on the persons who submit the documents to the court."

Comment 10: Preconviction criminal records should be searchable by defendant names and Race Census Data should be public.

Star Tribune supports the recommendations and discussion in Exhibit M: Minority Report on Searchability of Preconviction Criminal Records by Defendant Name and Public Access to Race Census Data.

Comment 11: Expungement is a limited remedy.

Star Tribune notes the discussion of the limitations of expungement in the Final Advisory Report at 46-48, and points out the further limitations on the judicial remedy of expungement as explained in In re Quinn, 517 N.W.2d 895 (Minn. 1994).

Suggestions for Specific Changes in Language of Proposed Rules

Consistent with the foregoing discussion, Star Tribune respectfully suggests that this Court should modify the proposals in the Advisory Committee's Final Report. Although

what follows is not an exhaustive list, Star Tribune does suggest the following specific changes in the rules proposed in the Advisory Committee's Final Report:

Suggested change to proposed Access Rule 4 subd. 1:

This Court should delete proposed Rule 4 subd. 1 (e) (Race Census Records).

Suggested change to proposed Access Rule 7 subd. 5:

Because it may not always be possible to determine whether a case record actually contains errors that should be corrected, and in order to provide some remedy to a person seeking a correction without requiring courts to become embroiled in lengthy ancillary proceedings, the Court may wish to add a final sentence to this proposed Rule: "Upon forwarding under either clause (b) or clause (c), the written request for correction shall be part of the publicly accessible case records and, where feasible, shall be linked to the original record for which a correction has been requested." Cf. Minn. Stat. § 13.04 subd. 4(a) ("Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.").

Suggested change to proposed Access Rule 8:

Subd. 1 (Access to Original Records) currently provides that any person shall be allowed to inspect original records at the place where they normally are kept, and to obtain copies of the original records. The purpose of the second sentence of the subdivision is to allow inspection of copies or other non-original versions of the records where access to the originals would jeopardize other interests. This preserves access to the underlying data, even if not to the original record. In that context, there is little purpose to the Advisory Committee's proposal to insert the phrase "provide remote or bulk access that is not permitted under this Rule 8," because any remote or bulk access would be equally available

from a copy as permitted by the remainder of the second sentence. That phrase should be deleted as illogical and the language of the current subdivision should not be changed.

The last paragraph of proposed Subd. 2 (a) should be modified to read: "All other electronic case records that are accessible to the public under Rule 4 may be made remotely accessible and shall be made accessible in either electronic or in paper form at the courthouse."

The references to street addresses and telephone numbers should be deleted from proposed Subd. 2 (b) (2) and (3).

Proposed Subd. 2 (c) (Preconviction Criminal Records) should be deleted.

The Court should adopt Bulk Data Alternative 2 as Subd. 3, to conform to the recommendation of the Data Policy Subcommittee of the Technology Planning Committee, Section 4.30.

In Subd. 6 (Fees), a final sentence should be added, reflecting current actual practice: "For members of the news media and for educational and noncommercial scientific institutions whose primary purpose is scholarly or scientific research, the custodian shall waive all but the actual cost of copying."

Suggested change to proposed Access Rule 11:

The rule should be modified to read: "Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for the release of information in the course of the custodian's duties of providing access under these rules."

Suggested change to proposed General Rule of Practice 313.05:

The rule should be modified to read:

"(a) Motion. Any person may file a motion for access to Sealed Financial Source Documents or portions of the documents. Written notice of the motion shall be required. The motion may be supported by supporting affidavits, other evidence, and legal memorandum. The person or party seeking to maintain a protective order as to Sealed Financial Source Documents or portions of the documents shall bear the burden of proof and the burden of persuasion for maintaining the documents under seal.

"(b) [no change in language suggested]

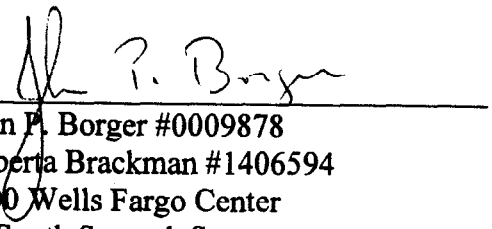
"(c) Balancing Test. In determining whether to allow access to Sealed Financial Source Documents, or relevant portions of the documents, the court shall balance the interests favoring access, along with the presumption in favor of access, against those asserted for restricting access. In order to overcome the presumption in favor of access, a party must show strong countervailing reasons why access should be restricted. Absent such a showing, a court may not continue to restrict access to Sealed Financial Souce Documents, or relevant portions of the documents, that have been filed with the court."

Suggested change to proposed General Rule of Practice 814:

The standards for restricting access to juror information should be the same in civil cases as in criminal cases. Both civil and criminal judicial records are subject to a presumptive constitutional right of public access. The rule should be modified to read consistently with Minn.R.Crim.Proc. 26.02 subd. 2.

Dated: September 9, 2004

FAEGRE & BENSON LLP



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REPORT TO THE

CHIEF JUDGE OF THE STATE OF NEW YORK

COMMISSION ON PUBLIC ACCESS TO COURT RECORDS

FEBRUARY, 2004

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1 Copies of the written submissions as well as the transcripts of each public hearing held by the Commission are available at the Commission's website: www.nycourts.gov/ip/publicaccess.

REPORT OF NEW YORK STATE COMMISSION ON PUBLIC ACCESS TO COURT RECORDS

This report is respectfully submitted to the Honorable Judith S. Kaye, Chief Judge of the State of New York, by the Commission on Public Access to Court Records. We do so to set forth our conclusions with respect to whether, in an Internet age, court case records that are already deemed public should be subject to any additional restrictions on public access before they are placed by the Unified Court System ("UCS") on the Internet.[2] Our basic conclusion is that they should not: the rules and conditions of public access to court case records should be the same whether those records are made available in paper form at the courthouse or electronically over the Internet. We do, however, suggest that, in light of the potential for harm to privacy interests and the personal security of individuals who are involved in judicial proceedings that may be occasioned by public disclosure of certain narrow categories of information, that information should not be referred to in court papers and therefore should not become public without

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[2] By "court case records" we refer to (a) documents, information or other things that are collected, received or maintained by a court, or by a county clerk on behalf of a court, in connection with a court case, including all exhibits and attachments to filed court papers; and (b) indexes, calendars, orders, judgments or other documents and any information in a case tracking system created by the court, other than for internal use only, that is related to a court case. Court records may be in paper, electronic, or other physical form. Court records do not include (a) records, such as public land and license records, that are maintained by a court or county clerk but are not connected with a court case; (b) notes, drafts and other work products prepared by a judge, or for a judge by court staff; (c) information gathered, maintained or stored by a governmental agency or other entity to which the court has access, but which does not become part of the court record as defined above.

leave of court. This policy should apply equally to court case records that are filed or maintained in paper or electronic form.

I. INTRODUCTION

With the advance of Internet technology, the introduction of electronic filings and the ability to convert paper documents into electronic form, the term "open courts" is taking on new and expanded meaning. New York state courts have already begun to make use of this technology. Today, attorneys, litigants and the press and public can examine many court calendars, decisions, and certain case information online. In the not distant future, more and more filings will be accomplished electronically, more and more case information will be available electronically and the public — as a direct and consequential result — is likely to be increasingly better informed about what occurs in its courts.

Chief Judge Kaye formed this Commission to respond to two related, but potentially competing, realities: that "the court system will begin to make case files available electronically within the next few years" and that even public "court records can contain sensitive information." UCS Press Release, April 24, 2002 (available on the Commission's Internet website: www.nycourts.gov/ip/publicaccess).

The prospect of Internet access to public court records routinely being provided is a positive and welcome development. It is certain to shed greater light on the functioning of the courts and thus to promote greater accountability of the judicial process. At the same time, the possibility of broad Internet access to court records, including

potentially sensitive information contained in those records, has, as Judge Kaye has indicated, led to the expression of serious concerns.

Court case records are, as a general proposition, public. As a general matter of state and federal law, they must be public. What Justice William O. Douglas said more than 50 years ago remains true today: "A trial is a public event. What transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 373 (1947). The same is true of most case records. There are, of course, exceptions: No one would seriously maintain that the identity of every undercover law enforcement officer must be revealed or that every (or any) trade secret referred to in a litigation must be done so publicly. But the rule, to which exceptions are narrow, remains just as Justice Douglas articulated it.

The question put by Chief Judge Kaye to the Commission is of a related but distinct nature. It is not what information should be made public in litigations and thus in court case records. It is whether information *already* deemed public that is in court files should be subjected to greater restrictions before being placed on the Internet by the UCS.

The question arises in a context that would have been unthinkable just a few years ago. New advances in technology such as the Internet now make it easier to disseminate public information than ever before. But the glories of the Internet — the ease of availability of information, the 24/7 availability of information, the unconstrained nature of who may receive the information — raise potential problems. Should the na-

ture of the Internet lead to rules limiting dissemination of information contained in public court files? Can there be too much availability of records that are already public but are, in a sense, practically obscure? Should Internet access lead us to take care about what finds its way into public court records in the first place?

Announcing the formation of this Commission, Judge Kaye put our task this way:

> In keeping with society's increasing reliance on technology, the court system will begin to make case files available electronically within the next few years. But while providing greater access to this information, we also must be diligent to protect a litigant's right to privacy. We recognize that court records can contain sensitive information, such as Social Security and home telephone numbers, tax returns, medical reports and even signatures. I have charged this commission with the hard task of examining any potential pitfalls, weighing the demands of both open access and individual confidentiality, and making recommendations as to the manner in which we should proceed.

Judge Kaye's formulation makes it plain that the important questions the Commission has been asked to consider are not easily answered. The Commission's own inquiries have confirmed the difficulties inherent in accurately predicting the impact of new technology, including technology that may not now exist. The Commission has sought to consider the questions from a broad range of perspectives and to focus on relevant legal, technological, and practical issues as well as the competing policy concerns surrounding electronic access to court records. Many issues were considered and then revisited as the Commission sought to fashion recommendations that would provide broad public access, while bearing in mind the need to take reasonable steps to safeguard individual privacy and security.

