

**Statement of Bob Port, Staff Writer, New York Daily News
New York Commission on Public Access to Court Records
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I have been a newspaper reporter and editor for more than 20 years, working first at the *St. Petersburg Times* in Florida, then at the headquarters of The Associated Press in New York and since July 2000 at the *Daily News*. I am also an adjunct professor at Columbia University Graduate School of Journalism, where I teach a popular elective course called "Investigative Techniques."

Since the early 1990s, I have specialized in investigative reporting that uses large databases of public records to build a foundation for accurate, probative journalism. I process electronic records, sometimes by the billions, to ferret out and document otherwise hidden connections and trends. This has yielded, for example, stories about: abusive nursing home aides employed after concealing their prior convictions for abusing the elderly; federal employees stealing horses from federal lands to sell for horsemeat; anti-smoking physicians with huge personal investments in tobacco farm land; and the involvement of all major clothing retailers in widespread illegal labor practices in New York City's garment sweatshops.

I rely on the courts, more than on any other branch of government, to be an impartial source of balanced, truthful information.

With the growth of the Internet as a digital communications medium in recent years, a cacophony of voices are expressing worry about the danger this poses to individual privacy rights. By publishing all court records on the Internet, for instance, the fearful warn, the World Wide Web could become a 'Big Brother' library. Each intimate detail of our past embarrassments will be logged for eternity. Facts once anonymous by their obscurity will join an instantly searchable database available to any faceless enemy to unjustly use against us with a mouse click on a screen.

In reality, this idea is foolishness rooted in ignorance - a modern version of killing the messenger, or in this case, a whole medium. The Internet does one thing and does it utterly democratically: It makes the transmission of information exponentially more efficient. All else that results would, or could, have occurred nevertheless. For court records, it merely saves trips to the courthouse.

I would also maintain that to attempt to make private on the Internet that which is already public on paper - like material archived by court clerks - is futile. Worse, such policies harm the public in a manner that outweighs the protection afforded any individual. Suppression of access hinders our progress, leaves our state's commerce less competitive and conceals threats to our safety that we rely on our courts to expose.

There is one and only one policy that makes sense for electronic access to court records: Information that's public at the courthouse should be available on the Internet to all for no more than its cost of publication.

To do less is to bar the common man from the real clerk's office of the future. To overcharge for access would be like selling tickets to a trial.

The status quo

Currently, I would describe New York State's online access to court records as poor. The federal courts, usually a bastion of conservatism where technology is concerned, are years ahead. The federal judiciary now has nationwide online access to dockets and other basic information available to anyone through its Public Access to Court Electronic Records (PACER) system. Fees are a modest seven cents per page collected quarterly by credit card and discounted for large downloads. Most federal districts have web access. Soon all will. A national case party name search is available and it includes all criminal indictments. Almost a third of federal courts have converted or will soon convert to a fully digital document system, where pleadings are filed electronically in Adobe's Portable Document Format (PDF), a format recognized by the Library of Congress and the National Archives and Records Administration.

The federal civil court in New York's Eastern District, home to much significant litigation, went digital two years ago. In New York's Southern District, bankruptcy court has been digital for five years. The record of the Enron bankruptcy case, including reports and many transcripts, for example, can be downloaded from the Internet on a Saturday afternoon. *The New York Times* did just that when it published a breaking Sunday report on the company's early internal investigation of what went wrong - news that rightly stunned readers everywhere and promptly intensified public debate.

By comparison, New York State courts make available only calendar entries online and only for open cases - what appears to me to be a convenience designed to aid lawyers and law firms in checking their schedules.

There are states where electronic access to court records is far worse. Mississippi is one. Alabama is another. Maine, a place where some court records still exist only on paper index cards, has a historic hostility toward computerization of government records. Had Maine's archival criminal files been automated, we might well have known earlier than a week before Election Day of the well-kept secret of candidate George W. Bush's youthful arrest for drunken driving. That we eventually learned of this case anyway is an illustration that nothing once public in court can be expected to remain hidden forever.

New York State should become a model for public access to court records on the Internet - for the health of its economy and to better inform its citizenry.

Florida, a less populous state with a shakier revenue base for its judiciary and a constitution that outlaws income taxes, manages to make electronic access widely available at cost, county-by-county, online or on CD-ROMs containing whole data sets. One can download a statewide Florida

rap sheet check (covering arrests of more than two million living persons dating back to the 1940s) through the Internet for \$15 with a credit card.

In New York, a complete check of the "CRIMS" database is not available on the Internet or through any private vendor. It covers only populous counties, costs \$25 and requires a visit or call to a clerk's office. This is inefficient, costly and it reduces the productivity of businesses that rely on this basic due diligence in hiring, lending or other business. It complicates the legitimate work of a free press, too. We can do better.

The privacy myth

As a journalist, what I fear most is that when New York begins to seriously publish court records on the Internet - and it will - names, dates of birth and addresses will be censored for "privacy" reasons.

Many Americans seem to assume that, by some birthright, they can expect their name, date of birth and home address to remain secret from whomever they choose, even when it was recorded because of their conviction for a crime.

This has always been a silly idea in a nation that requires citizens to serve as jurors in court. It became sillier as America industrialized and embraced inventions like the telephone, which requires telephone books. In an age of digital recordkeeping, it becomes downright stupid.

Get a clue. Names, birth dates and addresses for nearly all adult Americans are already widely available to the public through the Internet. Finance, commerce and politics depend on this.

While personal identifying information in its most accurate and detailed form is not *freely* available, that is, it is not published on free web sites, it is absolutely available at a low cost. I teach 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. The only requirement is that the person has possessed a bank account or credit card (the details of which are *not* public); has received mail; has owned a car; or has registered to vote.

