DISSENTING STATEMENT ON INTERNET AND BULK ACCESS TO JUDICIAL RECORDS

Donna Bergsgaard

It has been a privilege to serve as a member of the Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch. 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 and bulk access to judicial records.

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 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."[1] 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. [2]

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* for journalists to uncover wrongdoing and effectively cover crime, political stories and investigative pieces." [3]

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, [4] or the 43 million Americans—17 percent of the U.S. population—who change addresses every year. [5]

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 economy, improves efficiency, reduces costs, creates jobs, and

provides valuable products and services that people want."[6]

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.[7] 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.[8]

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."[9]

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.[10] 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.[11] Access is required even over the objections of both the defendant and the prosecution.[12] 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.[13] The Court has repeatedly extended the constitutional right of access to judicial records as well.[14]

This constitutional right of access to judicial proceedings and information merely restates the historical common law right of access.[15] 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."[16] 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."[17]

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

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 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 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 and bulk access 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."[18]

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."[19] 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.

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—none at all—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 never cites to 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. [20] 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 such 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.

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

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 structures its 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 takes 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." [21]

This turns the constitutional presumption of openness on its head. In *Globe Newspapers Co.*, the U.S. 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."[22]

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."[23] Rather than provide a list of what is permitted, and exclude all else from electronic access, the majority 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 restricting access to key data elements to the courthouse alone 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 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 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 ignores 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 and bulk access. Yet the majority never explains why these categories of access should be treated differently.

Presumably—and the public can only presume here because of the majority's silence—the majority believes 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. If this is part of the majority's thinking, it is 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 majority's recommendation clearer than with its confusion of bulk access with Internet access. The majority lumps 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, law enforcement agencies. Commercial intermediaries buy judicial records in bulk and then add value to 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."[24]

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 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 proposed by the majority pose serious questions as to how they will work in practice and the burden they will create on court clerks and other judicial officials. The majority proposes that 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 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 "pre-conviction criminal records" on the Internet be conditioned on those records being "not searchable by defendant name using automated tools."[25] 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 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 report does not deliver on that potential. Instead, it 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, the majority bases its recommendations concerning Internet and bulk access 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, the majority's unstated, and certainly untested, assumptions that Internet and bulk access present greater risks to the public than access (including electronic access) at the courthouse, and its inexplicable refusal 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 explanation, the majority recommends 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 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 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.

While I believe it would be better for the 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.

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[1] Madison, Letter to W.T. Barry, Aug. 4, 1822, *reprinted in* 9 *The Writing of James Madison* 10 (Hunt ed. 1910).

[2] See, for example, Reporters Committee for Freedom of the Press, "Stories Using Electronic Court Records" <available at www.rcfp.org/courtaccess/examples.html>.

[3] Brooke Barnett, "Use of Public Record Databases in Newspaper and Television Newsrooms,"53 *Federal Communications Law Journal* 557 (2001) (emphasis added).

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

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

[6] Fred H. Cate and Richard J. Varn, *The Public Record: Information Privacy and Access—A New Framework for Finding the Balance* (1999).

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

[8] <http://www.choicepoint.net/choicepoint/productwebdisplay.nsf/Child?openform>.

[9] Hearings before the Subcomm. 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).

[10] Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980).

[11] Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986).

[12] *Richmond Newspapers*, 448 U.S. 555.

[13] Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982).

[14] Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984); *Press-Enterprise*, 478 U.S. 1.

[15] Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978).

[16] Marc A. Franklin, et al., *Mass Media Law* 762 (6th ed. 2000).

[17] Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197, 202 (Minn. 1986).

[18] Majority Report, at 3.

[19] Id. at 3-4 (citation omitted).

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

[21] Id. at 35.

[22] 457 U.S. at 606.

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

[24] Hearings before the Subcomm. 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).

[25] Proposed Rule 8, subdiv. 2(c).