II. RECOMMENDATIONS AND CONCLUSIONS

The Commission offers the following recommendations and conclusions.

1. **Public court case records in electronic form should be made available to the public by the UCS remotely over the Internet. No additional limitations should be placed, on an across-the-board basis, on placing court case records on the Internet so long as those records are public in nature and conform to the requirements of the Commission's recommendations.**

The core premise of these recommendations is that court case records that are filed or maintained in electronic form should be made available to the public on the Internet to the same extent that paper records are available to the public at the courthouse. If a court case record is sealed or to any extent not deemed public — *i.e.*, a transcript of a Family Court proceeding — nothing in these recommendations would lead to it being made public and therefore available on the Internet. If a court case record, however, is public, and is therefore accessible to the public in paper form at the courthouse or County Clerk's office, the same record should, as a general matter, be publicly accessible on the Internet if it is filed in or converted to electronic form.

Our conclusion is rooted both in our understanding of New York jurisprudence and our pragmatic judgment as to how the law in this area should develop. As to the first, there is a strong presumption in New York that court case records are public, a presumption rooted in New York law and bolstered by constitutional principles. We are

thus reluctant to recommend denying broad access to such records in either paper or electronic form except in the narrow circumstances currently recognized under New York law. We are also chary about recommending any procedure that suggests that Internet access to court case records should result in *less* information being made available less speedily to the public. On a more pragmatic basis, we saw no need to propose a two-tiered definition of what is public and what is not. To treat differently, as a matter of course, paper and electronically maintained files, allowing greater public access to the first, seems to us to denigrate unjustifiably the value of the second while adding unnecessary complexity to this area of the law.

The Commission thus considered and rejected the proposition that electronic case records should be subjected to special limitations not applicable to paper records such as some sort of time gap after filing before those records are made public in the form they were filed. Such a proposal could, in the view of the Commission, foment significant additional litigation that should be avoided if it is at all possible to do so. The Commission is particularly reluctant to recommend such a procedure in light of the absence of any testimony before it suggesting a level of lawyer misconduct or malfeasance in placing inappropriate materials in court files that would justify such disparate treatment.

For the same reasons set forth above, the Commission recommends that public criminal case records should be made accessible to the same extent as civil case records. The Commission, in that regard, considered and rejected the suggestion that

criminal case records should not be made available on the Internet because they are subject to sealing in the event of an acquittal. Although the Commission understands that Internet access to such files creates the risk that they may be copied and then disseminated by third parties even after they are later sealed by the court, criminal case records are not presently protected against such a risk and the Commission believes that it is neither practical nor wise to seek to interpose additional limitations on public access.

The Commission similarly considered and rejected the notion that access to electronic case records should be made dependent upon the status of the individual or entity seeking access. While orders may be entered limiting the dissemination of certain information — *i.e.*, trade secrets — to counsel only, the Commission has concluded that once information is deemed public, there should be no different treatment of it as regards who may have access to it because it is in electronic as opposed to paper form.

Finally, while the Commission would prefer that records over the Internet be free of charge, if the UCS determines that a charge is advisable we recommend that the charge be nominal and that it in no event should exceed the actual cost to provide such records.

2. **Without leave of court, no public court case records, whether in paper or electronic form, should include the following information in full: (1) Social Security numbers, (2) financial account numbers, (3) names of minor children, and (4) full birth dates of any individual. To the extent that these identifi-**

ers are referenced in court filings, they should be shortened as follows: (1) Social Security numbers should be shortened to their last four digits, (2) financial account numbers should be shortened to their last four digits, (3) the names of minor children should be shortened to their initials and (4) birth dates should be shortened to include only the year of birth. The responsibility for ensuring compliance with these recommendations should lie with the filing attorneys or self-represented litigants. In addition, the UCS should determine how to protect at-risk individuals such as victims of domestic violence and stalking from being identified and located by use of their home and work phone numbers and addresses in public court records.

The Commission heard testimony from interested parties concerning the potential risk of harm to privacy and security associated with the publication of these types of personal identifiers and, in particular, the metastasizing phenomenon of identity theft.[3] Kenneth Dreifach, the Chief of the New York Attorney General's Internet Bureau, for example, testified that the incidence of identity theft is rising every year. Mr. Drei-

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[3] The Commission also takes note of the Federal Trade Commission's Identity Theft Survey Report, published in 2003, which estimated that total losses to businesses from identity theft were $33 billion in the last year.

fach described Social Security numbers and financial account numbers as "high value" personal identifiers that can be combined with birth dates and other more accessible information by identity thieves. A bank account number, for example, is all that an identity thief needs to scan, forge and cash checks in another's name, or even to set up a bank account into which to deposit ill-gotten funds. Mr. Dreifach testified that an identity thief can use a Social Security number to obtain an individual's welfare or Social Security benefits, order new checks at a new address, obtain credit cards, or even obtain an individual's paycheck.

Testimony submitted by the New York Press Association, acknowledged a valid distinction between "non-public information that could be used to inflict harm (for example Social Security and credit card numbers, PIN numbers, or other information that could facilitate identity theft)" and other information "that would simply be embarrassing if disclosed." In this regard, the New York Press Association testified that "rarely, if ever, is there public interest in one's Social Security number."

The Commission accordingly finds that the four specific types of information identified above present a risk of potential harm to privacy and the personal security of individuals such that they should not be maintained in public court case records at all. In this regard, the Commission found of particular use the analysis in the Guidelines developed by the National Center for State Courts and the Justice Management Institute on behalf of the Conference of Chief Justices and the Conference of State Court Administrators (the "CCJ/COSCA Guidelines for Public Access to Court Records," October 18,

2002). The Commission took into account, as well, the recommendations of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, pursuant to which these specific types of information are no longer to be included in filings in the federal courts. The Commission determined, in this respect, that a blanket policy of keeping all addresses and telephone numbers out of court records was both unnecessary and impractical. There are additional categories of information that are presently not permitted in case filings under New York law, as discussed more fully below. Nothing in these recommendations seeks any change with respect to these existing rules and laws.

The Commission heard testimony from several advocates for victims of domestic violence, stalking and other threats to personal safety. Charlotte Watson, Executive Director of the New York State Office for the Prevention of Domestic Violence, for example, described the difficulties faced by battered women in trying to hide their location from their abusers. Ms. Watson testified that such abusers may go to great lengths to track victims who attempt to escape and argued that the publication of personal information will increase the risk of harassment, stalking and violence toward such victims. Along similar lines, Hillary Sunghee Seo, of Sanctuary for Families, testified that batterers and stalkers generally will use any means available to track their victims. Ms. Seo described such abusers as often being technologically savvy and told the Commission that "the Internet is already a favored and extremely destructive weapon used by batterers and stalkers to terrorize and harm victims."

Because of the severity of the risk to these victims, we recommend that the UCS devote special attention to the protection of such individuals. In the meantime, courts should liberally grant requests by such individuals to protect their identity and location from public disclosure.

The Commission is aware that the types of information our recommendations seek to protect may already be available to some extent to the public over the Internet, and has seen examples of the ease with which such information can presently be obtained. The New York Attorney General's Office, for example, testified that Social Security numbers are presently available for purchase from some online vendors.[4] Robert Port, an investigative reporter for the Daily News testified that he teaches his journalism students how to "locate the birth date and home address of anyone in the United States in five minutes or less at a cost of about $5 per name." And the *New York Times Sunday Magazine* has reported that the types of information routinely collected about individuals, much of which can be easily purchased, also include:

- Your health history; your credit history; your marital history; your educational history; your employment history.

- The times and telephone numbers of every call you make and receive.

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[4] Mr. Dreifach also testified to the "vigorous effort" currently being made by Congress to ban or severely impair such sales, citing the Social Security Number Misuse Prevention Act (S. 228, H.R. 637, sponsored by Sen. Feinstein and Rep. Sweeney).

- The magazines you subscribe to and the books you borrow from the library.
- Your travel history.
- The trail of your cash withdrawals.
- All your purchases by credit card or check.
- What you buy at the grocery store.
- Your electronic mail and your telephone messages.
- Where you go, what you see on the World Wide Web.

James Gleick, "Behind Closed Doors; Big Brother is Us," *The New York Times Magazine*, Sept. 29, 1996, at 130.

The Commission also heard testimony and reviewed reports indicating that a large volume of court record information is available currently on the Internet through commercial vendors who purchase the information in bulk form. Mr. Port testified that final judgments and civil docket information are available for a fee through commercial services such as Lexis-Nexis and CourtLink. The UCS currently sells extracted information from some of its courts, in bulk, to a variety of commercial entities. The information that is made available in this manner includes appearance records, judicial orders, final judgments, names of parties, motion details, conviction and sentence information.

The Commission recommends that the specific information set forth in these recommendations should nonetheless be excluded from public court filings because their public dissemination poses a particularly strong risk to personal privacy and security and because their protection would not significantly impair the public right of access to court case records.

The Commission believes that it is practical and appropriate to place the burden of implementing this recommendation on filing attorneys who are subject to court and ethical rules in New York, together with attorney education as discussed below. The UCS should consider whether additional rules should be adopted to assure compliance with these recommendations.

The UCS should also consider what steps may be necessary to assure compliance with these recommendations by self-represented litigants, and to provide them with the necessary information about electronic public access to case records and education about the importance of excluding or redacting the data items discussed above.

3. **In implementing Internet access to case records, priority should be given to assuring that court calendars, case indices, dockets and judicial opinions of all courts are available. With respect to other case records, such as pleadings and other papers filed by the parties, the UCS should begin making such records available remotely over the Internet, on a pilot basis, in those courts in the state that already permit electronic fil-**

ings, that themselves convert paper court records into electronic form, or that are otherwise deemed appropriate by the UCS.

The UCS currently makes court calendar and other basic case information for civil cases pending in all 62 Supreme Courts — as well as 21 criminal courts and two housing courts — available on the Internet through its "e-courts" program. It is recommended that, as a first priority, this program be expanded to include court orders and opinions in all cases.

