

**Supplement to Representative Federal
and State Judicial Decisions and Other
Materials Involving Protective Orders,
Confidentiality and Public Access in
Civil and Criminal Matters**

Ronald J. Hedges

Editor

Lane Taylor

Contributing Editor

September, 2014

TABLE OF CONTENTS

NOTE TO THE READER ABOUT THIS SUPPLEMENT	4
A (UPDATED) SPECIAL NOTE ON A CURRENT CONTROVERSY.....	5
UNITED STATES SUPREME COURT DECISION	8
<i>Riley v. California</i> , 134 S.Ct. 2473 (U.S. 2014).....	8
FEDERAL JUDICIAL DECISIONS	9
ACLU v. Department of Justice, 750 F.3d 927 (D.C. Cir 2014)	9
Apple, Inc. v. Samsung Electronics Co., 920 F. Supp 2d 1079 (N.D. Cal. 2014).	9
Company Doe v. Public Citizen, 749 F.3d 246 (4 th Cir. 2014).	10
Courthouse News Service v. Planet, 750 F.3d 776 (9 th Cir. 2014).....	12
<i>In re Google Inc. Gmail Litig.</i> , Case No. 13-MD-02430-LHK (N.D. Ca. Aug. 6, 2014).....	13
<i>Legal Newslne v. Garlock Sealing Technologies LLC</i> , 3:13-CV-004464. 2014 WL 3696576 (W.D. N.C. July 23, 2014)	13
<i>Oliner v. Kontrabecki</i> , 745 F.3d 1024 (9 th Cir. 2014).	13
<i>Sullo & Bobbitt, P.L.L.C. v. Milner</i> , 13-10869, 2014 WL 3845227 (5 th Cir. Aug 6, 2014) (<i>per curiam</i>).	14
<i>United States v. Erie County</i> , 13-3653-CV, 2014 WL 4056326 (2d Cir. Aug. 18, 2014).	15
<i>United States v. Index Newspapers LLC</i> , 13-35243, 2014 WL 4376296 (9 th Cir. Sept. 5, 2014).	15
United States ex rel. Barko v. Halliburton Co., Case No. 1:05-CV-1276 (D.D.C. Mar. 11, 2014).	16
STATE JUDICIAL DECISIONS	18
<i>Circuit Court v. Lee Newspapers</i> , 332 P.3d 523 (Wyo. Sup. Ct. 2014).....	18
<i>City v. Superior Court</i> , 225 Cal.App. 4 th 75 (2014).	18
<i>Commonwealth v. Alebord</i> , 467 Mass. 106 (Mass. 2014).	19
Commonwealth v. Pon, 469 Mass. 296 (Mass. 2014).	19
<i>Cortez v. Johnston</i> , 06-13-00120-CV, 2014 WL 1513306 (Tex. Ct. App. Apr. 16, 2014)....	19
<i>Fiorella v. Paxton Media</i> , 424 S.W.3d 433 (Ky. Ct. App. Feb. 26, 2014).	20
<i>Gulliver School, Inc. v. Snay</i> , 137 So.3d 1045 (Fla. Dist. Ct. App. 2014).	20
Los Angeles County Dep’t of Children and Family Services v. J.P., B242179 (Ca. Ct. App. Mar. 3, 2014).	21
<i>Morris Pub. Grp. v. State</i> , 2014 WL 1665920 (Fla. Dist. Ct. App. Apr. 25, 2014).....	21
<i>Nissen v. Pierce County</i> , No. 44852-1-II (Wash. Ct. App. Sept. 9, 2014).....	22
Oahu Pub. Inc. v. Ahn, 133 Hawai’I 482 (Hawai’I Sup. Ct. 2014).	22
Washington State Dept. of Transp. v. Mendoza De Sugiyama, 330 P.3d 209 (Wash. Ct. App. 2014).	24
FEDERAL STATUTES, REGULATIONS, ETC.	25
“Changes to Information Available on PACER,”	25
Local Rules, United States District Court for the United States District Court for the Southern District of Indiana:	25