Information is like water. It flows to the sea via the path of least resistance. In our nation of free speech and capitalism, we reward investors who get people information they need and want. So it is with identifying facts on individuals. They will always be everywhere.

For more than 10 years, Aristotle Industries, a data vendor that mostly caters to political campaigns, has collected nationwide voter registration records. With an Aristotle internet account, and at a cost of less than \$20 per search, one can call up any voter's home address or addresses; his or her date and place of birth; past and present party affiliations; and election attendance. I can see the same information for other voters who shared the same household, such as spouses and children. The information

is meshed with neighborhood demographic and religious data culled from a range of sources. This is how the Michael Bloomberg campaign, for instance, can conduct a phone survey of older white Jewish Democratic voters in Washington Heights whenever it wishes.

If Aristotle goes out of business, I assure you there will be a new capitalist venture emerge to take its place and elected politicians who will assure its right to compile records. Unless we make voter registration confidential, an un-American concept that would invite corruption, we can expect our names, birth dates and addresses to remain available through the Internet forever. It is the price of citizenship. A small price, I'd say.

There are many more examples. The federal Fair Credit Practices Act gave Americans unprecedented rights to demand the equitable availability of credit from banks. It gave creditors rights, too, such as the right to share identifying information on borrowers. The intent was a good one: to facilitate bill collection. What evolved were numerous businesses that legally sell access to databases of name, age and address histories. The data are accurately interconnected by confidential Social Security Numbers that are withheld from customers not authorized to obtain an SSN.

Congress has recently given citizens the right to request that creditors not share their identifying information, but large brokers of credit bureau data, such as Equifax, already possess so much data from so many credit accounts, and have so much other data available to them - for example, from magazine subscriptions and professional associations - that all our horses are way out of their barn. The U.S. Postal Service makes its change-of-address database available to businesses. This also assists data brokers in tracking us. What else is the post office supposed to do? If our identities are secret, how is the postman to deliver us our mail?

With computers, today's mosaic of sources, each one legally public, makes it possible to compile directory-type information on anyone, but this is not exactly top secret stuff, is it? Data brokers are civilly liable for misuse of their material. Identity theft can be vigorously prosecuted. The press cannot barge into someone's home to get a story.

This is the reality of personal identification data in the United States today. Americans who live normal lives enjoy great benefits, but must expect that their names, ages and addresses be knowable. Courts should recognize this reality and leave it to politicians to debate privacy. It is not the job of the courts to suppress public information as a prophylactic measure based on hypothetical concerns about privacy. Law enforcement authorities already have the power to pursue criminal acts violating privacy. Civil law already acts as a check on irresponsible acts by the news media or businesses.

Personally identifying information in court records should be as public on the Internet as it is in court records - no more and no less.

The court's digital divide

I suspect many judges would be surprised to learn how much of the court's business is already published on the Internet. However, what principally characterizes this material is that it is very, very expensive. As a result, a digital divide has evolved. The rich can use computers to automate their work with court records. The poor cannot afford it.

Currently, Meade Data, through its Lexis-Nexis service, is the biggest vendor of New York State court records. Every filing and every final judgment in civil court triggers a synopsis published in the Lexis-Nexis public records library. All major news organizations and any sizable business typically subscribes to this data at an annual cost ranging from tens of thousands to hundreds of thousands of dollars. Some public libraries subscribe, too, and their Nexis terminals stay busy.

New York civil docket information is available through at least two vendors, the bigger being CourtLink, which was recently acquired by Lexis-Nexis. CourtLink can supply a current docket report for any civil case at a cost of roughly \$10 per search. Some corporate customers spend thousands of dollars per week for live, e-mail-based tracking of selected cases or selected categories of litigation - a kind of automated due diligence.

Competitors who might offer more affordable alternatives face a daunting obstacle: The Unified Court System's fee is \$20,000 to acquire the raw historic civil data accumulated since the 1980s needed to seed a new database. Daily data transmission of updates incurs a weekly fee of \$545.

I question the propriety of these fees. The *Daily News* recently acquired this data. It can be recorded on two blank CD-ROMs at a duplication cost of less than \$2. Why does the judiciary charge the public \$20,000?

The picture is worse for the public when it comes to criminal records. There are no legitimate private vendors of criminal data. Record checks are offered by the Office of Court Administration at \$25 per name - an exorbitant fee for public records from a system paid for by the public.

One can negotiate the purchase of a copy of the "CRIMS" database from the OCA at a cost of \$750 per update, but only in exchange for an agreement not to share or publish the database - so that the courts retain their ability to raise revenue by selling criminal records checks.

This is not fair. Electronic criminal records checks should be available for free or for the pennies that they actually cost. The executive branch freely publishes Department of Corrections inmate records on the Internet.

In short, New York State's courts have developed a taste for selling electronic records to generate a profit on an investment of public money in technology. The rich enjoy the benefits of automated court records while others, including many worthy non-profit public interest groups, are deprived of information they equally deserve.

While this may have its roots in the failure of the Legislature to properly finance technology for the third branch of government, the court system ought to know better. Fees based on the cost of duplication or publication would be more appropriate.

Open records on the Internet promote accuracy and truth

In the competitive news environment of New York, there is great demand to know as much as possible as quickly as possible. When it comes to old fashioned paper court records, this is a challenge.

By making basic data, and eventually court documents themselves available on the Internet, the judicial system would become a force for greater good by promoting the free flow of knowledge. People unjustly accused can have the disposition of their cases known more quickly. Questions about how many citations the city is issuing can be answered impartially, quickly and authoritatively. A corporate citizen's record on product safety can be sized up within a week or two, rather than with an impractical lengthy investigation.

Rather than representing a threat to personal privacy, open electronic records, in my experience, promote public good, public safety and healthy political debate.

New York's judiciary should get to work and go totally digital - immediately.