It is further recommended that a pilot program be established to make available on the Internet other case records, such as pleadings, motion papers and transcripts of proceedings, in jurisdictions in which electronic filing is already permitted or are otherwise deemed appropriate by the UCS for a pilot program. The pilot is proposed to allow the UCS to develop mechanisms for notifying and educating judges, the bar, litigants, and the public about the policy, the prospects of Internet access to case records, and the need to exclude or redact certain data elements from filed documents. The pilot will also provide an opportunity to further test the policy in advance of providing wide scale Internet access.

4. **The principles set forth herein should be applied prospectively with regard to court case records that are filed or placed in electronic form after the adoption and implementation of these recommendations and conclusions.**

Court case records that already exist in paper or electronic form may contain the personal identifying information set forth in paragraph 2. Bearing that in mind, the UCS should adopt rules to take account of the substance of paragraph 2 with regard to earlier created court case records (other than judicial opinions) that may be placed on the Internet.

5. The UCS should provide education to practicing attorneys, litigants and judges concerning public access to court records over the Internet.

Because these recommendations place the primary responsibility for ensuring that filed materials do not include certain highly sensitive identifying information on filers, attorneys and self-represented litigants and those who assist them should be educated about their responsibility for protecting such information and about the realities of Internet access to court case records generally. Lawyers should be specifically instructed of their obligation to include in public court records only information that is reasonably germane to the issues in their case and of the availability of sanctions if they misuse the judicial system by publicizing information that has no genuine bearing on their case. Litigants and the public should be informed of the manner in which public court case records will be made available remotely over the Internet, both so that they can take full advantage of such public access and so that they may seek protection in individual cases consistent with existing rules and statutes governing the sealing of court case records, as appropriate. Judges should be advised that as they conduct trials or other pro-

ceedings, care should be taken to avoid public reference to personal identifying data referred to in paragraph 2. They should also be advised to assure that counsel abide by the legal and ethical rules that have been adopted to constrain the misuse of the legal system and that self-represented litigants comply with any rules applicable to them.

6. Nothing in these recommendations and conclusions should be understood to bar any motion currently permitted under law for protective relief.

While these recommendations and conclusions are offered for general guidance in the future, there may be specific cases in which special protection is appropriate before court case files are placed on the Internet. We leave to case-by-case adjudication the resolution of such applications, subject to our view that the basic principles set forth herein should be followed in the absence of a finding that good cause exists justifying that an exception be made.

III. LEGAL AND FACTUAL BACKGROUND

1. The Presumption of Openness

Both New York statutory and common law create a presumption that judicial proceedings and case records are to be open to the public.[5] Section 4 of the Judiciary Law requires that "[t]he sittings of every court within this state shall be public, and every citizen may freely attend the same." Sections 255 and 255-b of the Judiciary Law (the judiciary's analogue to the New York State Freedom of Information Law) require that docket books and court records be public. Section 255 provides that:

> "A clerk of a court must, upon request, and upon payment of or offer to pay, the fees provided allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and documents in his office; and either make one or more transcripts or certificates of change therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, cannot be found."

Section 255-b requires that "[a] docket book, kept by a clerk of the court, must be kept open during the business hours fixed by law, for search and examination by any person."

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5 In light of the clarity with which New York state law presumes a right of access to court proceedings and files, it is unnecessary for us to pass upon the somewhat differing strains reflected in First Amendment law as determined by the United States Supreme Court through the years. *Compare Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) (concluding that there is a general common law but not constitutionally rooted right "to inspect and copy public records and documents") with *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501, 510 (1984) (concluding that First Amendment-rooted presumption of openness of trials "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest").

Section 216.1 of the Uniform Rules for the Trial Courts, creates a presumption of public access to records filed with a court, and prohibits sealing except upon a written finding of good cause. 22 NYCRR § 216.1.

Numerous cases emphasize the value placed on open court proceedings and records. In *Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d 430 (1979), the Court of Appeals summarized the many salutary purposes that such openness offers in the context of a criminal case: *i.e.*, protecting the accused from "unjust prosecution by public officials," insuring justice for the accused and "instill[ing] a sense of public trust in our judicial process." 48 N.Y.2d at 437.

More recently, this view was echoed by the First Department in a civil case, *Danco Laboratories, Ltd. v. Chemical Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1 (1st Dep't 2000), where the *Washington Post* successfully sought to obtain access to previously sealed court records in a commercial dispute involving the manufacturer of an abortifacient drug, RU-486, regarding its possible distribution and sale in the United States. The court, relying on federal constitutional principles set forth in prior case law, noted that the public's interest in access to court proceedings and records often is as strong, or even stronger, in civil cases as it is in criminal cases. 274 A.D.2d at 6. Quoting from the Third Circuit's opinion in *Republic of the Philippines v. Westinghouse Electronic Corp.*, 949 F.2d 653 (3d Cir. 1991), the court stated: "the bright light cast upon the judicial process by public observation diminishes the possibility for injustice, incompetence, perjury, and fraud. Furthermore, the very openness of the process should provide

the public with a more complete understanding of the judicial system and a better perception of fairness." 274 A.D.2d at 7.

2. Exceptions to the Presumption of Openness

While the norm in New York is that court proceedings and records attendant to them must be open, there are exceptions. Section 4 of the Judiciary Law grants the court discretion to exclude the public in certain classes of cases: "in all proceedings and trials in cases for divorce, seduction, abortion, rape, assault with intent to commit rape, sodomy, bastardy or filiation, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court."

The court's discretion to exclude proceedings from public view is not limited to those delineated in Section 4 of the Judiciary Law. Rather, "[t]he inherent power of courts to control the records of their own proceedings has long been recognized in New York .... [T]his power does not depend on statutory grant but exists independently and 'inheres in the very constitution of the court' ...." *In Re Dorothy D*, 49 N.Y.2d 212 (1980) (citations omitted). Courts may, in individual cases, decide to seal all or part of a record, upon their own initiative or upon an application by a party. The extent of a court's discretion under Section 4 of the Judiciary Law is, of course, subject to limitation to be consistent with constitutional norms. *See, e.g., Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501, 510 (1984).

The right to inspect and copy court records has also been limited by numerous statutes. Although it is beyond the scope of this report to include an exhaustive survey of existing exceptions to the presumption of openness referred to above, since case records that are not available to the public because they are sealed or otherwise deemed confidential will, perforce, not be available to the public on the Internet, the Commission believes it will be helpful to identify some of the more obvious examples of such case records.[6]

(a) Family Court Proceeding

Because Section 166 of the Family Court Act provides that the "records of any proceeding in the family court shall not be open to indiscriminate public inspection," Family Court case records generally are not available at the courthouse and would not be available on the Internet. Section 166 permits an exception insofar as the court has discretion to permit inspection of papers or records in a particular case upon an application, but this procedure would not result in the record being available to the public at the courthouse. This statutory framework, therefore, appears to preclude Internet access to Family Court records.

We note the Family Court Act also contains provisions regarding the confidentiality or sealing of particular case files and documents — for example, a case

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6 It is also beyond the scope of this document to outline the provisions of these statutes and rules regarding the circumstances under which access may be obtained to case files that are sealed or deemed confidential by law.

where a delinquency proceeding terminates in favor of the respondent (§ 375.1); order of adoption (§ 114); or court documents consisting of "reports prepared by the probation service or a duly authorized association, agency, society or institution for use by the court" (§ 1047).

(b) Matrimonial Actions

The Domestic Relations Law also includes provisions protecting certain cases between spouses from indiscriminate public inspection. It deems confidential certain files and records in matrimonial actions,[7] as well as in actions or proceedings for custody, visitation or child support.[8] Except by order of the court, "pleadings, affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separation or memorandum thereof, or testimony," may not be copied or examined by any person other than a party, or the attorney or counsel of a party. *See* DRL § 235. These items will, therefore, be unavailable on the Internet.

Although trials or proceedings in a matrimonial action are public, the court or referee may determine that the public interest requires that the examination of the witnesses should not be public, and exclude all persons except the parties to the action

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7 A matrimonial action is defined as including actions for separation, annulment, dissolution, divorce, declaration of nullity of void marriage, declaration of nullity or validity of foreign judgment of divorce, and declaration of nullity or validity of marriage (CPLR § 105(p)).

8 Other types of proceedings between spouses or former spouses may take place that are not encompassed by this statute.

and their counsel. In such matters, the court may order the evidence to be filed with the clerk of the court under seal, to be viewed only by the parties to the action or proceeding or someone interested, on order of the court.

(c) Sealed and Confidential Records

Sealed records may be not be viewed by the public. There are several types of situations in which records are sealed by virtue of existing statutes or rules. Some examples follow:

- *Criminal Cases:* Several New York statutes require the sealing of the record of a criminal case. Section 160.50 of the Criminal Procedure Law mandates that a record be sealed when the criminal case is terminated favorably to the accused, such as when the defendant is acquitted of all charges or the case is dismissed. CPL § 160.50. (Exceptions are covered by CPL § 160.50(1)(d).) CPL § 720.35(2) requires the sealing of a court record in a criminal case in which the defendant is adjudicated a youthful offender. If a criminal matter against a juvenile offender is removed to the Family Court pursuant to CPL Article 725, the record must be sealed. CPL § 725.15.

- *Records Contained in a Court File:* Other records that are not available to the public at the courthouse include:

  - records in a sex offense case that might identify the victim (Civil

Rights Law § 50-b);

- grand jury minutes (CPL § 190.25(4), Penal Law § 215.70);
- probation reports and pre-sentence memoranda (CPL § 390.50);
- records that identify jurors (Judiciary Law § 509(a); Rules of the Chief Administrator of the Courts § 128.14);
- mental health records, including records of commitment, retention and discharge proceedings of the mentally ill and mentally retarded (Articles 9 and 15 of the Mental Hygiene Law) and clinical records submitted in connection with the proceedings (Mental Hygiene Law § 33.13(c));
- orders of commitment of mentally ill inmates (Correction Law § 402);
- records of adoption proceedings (Domestic Relations Law § 114);
- proceedings concerning applications for court approval of marriage licenses for individuals under the age of sixteen (Domestic Relations Law § 15);
- habeas corpus proceedings for a child detained by a parent (Domestic Relations Law § 70);

- special proceedings or habeas corpus to obtain visitation rights in respect of certain infant grandchildren (Domestic Relations Law § 72);

- certain proceedings under the Public Health Law (§ 2301 concerning venereal disease, and § 2785 concerning HIV-related information);

- allowing confidentiality of address or other identifying information in matters in which the court finds that disclosure of such information would pose an unreasonable risk to the health or safety of a party or the child (Family Court Act § 154-b(2));

- instruments filed with the County Clerk regarding guardianship or custody of children in foster care (Social Service Law § 383-c) and not in foster care (Social Service Law § 384).