ARTICLES	26
J. Aresty, D. Rainey & J. Cormie, “State Courts and the Transformation to Virtual Courts,” <i>Litigation</i> (ABA Sec. of Litigation: Spring 2013)	26
A.Conley, et al., “Sustaining Privacy and Open Justice in the Transition to Online Court Records: A Multidisciplinary Inquiry,” 71 <i>Maryland L. Rev.</i> 772 (2012)	26
D.D. Cross & J. Levine, “Protecting Confidential Information: Lessons from the <i>Apple v. Samsung</i> Litigation,” 14 <i>DDEE</i> 91 (2014).....	26
H.B. Dixon, Jr., “Information Technology Disaster: Disaster Recovery Planning for Court Institutions,” <i>The Judges’ Journal</i> 36 (ABA: Fall 2013).....	27
R.J. Hedges, “Princeton’s Center for Information Technology Explores the Future of Privacy and Public Access in Civil Litigation in the 21 st Century,” 11 <i>DDEE</i> 340 (2011).....	27
R.J. Hedges, Private Information, Data Breach, and the First Amendment) (May 11, 2011) (unpublished: available from the author).....	27
V. Li, “Who Owns the Law?” <i>ABA Journal</i> 48 (June 2014).....	28
G.J. Linhares & N. Raaen, To Protect and Preserve: Standards for Maintaining and Managing 21 st Century Court Records (COSCA 2012-2013 Policy Paper).....	28
J. Mullin, “US Courts Trash a Decade’s Worth of Online Documents, Shrug It Off,” <i>Ars Technica</i> (posted Aug. 26, 2014)	28
J.P. Murphy & L.K. Marion, “Riley v. California: The Dawn of a New Age of Digital Privacy,” 14 <i>DDEE</i> 345 (2014).....	28
J. Palazzolo, “NSA Phone-Data Collection Program Set for Legal Challenge,” <i>Wall St. J.</i> A2 (Sept. 2, 2014).....	29
J. Palazzolo, “U.S. Appeals Court Weighs Legality of NSA’s Collecting Phone Records,” <i>Wall St. J.</i> (posted Sept. 2, 2014)	29
M.J. Quina & S.T. Bychowski, “Protecting Confidential Information During Litigation,” <i>Corporate Counsel</i> (ALM: posted Sept. 3, 2014)	29
N. Raaen, “Order in the Courts! RM Principles for the Judiciary,” <i>Information Management</i> 28 (ARMA: January/February 2014).....	29
T. Ruger, “PACER Changes Draw Ire of Attorneys, Journalists,” <i>National L. J.</i> (ALM: posted Aug. 26, 2014).....	30
S.G. Swisdak, “The Value of Historical Research to In-House Counsel,” <i>In-House Counsel Comm. Newsletter</i> (ABA: June 2009)	30
SAMPLE PROTECTIVE ORDER	31
Appendix A to 16 C.F.R. 3.31: Standard Protective Order	31

NOTE TO THE READER ABOUT THIS SUPPLEMENT

In 2007, *The Sedona Guidelines Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases* was published as a project of The Sedona Conference Working Group on Protective Orders, Confidentiality & Public Access (WG2). The intent of the Guidelines was to recognize the relationship—and tension—between the legitimate confidentiality needs of parties and the “right of access” derived from the First Amendment, the common law, and state and federal statutes and regulations. To do so, the Guidelines cited to, among other things, case law.

Not surprisingly, that case law continued to develop and led to the Spring 2014 Digest. The Digest included sections on statutes and regulations as well as articles that illustrated the continuing tensions described above. Several forms of protective orders were also included.

This Supplement to the Spring 2014 Digest recognizes the further development of case law and related materials. The case law and materials digested here are again over-inclusive in that some go beyond the “four corners” of the Guidelines and address privacy in other contexts, such as criminal actions and broad privacy-related matters. The decisions and materials are under-inclusive in that what appears is not intended to be an exhaustive compilation.