- *Sealed by Court Order:* In addition, a case record may be sealed by order of the court, pursuant to the provisions of 216.1 of the Uniform Rules for the New York State Trial Courts, which provides that, where a case file is not otherwise sealed by statute or rule, the court "shall not" enter an order sealing the court records in whole or in part except on "a written finding of good cause, which shall specify the grounds therefor." In deciding whether good cause exists to seal records, the court must consider the interests of the

public as well as the parties. *See* George F. Carpinello, *Public Access to Court Records in New York: The Experience under Uniform Rule 216.1 and the Rule's Future in a World of Electronic Filing*, 66 Albany L. Rev. 1089 (2003).

- *Confidential or Sealed by Court Rule:* Court rules also address confidentiality and sealing of particular types of information:
  - juror questionnaires and other juror records (Rules of the Chief Administrator of the Courts § 128.14(a));
  - proceedings under the fee dispute resolution program, including any arbitration case file (Rules of the Chief Administrator of the Courts § 137.10).
- *Confidential by Federal Law:* In addition, federal law contains confidentiality protections for certain types of records, including:
  - Alcohol or drug treatment records (42 U.S.C. § 290dd-2; 42 CFR Part 2.31, et seq.);
  - certain criminal history information (28 C.F.R. § 20);
  - Social Security numbers (42 U.S.C. § 405(c)(2)(C)(viii)(I));
  - educational information (20 U.S.C. 1232g);

- research involving human subjects (28 C.F.R. Part 46).

IV. CURRENT COURT RECORDS ACCESS PRACTICES OF THE NEW YORK STATE UNIFIED COURT SYSTEM

1. Access to Paper Records at the Courthouse

The New York State Unified Court System currently provides public access to court records not restricted by statute or court rule at the courthouse or County Clerk's office pursuant to the Judiciary Law and other applicable law. The County Clerk is the custodian of court records for Supreme and County Courts.[9] Generally, a person seeking access to case records comes to the courthouse or the County Clerk's office and requests the record by filling out a form that indicates the docket number and the documents being sought. In some instances in which the docket number is not known, the person making the inquiry may ask the clerk for assistance in locating the docket number using a party or attorney name or the requestor may be provided access to a computer terminal that permits her to search for the case using the name of one or more litigants or attorneys or by reviewing a judge's calendar. Once the request is made, the clerk locates the file and provides it to the requestor for inspection or copying. The court may charge for copying the file, and this is usually done utilizing copy machines that require a per-page charge. The file is then returned to the clerk.

In many instances, those seeking regular access to case records hire professional services to review daily court calendars and retrieve all of the case records

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[9] We note that in all jurisdictions around the state, other than New York City, the County Clerk is an elected official, not under the direct supervision of the UCS.

filed in connection with cases of interest. In some instances, these professional services have been known to scan case records and make them available electronically to paying clients.

2. Electronic Access

Eager to provide easy and open access to court information of interest to the public, the UCS, through its "E-Courts" initiative, currently makes certain trial court index information (*i.e.*, lists of case name, party and attorney names, index number, judge, and description of significant case activity and dates) available electronically via the Internet free of charge. Judges' calendars, information about future court appearances, and selected decisions are also currently available online via the Internet.

E-Courts currently provides Supreme Court civil decisions from 28 counties and Supreme Court criminal and other criminal court decisions from 13 counties. In addition it provides access via links to decisions posted on the following court Web sites: Court of Appeals, Appellate Division (all departments) and Court of Claims. It also provides a link to the Law Reporting Bureau Web site, which posts all decisions of the Court of Appeals, Appellate Division (all departments), and Appellate Term; as well as all trial court decisions selected for publication in the Miscellaneous Reports (including those selected only for on-line publication).

The Law Reporting Bureau screens all decisions posted to its Web site for compliance with statutes requiring anonymity for persons named in text. Where a decision violates the anonymity rule, the Law Reporting Bureau consults with the authoring

judge on making a correction, posts the corrected decision to its Web site, and notifies commercial information services that a corrected decision has been issued.

In addition, the UCS is engaged in an electronic filing pilot in selected jurisdictions around the state. The electronic filing pilot permits the electronic filing of cases in certain Commercial Division, Court of Claims, and tax certiorari cases only if all of the parties agree voluntarily to participate. The pilot has been particularly successful in the context of tax certiorari cases (over 6,000 filings in 2003) but has had limited success in the Commercial Division, Court of Claims and other case types. One reason for limited participation appears to be the requirement that all parties are required to consent to participate in the pilot and that participation is usually initiated by one of the parties to the litigation (and then rejected by others). Another may stem from uncertainty about the treatment of private or sensitive information and concern that electronically filed documents will be made available over the Internet. As stated above, the Commission's view is that courts should treat private or confidential material in electronic form in the same manner it treats such material in paper form. In that respect, the Commission has proposed that certain personal indentifying data should not be made public in court records, whether maintained in paper or electronic form. As for more generalized concerns about disclosure of public case records on the Internet, the Commission has determined that across-the-board distinctions in the treatment of public case files should not be made based upon whether information is maintained in electronic or paper form.

V. THE COMMISSION'S WORK

The Commission went about the task of gathering relevant information, identifying pertinent issues, obtaining broad-based input, and crafting recommendations in essentially three stages.

1. Preliminary Deliberations

The Commission's preliminary deliberations took place over the course of several regular meetings during which Commission members were introduced to current UCS paper and electronic records rules and practices and to the range of concerns and points of view that had been raised in developing electronic access policies that balanced the interest in broad public access with concerns about privacy, security, fair trial rights, and effective administration. The Commission established subcommittees to review relevant law, technology issues, existing policy development, and practices in other states and on the Federal level. The Commission established a Web site, www.nycourts.gov/publicaccess, to serve as a resource for the public and to permit easy access to information sharing.

2. Public Hearings

To provide an opportunity for broad input on the questions of public access, privacy, security, due process, and other concerns related to electronic access to court records, the Commission conducted three public hearings about New York State: in Albany on May 16, 2003; in New York City on May 30, 2003; and in Buffalo on June 12, 2003. (A copy of the public hearing notice is attached as Exhibit A.) From the first tes-

timony in Albany of the founder of RID, a group dedicated to removing intoxicated drivers from the road, to the last in Buffalo of the publisher of four community newspapers in western New York, the Commission heard a wide range of views from members of the public, members of the bar, representatives of the media, bar associations, the New York State Attorney General's office, the Association of Chief Clerks of Surrogate's Courts, advocates for victims of domestic violence and from a County Clerk.

Through these public hearings, the Commission gained the benefit of a broad range of views, some of which are summarized below. Transcripts of the entire public hearings and written statements submitted to the Commission are posted on the Web site.

- The Commission heard testimony from a variety of viewpoints as to the benefit of providing Internet access to court case records. County clerks testified that Internet access would enable them to better serve the public and would free resources but offered warnings about the personal nature of some information already deemed public. Media entities testified that Internet access improves both the quality of journalism and the ability of the public to test the accuracy and fairness of journalism. Attorneys testified that Internet access would help them more efficiently serve their clients. A broad range of witnesses testified that Internet access will improve public understanding of the judicial system and processes.

- While the Commission heard testimony from a broad range of media entities,

ranging from small regional newspapers to *The New York Times*, in support of broad public Internet access to court records, virtually all of these entities acknowledged that some limitations on specific private information may be warranted and that, although they require certain individual identifiers, information such as Social Security numbers does not significantly improve their ability to report the news.

- The Commission also heard testimony from an array of witnesses, including advocates for victims of domestic abuse, stalking victims, and others, who asserted that personal identifying information in court case records may pose a risk to the security of individuals when made available remotely over the Internet.

- A number of witnesses, including the Reporters Committee for Freedom of the Press and the New York State Bar Association Federal and Commercial Litigation Section specifically supported, in part or in whole, the approach taken in the new federal rules regarding Internet access to court records.

3. The Commission's Focus

Following the public hearings, the Commission focused its inquiry on the arguments and approaches that appeared most appropriately to balance the interest in open access against the various competing concerns articulated. The recommendations set forth above are the result of this process and represent an approach that includes many elements contained in the Federal courts' policy regarding public access to court records,

with some departures designed to take into account specific circumstances, practices, or goals of the New York State UCS.

CONCURRING AND MINORITY REPORT
COMMISSION ON PUBLIC ACCESS TO COURT RECORDS

The Minority supports the Report of the Commission and its conclusions, except with respect to the following reservations applicable to part II, section 1 of the Commission's report. With respect to that portion, the Minority agrees with the basic conclusion of the Report that court records are generally public; that they should be widely available, and accessible on the Internet. However, the Minority does not agree that the rules for public access for paper and Internet records must in all respects be the same.

Although court records generally have been considered public, this does not answer the question of whether the court records should be published on the Internet immediately upon filing. To be sure, the historically public nature of court records is an important point, but concerns over privacy and the inadvertent or improvident disclosures of non-public information are important as well. A limited time period during which adverse parties may object to inclusion of information in an Internet publication is appropriate, and consistent with the public interest.

The Minority proposes a provision such as the following suggested new paragraph (9) to subdivision (e) of section 202.5-a of the Uniform Rules:

> **(9) Papers not yet under direct judicial consideration shall be available to nonparties on the IAS website __ days following filing, provided that such papers shall upon filing be made available at the court clerk's office upon request of any person, and further provided that the court may sua sponte or on application of any person suspend the application of this rule and direct that papers in an action be available to nonparties upon filing on the IAS website.**

The period of time to be inserted in the above rule was left open for purposes of debating the general proposition, but as the general proposition of a delay was rejected by the Majority,

the actual time period has not been settled for a recommendation. Such a time period should provide a reasonable opportunity for parties in a case to object to a filing, prior to it becoming available on the Internet. It is the view of the Minority that this period could be generally fixed, but subject to reduction on a case to case basis depending on the nature of the litigation.

The lag procedure is simple, generally automatic, and in the vast number of cases where no unusual public interest is evident, it would work without court involvement. Motion practice and sealing orders could ultimately be reduced in number by such a procedure. Redaction or withdrawal of sensitive information upon request of adversary counsel would be possible. Any party truly interested enough to determine what a particular filing contains, could await the expiration of the lag or immediately obtain access to the papers at the county clerk's office. In cases of public interest, the lag rule could be suspended by the parties or the court on the motion of any person.

On the other hand, the accommodation of privacy concerns could be seriously hampered in the event that electronically filed court papers are immediately available on the Internet. Once made public on the Internet, the subsequent sealing or protective order may be ineffectual, due to technologies that can copy and make available for reproduction anything once made public on the court system's WebPages.

The treatment of electronic papers differently from other court papers is not revolutionary. In the development of the model policy on public access to court records prepared on behalf of the Conference of Chief Justices and the Conference of State Court Administrators by the National Center for State Courts and the Justice Management Institute, it was proposed that a category of court records be identified for presumptive electronic availability to the public. These

did not include all filings, but generally included litigant/party indices; lists of new case filings; registries of actions showing documents that have been filed; calendars of court proceedings, final judgments, orders and similar dispositive matters (see Model Policy on Public Access §4.70 Court Records In Electronic Form Presumptively Subject To Remote Access By The Public).

With respect to requests to exclude public access to court records, the Model Policy suggests a balancing of the risk of harm to the individual, against the public interest in access to court records (see Model Policy §4.60). The delicacy of such a determination argues strongly in favor of a procedure that allows sufficient time for it to be effectively made.

For over a decade New York has had a rule relating to the sealing of court records (see 22 NYCRR §216.1). Recently, in a thoughtful article in the Albany Law Review, George F. Carpinello, Esq. noted that the New York rule on sealing of court records has generally worked well, but that electronic filing and availability of documents over the Internet raises special problems, and dramatically increases the risk of misuse (see 66 Albany Law Review, pp. 1089-1023, at 1022). While the proponents of the Minority Report do not advocate change in the standards with respect to sealing of court records or protective orders, they do propose the lag for purposes of allowing time for an effective motion to be made.

It is submitted that immediate availability of electronically filed court records is not required as a matter of constitutional law. As noted by the United States Court of Appeals for the Second Circuit in United States v. Amodeo, 44 F. 3d 141 (2nd Cir. 1995); 71 F. 3d 1044 (2nd Cir. 1995), the filing of a document with the court does not in and of itself create the presumption of access. Rather, the Amodeo Court recognized that granting public access to court records serves the purpose of assuring accuracy and fairness of judicial proceedings through public oversight.

The Court noted that disclosure documents, or other papers that are not directly involved in the Court's decision, would not if published advance the fundamental purpose of open court access. It follows that there are many things that may be disclosed during the discovery phase of a case that may not be presumptively public.

When such documents are filed, the act of filing may precede the nexus with the court's adjudicative functioning, and that nexus is the point on which the constitutional right of access depends (see Amodeo, *supra*). While there are strong arguments in favor of a general rule allowing for the maximum amount of public access to filed court records, it does not follow that immediate Internet access is required by the cases presently decided, nor necessarily as a matter of constitutional law.

Litigation in New York State Courts is far wider in topical scope than the type of litigation conducted in federal courts, and often would involve sensitive personal information such as medical or personnel records, financial information, trade secrets, etc. Often such information would not be covered under the description of sensitive information in the Majority Report. New York civil practice discovery rules are extremely broad, and invite inquiry into any matter that may conceivably lead to evidence. While counsel frequently enter into stipulations of confidentiality regarding discovery matters, it is difficult to predict in advance the information that might, if publicized, provide scant advancement to the litigation but at the same time cause significant discomfort or damage. At other junctures of the case, as for example during *voir dire* questioning, the scope of inquiry may involve persons who are not even parties to the litigation, but whose answers to counsel's inquires may involve court submissions and significant privacy issues. While such matters might ultimately be appropriately public, and even presumptively so,

immediate Internet access would render the determination of the private nature of information moot.

For the past several years, New York State has conducted an experiment on electronic filing of court papers through the Filing By Electronic Means (FBEM) system (see 22 NYCRR 202.5-a). The availability of such electronically filed court records promises great public benefit, through better access to court records, convenience of the parties and improved review of the actions of the judicial branch of government. However, the prospect of Internet availability of court papers has raised significant privacy concerns. These concerns repeatedly have been expressed by legislative representatives in the legislative authorization process, and by the attorneys who have participated in the pilot program.

The predominant limit on the use of the FBEM system has been the concern over the availability of court papers on the Internet. Even in cases involving purely commercial matters, and matters which typically would raise little or no public interest, attorneys nonetheless express reluctance[10] to subject court papers to technologies that allow Internet publication. Such publication, of course, may in many cases be a good thing, notwithstanding the reluctance of the parties or their counsel. However, Internet filings, in actual practice, are recognized as being different from filings at the court house. This recognition supports the advisability of a tempered approach, and a lag is a less aggressive measure than automatic Internet publication.

The Minority also is of the view that increasing the Bar's acceptance of electronically

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10 When provided with the opportunity to file papers in a secure form without making them publicly available on the Internet, virtually all of the subsequent filings have been made on a confidential basis.

filed court papers is in the public interest. If such papers are promptly made available on the Internet after reasonable opportunity for inquiry, with a procedure that allows for suspension of the delay in cases of public interest, the concerns of the public and litigants in privacy matters, and the interest of the public in the right to know what is proceeding in the judicial branch of government, will both be advanced.

The general, immediate and probably irrevocable public availability of court papers on the Internet strikes the members of the Minority as being neither necessary, nor at this juncture, wise. Such a rule would likely inhibit the proliferation of the electronic filing of documents, and ultimately, the availability of court papers in electronic form to the public in general.

Respectfully submitted,

Thomas F. Gleason
Member of the Commission

NOTICE OF PUBLIC HEARINGS

Commission on Public Access to Court Records

***The Commission on Public Access to Court Records** will be conducting three public hearings this Spring. The Commission was appointed by Chief Judge Judith S. Kaye to examine the future availability of court case records on the Internet. It will focus on the competing interests of privacy and the public interest in access to information in court case files. The work of the Commission relates to state court case records filed in or converted to electronic form in courts throughout New York State.*

THE PURPOSE OF THE PUBLIC HEARINGS is to receive the views of interested individuals and organizations with regard to the issues surrounding the future availability of court case records on the Internet. The Commission seeks comment on the following issues:

1. In light of the recognized public interest that is served by having court case records available for public inspection, are there any privacy concerns that should limit public access to those records on the Internet?
2. Should any information that is currently deemed public be subject to greater restrictions if made available for public access on the Internet by the Unified Court System? For example, when public court records contain an individual's Social Security identification number, credit card numbers, bank or investment account numbers or other personal identifying information, should privacy concerns limit their disclosure on the Internet?
3. If such personal identifying information should not be made available on the Internet, how should that information be eliminated from electronic/Internet availability?
4. If there are any limitations or restrictions to be placed on the dissemination of court records on the Internet, what role should be played by the courts, by attorneys or by others?
5. Should the public be charged a fee to access court case records on the Internet?
6. What information should a member of the public need in order to search case records on the Internet? Should a search require the name of a litigant or index number, or some other limited method, or should full text searches be available?

The hearings will take place from 1:00 P.M. to 5:00 P.M. at the following dates and locations:

ALBANY . . . . . .MAY 16, 2003
Legislative Office Building
Hearing Room C., Empire State Plaza

NEW YORK CITY . . . . . .MAY 30, 2003
Association of the Bar of the City of New York
42 West 44th Street (Bet. 5th & 6th), N.Y., N.Y.

BUFFALO . . . . . .JUNE 12, 2003
Supreme Court, Part 6
92 Franklin Street, Buffalo, N.Y.

ALL THOSE INTERESTED IN TESTIFYING should register at least 10 days before the hearing date by E-mail at publicaccess@courts.state.ny.us or by contacting **MELANIE SUE AT 212-428-2100.** Prior to the hearing, you will receive a time frame for your testimony. Comments should be limited to 10 minutes, but the Commission welcomes written submissions. If you are unable to attend the hearing but are interested in providing your views you may do so by E-mail or by mailing your written comments to the address below.

THE COMMISSION WILL NOT ADDRESS court records that are already unavailable to the public in the absence of a court order because they are protected by law, including, but not limited to:

- Documents filed in matrimonial actions, including child custody, visitation and support proceedings;
- Documents filed in family court proceedings, including abuse, neglect, support, custody and paternity proceedings;
- Documents containing the identity of victims of sexual offenses;
- Documents containing confidential HIV-related information;
- Pre-sentence reports and memoranda in criminal proceedings;
- Documents sealed pursuant to a lawful court order

COMMISSION ON PUBLIC ACCESS TO COURT RECORDS
C/O NEW YORK STATE UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
Attn: Melanie Sue

E-mail: publicaccess@courts.state.ny.us

For further information about the Commission and the hearings, please visit the Commission's website:

www.nycourts.gov/publicaccess

EXHIBIT 2

REPORT ON PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

Judicial Conference Committee on Court Administration and Case Management

Reviewed by the Committees on Court Administration and Case Management, Criminal Law, Automation and Technology, Rules of Practice and Procedure and the Administration of the Bankruptcy System and submitted to the Judicial Conference for approval

June 26, 2001

Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files

The Judicial Conference of the United States requested that its Committee on Court Administration and Case Management examine issues related to privacy and public access to electronic case files. The Committee on Court Administration and Case Management formed a special subcommittee for this purpose. This subcommittee, known as the Subcommittee on Privacy and Public Access to Electronic Case Files, consisted of four members of the Committee on Court Administration and Case Management: Judge John W. Lungstrum, District of Kansas, Chair; Judge Samuel Grayson Wilson, Western District of Virginia; Judge Jerry A. Davis, Magistrate Judge, Northern District of Mississippi; and Judge J. Rich Leonard, Bankruptcy Judge, Eastern District of North Carolina, and one member from each of four other Judicial Conference Committees (liaison Committees): Judge Emmet Sullivan, District of Columbia, liaison from the Committee on Criminal Law; Judge James Robertson, District of Columbia, liaison from the Committee on Automation and Technology; Judge Sarah S. Vance, Eastern District of Louisiana, liaison from the Committee on the Administration of the Bankruptcy System; and Gene W. Lafitte, Esq., Liskow and Lewis, New Orleans, Louisiana, liaison from the Committee on the Rules of Practice and Procedure. After a lengthy process described below, the Subcommittee on Privacy and Public Access to Electronic Case Files, drafted a report containing recommendations for a judiciary-wide privacy and access policy.