Feel free to suggest others by sending them to Ronald J. Hedges at:
r_hedges@live.com

A (UPDATED) SPECIAL NOTE ON A CURRENT CONTROVERSY

No current compilation related to confidentiality and public access can avoid the controversy over National Security Agency (“NSA”) surveillance. Having recognized that controversy, this Supplement will simply note several sources of information about it (including those identified in the Spring 2014 Digest):

- “Bulk Collection of Telephony Metadata Under Section 215 of the USA Patriot Act” (Administration White Paper: Aug. 9, 2013).
- J. Vanentino-DeVires & S. Gorman, “What You Need to Know on New Details of U.S. Spying,” *Wall St. J.* (Aug. 20, 2013).
- “Liberty and Security in a Changing World” (Report and Recommendations of the President’s Review Group on Intelligence and Communications Technologies: Dec. 13, 2013).
- A. Serwin, “Striking the Balance — Privacy Versus Security and the New White House Report,” *The Privacy Advisor* (International Ass’n of Privacy Professionals: Dec. 19, 2013).
- E.C. Liu, *et al.*, *Overview of Constitutional Challenges to NSA Collection Activities and Recent Developments* (CRS: Apr. 1, 2014).
- *NSA’s Implementation of Foreign Intelligence Surveillance Act Section 702* (NSA Director of Civil Liberties and Privacy Office Report: Apr. 16, 2014)
- C. Timberg, “Apple, Facebook, Others Defy Authorities, Notify Users of Secret Data Demands,” *Washington Post* (May 1, 2014)
- D.E. Sanger & N. Perlroth, “Internet Giants Erect Barriers to Spy Agencies,” *New York Times* (June 6, 2014)

As the Supplement is being published, four courts have ruled on the constitutionality of NSA surveillance, at least for the purposes of preliminary injunctive relief:

- *Klayman v. Obama*, Civil Action No. 13-0851 (RJL), 2013 WL 6598728 (D.D.C. Dec. 16, 2013), *cert. denied*, 572 U.S. ____ (2014) (unconstitutional)

- *ACLU v. Clapper*, 13 Civ. 3994 (WHP), 2013 WL 6819708 (S.D.N.Y. Dec. 27, 2013) (constitutional)
- *In re Application of FBI for an Order Requiring the Production of Tangible Things*, No. 14-01 (F.I.S.A. Mar. 20, 2014) (constitutional)
- *Smith v. Obama*, No. 2:13-CV-257-BLW (D. Idaho June 3, 2014) (constitutional)

Both *Klayman* actions are now before their respective Courts of Appeals. Presumably, the “final word” on constitutionality will come from the United States Supreme Court.

Several other courts have dealt with issues arising out of the NSA Surveillance:

- *United States v. Moalin*, Case No. 10cr4246 JM (S.D. Ca. Nov. 18, 2013) (denying motion for new trial based on argument that NSA collection of telephony metadata violated First and Fourteenth Amendment rights)
- *First Unitarian Church v. NSA*, No. 3:13-cv-03287-JSW (N.D. Ca. Mar. 21, 2014) (ordering preservation of “all documents, data and tangible things reasonably anticipate[d] to be subject to discovery”)
- *In re: National Security Letter* (W.D. Wash. May 21, 2014) (ordering unsealing of civil action brought by Microsoft challenging National Security Letter from FBI and then sealing “every document on the docket *** *except* this order and the two documents attached to it” as these are “sufficient to ensure that the public can become aware of the existence of the national security letter issued to Microsoft, Microsoft’s position challenging it, and other facts relevant to this petition.”)

On December 17, 2013, the White House released, *Presidential Policy Directive/PPD-28*, which “articulates principles to guide why, whether, when, and how the United States conducts signals intelligence activities for

authorized foreign intelligence and counterintelligence purposes” (footnote omitted).

On July 2, 2014, a newly-created agency within the Executive Branch, the Privacy and Civil Liberties Oversight Board, released, its “*Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*. The Board found that “certain aspects of the program’s implementation raise privacy concerns.”