The four liaison Committees reviewed the report and provided comments on it to the full Committee on Court Administration and Case Management. After carefully considering these comments, as well as comments of its own members, the Committee on Court Administration and Case Management made several changes to the subcommittee report, and adopted the amended report as its own.

Brief History of the Committee's Study of Privacy Issues

The Committee on Court Administration and Case Management, through its Subcommittee on Privacy and Public Access to Electronic Case Files (the Subcommittee) began its study of privacy and security concerns regarding public electronic access to case file information in June 1999. It has held numerous meetings and conference calls and received information from experts and academics in the privacy arena, as well as from court users, including judges, court clerks, and government agencies. As a result, in May 2000, the Subcommittee developed several policy options and alternatives for the creation of a judiciary-wide electronic access privacy policy which were presented to the full Committee on Court Administration and Case Management and the liaison committees at their Summer 2000 meetings. The Subcommittee used the opinions and feedback from these committees to further refine the policy options.

In November 2000, the Subcommittee produced a document entitled "Request for Comment on Privacy and Public Access to Electronic Case Files," a copy of which is attached. This document contains the alternatives the Subcommittee perceived as viable following the committees' feedback. The Subcommittee published this document for public comment from November 13, 2000 through January 26, 2001. A website at www.privacy.uscourts.gov was established to publicize the comment document and to collect the comments. Two hundred forty-two comments were received from a very wide range of interested persons including private citizens, privacy rights groups, journalists, private investigators, attorneys, data re-sellers and representatives of the financial services industry. Those comments, in summary and full text format, are available at that website.

On March 16, 2001, the Subcommittee held a public hearing to gain further insight into the issues surrounding privacy and access. Fifteen individuals who had submitted written comments made oral presentations to and answered the questions of Subcommittee members. Following the hearing, the Subcommittee met, considered the comments received, and reached agreement on the policy recommendations contained in this document.

Background

Federal court case files, unless sealed or otherwise subject to restricted access by statute, federal rule, or Judicial Conference policy, are presumed to be available for public inspection and copying. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) (holding that there is a common law right "to inspect and copy public records and documents, including judicial records and documents"). The tradition of public access to federal court case files is also rooted in constitutional principles. *See Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 575-78 (1980). However, public access rights are not absolute, and courts balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The authority to protect personal privacy and other legitimate interests in nondisclosure is based, like public access rights, in common law and constitutional principles. *See Nixon*, 435 U.S. at 596 ("[E]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes").

The term "case file" (whether electronic or paper) means the collection of documents officially filed by the litigants or the court in the context of litigation, the docket entries that catalog such filings, and transcripts of judicial proceedings. The case file generally does not include several other types of information, including non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff, and various documents that are sometimes known as "left-side" file material. Sealed material, although part of the case file, is accessible only by court order.

Certain types of cases, categories of information, and specific documents may require special protection from unlimited public access, as further specified in the sections on civil, criminal, bankruptcy and appellate case files below. *See United States Department of Justice v. Reporters Committee for Freedom of the Press,* 489 U.S. 749 (1989) (noting that technology may affect the balance between access rights and privacy and security interests). To a great extent, these recommendations

rely upon counsel and litigants to act to protect the interests of their clients and themselves. This may necessitate an effort by the courts to educate the bar and the public about the fact that documents filed in federal court cases may be available on the Internet.

It is also important to note that the federal courts are not required to provide electronic access to case files (assuming that a paper file is maintained), and these recommendations do not create any entitlement to such access. As a practical matter, during this time of transition when courts are implementing new practices, there may be disparity in access among courts because of varying technology. Nonetheless, the federal courts recognize that the public should share in the benefits of information technology, including more efficient access to court case files.

These recommendations propose privacy policy options which the Committee on Court Administration and Case Management (the Committee) believes can provide solutions to issues of privacy and access as those issues are now presented. To the extent that courts are currently experimenting with procedures which differ from those articulated in this document, those courts should reexamine those procedures in light of the policies outlined herein. The Committee recognizes that technology is ever changing and these recommendations may require frequent re-examination and revision.

Recommendations

The policy recommended for adoption by the Judicial Conference is as follows:

General Principles

1. There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.

2. Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the Internet.

3. Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.

4. Except where otherwise noted, the policies apply to both paper and electronic files.

5. Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.

6. The availability of case files at the courthouse will not be affected or limited by these policies.

7. Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

Case Types

Civil Case Files

Recommendation: That documents in civil case files should be made available electronically to the same extent that they are available at the courthouse with one exception (Social Security cases should be excluded from electronic access) and one change in policy (the requirement that certain "personal data identifiers" be modified or partially redacted by the litigants). These identifiers are Social Security numbers, dates of birth, financial account numbers and names of minor children.

The recommendation provides for liberal remote electronic access to civil case files while also adopting some means to protect individual privacy. Remote electronic access will be available only through the PACERNet system which requires registration with the PACER service center and the use of a log in and password. This creates an electronic trail which can be retraced in order to determine who accessed certain information if a problem arises. Further, this recommendation contemplates that certain personal, identifying information will not be included in its full and complete form in case documents, whether electronic or hard copy. For example, if the Social Security number of an individual must be included in a document, only the last four digits of that number will be used whether that document is to be filed electronically or at the courthouse. If the involvement of a minor child must be mentioned, only that child's initials should be used; if an individual's date of birth is necessary, only the year should be used; and, if financial account numbers are relevant, only the last four digits should be recited in the document. It is anticipated that as courts develop local rules and instructions for the use and implementation of Electronic Case Filing (ECF), such rules and instructions will include direction on the truncation by the litigants of personal identifying information. Similar rule changes would apply to courts which are imaging documents.

Providing remote electronic access equal to courthouse access will require counsel and pro se litigants to protect their interests through a careful review of whether it is essential to their case to file certain documents containing private sensitive information or by the use of motions to seal and for protective orders. It will also depend upon the discretion of judges to protect privacy and security interests as they arise in individual cases. However, it is the experience of the ECF prototype courts and courts which have been imaging documents and making them electronically available that reliance on judicial discretion has not been problematic and has not dramatically increased or altered the amount and nature of motions to seal. It is also the experience of these courts that have been making

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their case file information available through PACERNet that there have been virtually no reported privacy problems as a result.

This recommended "public is public" policy is simple and can be easily and consistently applied nationwide. The recommended policy will "level the geographic playing field" in civil cases in federal court by allowing attorneys not located in geographic proximity to the courthouse easy access. Having both remote electronic access and courthouse access to the same information will also utilize more fully the technology available to the courts and will allow clerks' offices to better and more easily serve the needs of the bar and the public. In addition, it might also discourage the possible development of a "cottage industry" headed by data re-sellers who, if remote electronic access were restricted, could go to the courthouse, copy the files, download the information to a private website, and charge for access to that website, thus profiting from the sale of public information and undermining restrictions intended to protect privacy.

Each of the other policy options articulated in the document for comment presented its own problems. The idea of defining what documents should be included in the public file was rejected because it would require the courts to restrict access at the courthouse to information that has traditionally been available from courthouse files. This would have the net effect of allowing less overall access in a technological age where greater access is easy to achieve. It would also require making the very difficult determination of what information should be included in the public file.

The Committee seriously considered and debated at length the idea of creating levels of access to electronic documents (i.e., access to certain documents for specific users would be based upon the user's status in the case). The Committee ultimately decided that levels of access restrictions were too complicated in relation to the privacy benefits which could be derived therefrom. It would be difficult, for example, to prohibit a user with full access to all case information, such as a party to the case, from downloading and disseminating the restricted information. Also, the levels of access would only exist in relation to the remote electronic file and not in relation to the courthouse file. This would result in unequal remote and physical access to the same information and could foster a cottage industry of courthouse data collection as described above.

Seeking an amendment to the Federal Rules of Civil Procedure was not recommended for several reasons. First, any such rules amendment would take several years to effectuate, and the Committee concluded that privacy issues need immediate attention. There was some discussion about the need for a provision in Fed. R. Civ. P. 11 providing for sanctions against counsel or litigants who, as a litigation tactic, intentionally include scurrilous or embarrassing, irrelevant information in a document so that this information will be available on the Internet. The Committee ultimately determined that, at least for now, the current language of Fed. R. Civ. P. 11 and the inherent power of the court are sufficient to deter such actions and to enforce any privacy policy.

As noted above, this recommendation treats Social Security cases differently from other civil case files. It would limit remote electronic access. It does contemplate, however, the existence of a skeletal electronic file in Social Security cases which would contain documents such as the complaint,

answer and dispositive cross motions or petitions for review as applicable but **not** the administrative record and would be available to the court for statistical and case management purposes. This recommendation would also allow litigants to electronically file documents, except for the administrative record, in Social Security cases and would permit electronic access to these documents by litigants only.