The impact of the *Directive* and the *Report* on the appeals—and their reception in Congress—remain to be seen.

Beyond the NSA surveillance controversy—and beyond the scope of this Supplement or the Spring 2014 Digest—is a broader one about, on the one hand, the privacy and autonomy of the individual and, on the other, public and private surveillance and tracking of individuals through electronic devices. Here are several examples of this controversy:

- “Information Resellers: Consumer Privacy Framework Needs to Change to Reflect Changes in Technology and the Marketplace” (GAO: Sept. 25, 2013).
- S. Sengupta, “Privacy Fears Grow as Cities Increase Surveillance,” *New York Times* (Oct. 13, 2013).
- J.R. Reidenberg, *et al.*, “Privacy and Cloud Computing in Public Schools,” *Fordham Law School Center on Law and Info. Policy* (Dec. 13, 2013).
- “A Review of the Data Broker Industry: Collection, Use, and Sale of Consumer Data for Marketing Purposes” (Staff Report for Chairman Rockefeller, Office of Oversight and Investigations Majority Staff, Committee on Commerce, Science, and Transportation: Dec. 18, 2013).

Presumably, this broader controversy will lead to statutory and regulatory responses and litigation beyond what now exists.

UNITED STATES SUPREME COURT DECISION

***Riley v. California*, 134 S.Ct. 2473 (U.S. 2014).**

In a unanimous decision authored by Chief Justice Roberts, the Supreme Court rejected the argument that the “search incident to arrest” exception to the warrant requirement of the Fourth Amendment justified the warrantless search of the content of a cell phone:

“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life” ***. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.”

NOTE: Whether the language of *Riley* will lead to new approaches to confidentiality or public access remains to be seen. See Murphy and Marion under “Articles” below.

MISCELLANEOUS

FEDERAL JUDICIAL DECISIONS

ACLU v. Department of Justice, 750 F.3d 927 (D.C. Cir 2014)

In this FOIA action, the ACLU sought disclosure of docket information for prosecutions in which the Government had obtained cell phone tracking data without warrant in which the defendants had been *acquitted* or in which the charges *dismissed*. On remand from an earlier Court of Appeals decision that had required the Government to disclose such information as to defendants who had been convicted, the district court identified four prosecutions which had been dismissed and two which resulted in acquittals. Citing Exemption 7(C), the District Court ruled against disclosure. The Court of Appeals affirmed: “Given the fundamental interest individuals who have been charged with but never convicted of a crime have in preventing the repeated disclosure of the fact of their prosecution, we have little hesitation in concluding that release of the information *** ‘could reasonably be expected to constitute an unwarranted invasion of personal privacy.’” In dissent, one judge quoted Lady MacBeth’s line, “What’s done cannot be undone,” and observed that the information in issue is accessible via a Google search or PACER.

Freedom of Information Act

Apple, Inc. v. Samsung Electronics Co., 920 F. Supp 2d 1079 (N.D. Cal. 2014).

Apple and non-party Nokia Corporation moved for sanctions arising out of the disclosure of information in violation of a protective order that provided, “Protected Materials shall not voluntarily be *** disclosed.” As framed by the magistrate judge, “[a] junior associate missing one redaction among many in an expert report is not exactly a historical event in the annals of big-ticket patent litigation. Even if regrettable, these things can happen, and almost certainly do happen each and every day. But when such an inadvertent mistake is permitted to go unchecked, unaddressed, and propagated hundreds and hundreds of times by conscious – and indeed strategic – choices by that associate’s firm and client alike, more significant and blameworthy flaws are revealed.” The information disclosed were the terms of an Apple/Nokia licensing agreement that Samsung and its attorneys used to their benefit. The judge held:

(1) The use of the word “voluntarily” in the protective order did not establish a willfulness requirement: “absent court order, any *** disclosure *** is a violation, regardless of the intent of the perpetrator.”

(2) “Because the conduct here stems directly from the protective order issued under Rule 26(c) ***, the court has the authority to issue sanctions under Rule 37(B)(2)(A).”