After much debate, the consensus of the Committee was that Social Security cases warrant such treatment because they are of an inherently different nature from other civil cases. They are the continuation of an administrative proceeding, the files of which are confidential until the jurisdiction of the district court is invoked, by an individual to enforce his or her rights under a government program. Further, all Social Security disability claims, which are the majority of Social Security cases filed in district court, contain extremely detailed medical records and other personal information which an applicant must submit in an effort to establish disability. Such medical and personal information is critical to the court and is of little or no legitimate use to anyone not a party to the case. Thus, making such information available on the Internet would be of little public benefit and would present a substantial intrusion into the privacy of the claimant. Social Security files would still be available in their entirety at the courthouse.

Criminal Case Files

Recommendation: That public remote electronic access to documents in criminal cases should not be available at this time, with the understanding that the policy will be reexamined within two years of adoption by the Judicial Conference.

The Committee determined that any benefits of public remote electronic access to criminal files were outweighed by the safety and law enforcement risks such access would create. Routine public remote electronic access to documents in criminal case files would allow defendants and others easy access to information regarding the cooperation and other activities of defendants. Specifically, an individual could access documents filed in conjunction with a motion by the government for downward departure for substantial assistance and learn details of a defendant's involvement in the government's case. Such information could then be very easily used to intimidate, harass and possibly harm victims, defendants and their families.

Likewise, routine public remote electronic access to criminal files may inadvertently increase the risk of unauthorized public access to preindictment information, such as unexecuted arrest and search warrants. The public availability of this information could severely hamper and compromise investigative and law enforcement efforts and pose a significant safety risk to law enforcement officials engaged in their official duties. Sealing documents containing this and other types of sensitive information in criminal cases will not adequately address the problem, since the mere fact that a document is sealed signals probable defendant cooperation and covert law enforcement initiatives.

The benefit to the public of easier access to criminal case file information was not discounted by the Committee and, it should be noted that, opinions and orders, as determined by the court, and

criminal docket sheets will still be available through court websites and PACER and PACERNet. However, in view of the concerns described above, the Committee concluded that individual safety and the risk to law enforcement personnel significantly outweigh the need for unfettered public remote access to the content of criminal case files. This recommendation should be reconsidered if it becomes evident that the benefits of public remote electronic access significantly outweigh the dangers to victims, defendants and their families, and law enforcement personnel.

Bankruptcy Case Files

Recommendation: That documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; that § 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full Social Security number but display only the last four digits.

The Committee recognized the unique nature of bankruptcy case files and the particularly sensitive nature of the information, largely financial, which is contained in these files; while this recommendation does provide open remote electronic access to this information, it also accommodates the privacy concerns of individuals. This recommendation contemplates that a debtor's personal, identifying information and financial account numbers will not be included in their complete forms on any document, whether electronic or hard copy (i.e., only the last four digits of Social Security and financial account numbers will be used). As the recommendation recognizes, there may be a need to amend the Bankruptcy Code to allow only the last four digits of an individual debtor's Social Security number to be used. The bankruptcy court will collect the full Social Security number of debtors for internal use, as this number appears to provide the best way to identify multiple bankruptcy filings. The recommendation proposes a minor amendment to § 107(a) to allow the court to collect the full number, but only display the last four digits. The names of minor children will not be included in electronic or hard copies of documents.

As with civil cases, the effectiveness of this recommendation relies upon motions to seal filed by litigants and other parties in interest. To accomplish this result, an amendment of 11 U.S.C. § 107(b), which now narrowly circumscribes the ability of the bankruptcy courts to seal documents, will be needed to establish privacy and security concerns as a basis for sealing a document. Once again, the experiences of the ECF prototype and imaging courts do not indicate that this reliance will cause a large influx of motions to seal. In addition, as with all remote electronic access, the information can only be reached through the log-in and password- controlled PACERNet system.

The Committee rejected the other alternatives suggested in the comment document for various reasons. Any attempt to create levels of access in bankruptcy cases would meet with the same problems discussed with respect to the use of levels of access for civil cases. Bankruptcy cases

present even more issues with respect to levels of access because there are numerous interests which would have a legitimate need to access file information and specific access levels would need to be established for them. Further, many entities could qualify as a "party in interest" in a bankruptcy filing and would need access to case file information to determine if they in fact have an interest. It would be difficult to create an electronic access system which would allow sufficient access for that determination to be made without giving full access to that entity.

The idea of collecting less information or segregating certain information and restricting access to it was rejected because the Committee determined that there is a need for and a value in allowing the public access to this information. Further, creating two separate files, one totally open to the public and one with restricted access, would place a burden on clerks' offices by requiring the management of two sets of files in each case.

Appellate Case Files

Recommendation: That appellate case files be treated at the appellate level the same way in which they are treated at the lower level.

This recommendation acknowledges the varying treatment of the different case types at the lower level and carries that treatment through to the appellate level. For cases appealed to the district court or the court of appeals from administrative agencies, the documents in the appeal will be treated, for the purposes of remote electronic access, in the same manner in which they were treated by the agency. For cases appealed from the district court, the case file will be treated in the manner in which it was treated by the district court with respect to remote electronic access.

Attachment

Request for Comment on Privacy and Public Access to Electronic Case Files

The federal judiciary is seeking comment on the privacy and security implications of providing electronic public access to court case files. The Judicial Conference of the United States is studying these issues in order to provide policy guidance to the federal courts. This request for public comment addresses several related issues:

the judiciary's plans to provide electronic access to case files through the Internet;
the privacy and security implications of public access to electronic case files;
potential policy alternatives and the appropriate scope of judicial branch action in this area.

The judiciary is interested in comments that address any of the issues raised in this document, including whether it is appropriate for the judiciary to establish policy in this area. All comments should be received by 5:00 p.m. January 26, 2001 and must include the name, mailing address and phone number of the commentator.

All comments should also include an e-mail address and a fax number, where available, as well as an indication of whether the commentator is interested in participating in a public hearing, if one is held. The public should be advised that it may not be possible to honor all requests to speak at any such hearing.

The electronic submission of comments is highly encouraged. Electronic comments may be submitted at www.privacy.uscourts.gov or via e-mail to Privacy_Policy_Comments@ao.uscourts.gov . Comments may be submitted by regular mail to The Administrative Office of the United States Courts, Court Administration Policy Staff, Attn: Privacy Comments, Suite 4-560, One Columbus Circle, N.E. Washington, DC 20544.

Electronic Public Access to Federal Court Case Files

The federal courts are moving swiftly to create electronic case files and to provide public access to those files through the Internet. This transition from paper files to electronic files is quickly transforming the way case file documents may be used by attorneys, litigants, courts, and the public. The creation of electronic case files means that the ability to obtain documents from a court case file will no longer

depend on physical presence in the courthouse where a file is maintained. Increasingly, case files may be viewed, printed, or downloaded by anyone, at any time, through the Internet.

Electronic files are being created in two ways. Many courts are creating electronic images of all paper documents that are filed, in effect converting paper files to electronic files. Other courts are receiving court filings over the Internet directly from attorneys, so that the "original" file is no longer a paper file but rather a collection of the electronic documents filed by the attorneys and the court. Over the next few years electronic filing, as opposed to making images of paper documents, will become more common as most federal courts begin to implement a new case management system, called Case Management/Electronic Case Files (or "CM/ECF"). That system gives each court the option to create electronic case files by allowing lawyers and parties to file their documents over the Internet.

The courts plan to provide public access to electronic files, both at the courthouse and beyond the courthouse, through the Internet. The primary method to obtain access will be through Public Access to Court Electronic Records (or "PACER"), which is a web-based system that will contain both the dockets (a list of the documents filed in the case) and the actual case file documents. Individuals who seek a particular document or case file will need to open a PACER account and obtain a login and password. After obtaining these, an individual may access case files – whether those files were created by imaging paper files or through CM/ECF – over the Internet. Public access through PACER will involve a fee of $.07 per page of a case file document or docket viewed, downloaded or printed. This compares favorably to the current $.50 per page photocopy charge. Electronic case files also will be available at public computer terminals at courthouses free of charge.

Potential Privacy and Security Implications of Electronic Case Files

Electronic case files promise significant benefits for the courts, litigants, attorneys, and the public. There is increasing awareness, however, of the personal privacy implications of unlimited Internet access to court case files. In the court community, some have begun to suggest that case files – long presumed to be open for public inspection and copying unless sealed by court order – contain private or sensitive information that should be protected from unlimited public disclosure and dissemination in the new electronic environment. Others maintain that electronic case files should be treated the same as paper files in terms of public access and that existing court practices are adequate to protect privacy interests.

Federal court case files contain personal and sensitive information that litigants and third parties often are compelled by law to disclose for adjudicatory purposes. Bankruptcy debtors, for example, must divulge intimate details of their financial affairs for review by the case trustee, creditors, and the judge. Civil case files may contain medical records, personnel files, proprietary information, tax returns, and other sensitive information. Criminal files may contain arrest warrants, plea agreements, and other information that raise law enforcement and security concerns.

Recognizing the need to review judiciary public access policies in the context of new technology, the Judicial Conference is considering privacy and access issues in order to provide guidance to the courts.

The Judicial Conference has not reached any conclusions on these issues, and this request for public comment is intended as part of the Conference's ongoing study.

The judiciary has a long tradition – rooted in both constitutional and common law principles – of open access to public court records. Accordingly, all case file documents, unless sealed or otherwise subject to restricted access by statute or federal rule, have traditionally been available for public inspection and copying. The Supreme Court has recognized, however, that access rights are not absolute, and that technology may affect the balance between access rights and privacy and security interests. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), and *United States Department of Justice v. Reporters Committee for Freedom of the Press,* 489 U.S. 749 (1989). These issues are discussed in more detail in an Administrative Office staff paper, "Privacy and Access to Electronic Case Files in the Federal Courts," available on the Internet at www.uscourts.gov/privacyn.pdf.

The Role of the Federal Judiciary

The judiciary recognizes that concern about privacy and access to public records is not limited to the judicial branch. There is a broader public debate about the privacy and security implications of information technology. Congress has already responded to some of these concerns by passing laws that are designed to shield sensitive personal information from unwarranted disclosure. These laws, and numerous pending legislative proposals, address information such as banking records and other personal financial information, medical records, tax returns, and Social Security numbers. The executive branch is also concerned about implications of electronic public access to private information. Most recently, the President directed the Office of Management and Budget, the Department of Justice, and the Department of Treasury to conduct a study on privacy and security issues associated with consumer bankruptcy filings.

Accordingly, the judiciary is interested in receiving comment on the appropriate scope of judicial branch action, if any, on the broad issue of access to public court records, and the corresponding need to balance access issues against competing concerns such as personal privacy and security.

Policy Alternatives on Electronic Public Access to Federal Court Case Files

Regardless of what entity addresses the issues of privacy and electronic access to case files, the effort must be made to balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The policy options outlined below are intended to promote consistent policies and practices in the federal courts and to ensure that similar protections and electronic access presumptions apply, regardless of which federal court is the custodian of a particular case file. One or more of the policy options for each type of case file may be recommended to the Judicial Conference for its consideration. Some, but not all of the options are mutually exclusive.

Civil Case Files

1. Maintain the presumption that all filed documents that are not sealed are available both at the courthouse and electronically.

This approach would rely upon counsel and pro se litigants to protect their interests on a case-by-case basis through motions to seal specific documents or motions to exclude specific documents from electronic availability. It would also rely on judges' discretion to protect privacy and security interests on a case-by-case basis through orders to seal or to exclude certain information from remote electronic public access.

2. Define what documents should be included in the "public file" and, thereby, available to the public either at the courthouse or electronically.

This option would treat paper and electronic access equally and assumes that specific sensitive information would be excluded from public review or presumptively sealed. It assumes that the entire public file would be available electronically without restriction and would promote uniformity among district courts as to case file content. The challenge of this alternative is to define what information should be included in the public file and what information does not need to be in the file because it is not necessary to an understanding of the determination of the case or because it implicates privacy and security interests.

3. Establish "levels of access" to certain electronic case file information.

This contemplates use of software with features to restrict electronic access to certain documents either by the identity of the individual seeking access or the nature of the document to which access is sought, or both. Judges, court staff, parties and counsel would have unlimited remote access to all electronic case files.

This approach assumes that the complete electronic case file would be available for public review at the courthouse, just as the entire paper file is available for inspection in person. It is important to recognize that this approach would not limit how case files may be copied or disseminated once obtained at the courthouse.

4. Seek an amendment to one or more of the Federal Rules of Civil Procedure to account for privacy and security interests.

Criminal Case Files

1. Do not provide electronic public access to criminal case files.

This approach advocates the position that the ECF component of the new CM/ECF system should not be expanded to include criminal case files. Due to the very different nature of criminal case files, there may be much less of a legitimate need to provide electronic access to these files. The files are usually not that extensive and do not present the type of storage problems presented by civil files. Prosecution and defense attorneys are usually located near the courthouse. Those with a true need for the information can still access it at the courthouse. Further, any legitimate need for electronic access to criminal case information is outweighed by safety and security concerns. The electronic availability of criminal information would allow co-defendants to have easy access to information regarding cooperation and other activities of defendants. This information could then be used to intimidate and harass the defendant and the defendant's family. Additionally, the availability of certain preliminary criminal information, such as warrants and indictments, could severely hamper law enforcement and prosecution efforts.

2. Provide limited electronic public access to criminal case files.

This alternative would allow the general public access to some, but not all, documents routinely contained in criminal files. Access to documents such as plea agreements, unexecuted warrants, certain pre-indictment information and presentence reports would be restricted to parties, counsel, essential court employees, and the judge.

Bankruptcy Case Files

1. Seek an amendment to section 107 of the Bankruptcy Code.

Section 107 currently requires public access to all material filed with bankruptcy courts and gives judges limited sealing authority. Recognized issues in this area would be addressed by amending this provision as follows: 1) specifying that only "parties in interest" may obtain access to certain types of information; and (2) enhancing the 107(b) sealing provisions to clarify that judges may provide protection from disclosures based upon privacy and security concerns.

2. Require less information on petitions or schedules and statements filed in bankruptcy cases.

3. Restrict use of Social Security, credit card, and other account numbers to only the last four digits to protect privacy and security interests.

4. Segregate certain sensitive information from the public file by collecting it on separate forms that will be protected from unlimited public access and made available only to the courts, the U.S. Trustee, and to parties in interest.

Appellate Cases

1. Apply the same access rules to appellate courts that apply at the trial court level.

2. Treat any document that is sealed or subject to public access restrictions at the trial court level with the same protections at the appellate level unless and until a party challenges the restriction in the appellate court.

NEWS RELEASE

Administrative Office of the U.S. Courts

September 23, 2003 Contact: David Sellers

Judicial Conference Seeks Restoration of Judges' Sentencing Authority

The federal courts' policy-making body voted today to support repeal of a new law that severely limits the ability of trial judges to depart from Sentencing Guidelines and requires reports to Congress on any federal judge who does so.

The Judicial Conference of the United States also agreed to expand remote public access to electronic court documents by allowing access to criminal case files. The new policy will be implemented as soon as operational guidance to all federal courts can be developed and approved.

Sentencing

Because the Judiciary and the U.S. Sentencing Commission were not consulted prior to enactment, the Conference voted to support repeal of the following provisions of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, known as the PROTECT Act:

- The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure;
- The requirement that the Sentencing Commission release data files containing judge-specific information to the Attorney General;
- The requirement that the Department of Justice submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees;
- The requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures;
- The requirement that the Sentencing Commission promulgate a policy statement limiting the authority of the courts and U.S. Attorneys' Offices to develop and implement early disposition programs; and
- The amendment of 28 U.S.C. §991(a) to limit the number of judges who may be members of the Sentencing Commission.

The PROTECT Act, fast-moving legislation that passed both houses of Congress and was signed by the President in just over 30 days, provides protection for children by expanding to national coverage a rapid-response system to help find kidnaped children. When the legislation was considered on the House floor, an amendment was added to limit judges' sentencing flexibility. The Judiciary was not asked for its views on this amendment, nor was it advised of its consideration. After the PROTECT Act passed the House and the sentencing provisions came to the attention of the Judiciary, the Judicial Conference, the

(MORE)

Chief Justice, and the Sentencing Commission expressed serious concerns. The bill was signed into law on April 30, 2003. The Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003, known as the JUDGES Act, is pending in the Senate as S.1086 and in the House as H.R. 2213. These companion bills would repeal many of the sentencing provisions in the PROTECT Act.

Case Files

In September 2001, the Conference adopted a policy for remote public electronic access to civil, bankruptcy, and appellate case files. But at that time it decided not to allow for similar access to criminal case files. In March 2002, the Conference established a pilot program for 10 district courts and one appellate court to allow Internet access to criminal case files.

The Federal Judicial Center has studied the experience of the pilot courts and found no evidence of harm to any individual and also found that a majority of those interviewed in the pilot courts —judges, court staff, and counsel — extolled the advantages of electronic access. The Conference Committees on Court Administration and Case Management, Criminal Law, and Defender Services will work together in drafting appropriate implementation guidance for the courts. The pilot program will continue access during the implementation period.

Once implemented, the policy requires that certain personal identifier information should be partially redacted by the filer of the document, whether it is filed electronically or in paper form. For example, Social Security and financial account numbers should be reported as the last four digits only and the names of minor children should be listed only by their initials. This is the policy currently in effect for civil cases.

Remote access to federal court files has been made possible by the Case Management/Electronic Case Files (CM/ECF) system, which is in the process of being implemented throughout the federal courts. As of September 1, 2003, 25 district courts and 60 bankruptcy courts are using the system. More than 10 million cases are on the CM/ECF system and more than 40,000 attorneys and others have filed documents over the Internet. Electronic access to these documents is available through the Public Access to Court Electronics Records (PACER) program.

In other action, the Conference

- Agreed to seek legislation to permit emergency special court sessions outside the district or circuit in which a court is located. The need for this legislation became apparent following the events of September 11, 2001, when court operations, particularly in New York City, were impacted.

- Declared courthouse space emergencies in Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico. The Conference's Security and Facilities Committee said that intolerable security and operational problems exist in the three courts along the southwest border and in Los Angeles, which justifies the Judicial Conference designation of these locations as a space emergency.

The Judicial Conference of the United States is the principal policy-making body for the federal court system. The Chief Justice serves as the presiding officer of the Conference, which is composed of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year to consider administrative and policy issues affecting the court system and to make recommendations to Congress concerning legislation involving the Judicial Branch. A list of Conference members is attached.

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JUDICIAL CONFERENCE OF THE UNITED STATES

September 2003

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Judge D. Brock Hornby	District of Maine
Chief Judge John M. Walker, Jr.	Second Circuit
Chief Judge Frederick J. Scullin, Jr.	Northern District of New York
Chief Judge Anthony J. Scirica	Third Circuit
Chief Judge Sue L. Robinson	District of Delaware
Chief Judge William W. Wilkins	Fourth Circuit
Judge David C. Norton	District of South Carolina
Chief Judge Carolyn Dineen King	Fifth Circuit
Judge Martin L.C. Feldman	Eastern District of Louisiana
Chief Judge Boyce F. Martin, Jr.	Sixth Circuit
Chief Judge Lawrence P. Zatkoff	Eastern District of Michigan
Chief Judge Joel M. Flaum	Seventh Circuit
Judge Marvin E. Aspen	Northern District of Illinois
Chief Judge James B. Loken	Eighth Circuit
Chief Judge James M. Rosenbaum	District of Minnesota
Chief Judge Mary M. Schroeder	Ninth Circuit
Chief Judge David Alan Ezra	District of Hawaii
Chief Judge Deanell R. Tacha	Tenth Circuit
Judge Frank Howell Seay	Eastern District of Oklahoma
Chief Judge J. L. Edmondson	Eleventh Circuit
Judge J. Owen Forrester	Northern District of Georgia
Chief Judge Douglas H. Ginsburg	District of Columbia Circuit
Chief Judge Thomas F. Hogan	District of Columbia
Chief Judge Haldane Robert Mayer	Federal Circuit
Chief Judge Gregory W. Carman	Court of International Trade

Conference Secretary:

Leonidas Ralph Mecham, Director
Administrative Office of the U.S. Courts