(3) “the ideal remedy is one that advances both the remedial and deterrent goals of sanctions, as the need for one is not diminished by a need for the other.”

The judge found:

- (1) The “1 lawyer deep” structure for preproduction review was unacceptable.
- (2) The wide dissemination of the information caused substantial harm to Apple and Nokia.
- (3) Samsung’s counsel violated the order by failing “immediately notify” of the Apple of the disclosure.
- (4) Monetary sanctions should be imposed on Samsung’s counsel: “That expense, in addition to the public findings of wrongdoing, is, in the court’s opinion, sufficient both to remedy Apple and Nokia’s harm and to discourage similar conduct in the future.”

DISCOVERY MATERIALS

PLEADINGS & ORDERS

Company Doe v. Public Citizen, 749 F.3d 246 (4th Cir. 2014).

Company Doe brought an action under the Administrative Procedure Act to enjoin the Consumer Product Safety Commission from publishing on its “online, publically accessible database a ‘report of harm’” that attributed an infant’s death to a product manufactured and sold by Company Doe. It also moved to litigate the action under seal and to proceed anonymously. Consumer groups and the Commission objected, but the objections were not ruled on by the district court until after it had resolved the action on the merits. Because of the district court’s rulings,”[m]uch of the record—including the pleadings, the briefing pertaining to Company Doe’s motion for injunctive relief, the Commission’s motion to dismiss, the parties’ cross-motions for summary judgment, and numerous residual matters—remains sealed in its entirety.” The consumer groups filed a post-judgment motion to intervene to challenge the orders that allowed the records to be sealed and Company Doe to proceed anonymously. Because the district court had not ruled on that motion before the time to appeal the judgment expired, the consumer groups noted their appeal. The district judge denied the motion to intervene thereafter. The Court of Appeals first addressed threshold jurisdictional issues:

- (1) “we join the majority of our sister circuits and hold that an effective notice of appeal divests a district court of jurisdiction to entertain an intervention motion.”
- (2) “by lodging objections to Company Doe’s motions to seal and to proceed under a pseudonym, and by filing their own motion to unseal, Consumer Groups sufficiently participated in the proceedings before the district court to appeal the court’s orders dismissing their objections and permitting the case to be litigated under seal and pseudonymously.”

(3) “because they objected to Company Doe’s motion to seal and to proceed under a pseudonym, Consumer Groups may appeal the district court’s adverse sealing and pseudonymity rulings without first intervening in the underlying proceeding.”

(4) The informational interests of the consumer groups, “though shared by a large segment of the citizenry, became sufficiently concrete to confer Article III standing when they sought and were denied access to the information that they claimed a right to inspect.”

(5) “Consumer Groups *** do not appeal the merits ***. Their interest *** is that of a third-party seeking access to documents filed with the court, which is an interest entirely independent of the injury that supplied the requisite case or controversy between Company Doe and the Commission. Consumer Groups have a redressable, actual injury and a personal stake sufficient to make their claims justiciable.”

On the merits, the Court of Appeals held:

(1) “When presented with a sealing request, our right-of-access jurisprudence requires that a district court first ‘determine the source of the right of access with respect to each document, because only then can it accurately weigh the competing interests at stake.’”

(2) “the First Amendment right of access extends not only to the parties’ summary judgment motions and accompanying materials but also to a judicial decision adjudicating the summary judgment motion.”

(3) “Because access to docket sheets is integral to providing meaningful access to civil proceedings, we hold that the public and the press enjoy a presumptive right to inspect docket sheets in civil cases under the First Amendment.”

(4) “An unsupported claim of reputational harm falls short of a compelling interest sufficient to overcome the strong First Amendment presumptive right of public access. The district court erred by concluding otherwise.”

(5) “The right Company Doe secured by prevailing on its claims was the right to keep the challenged report of harm removed from the online database. That remedy is distinct from the right to litigate its claims in secret and to keep all meaningful facts about the litigation forever concealed from public view. Neither the CPSIA [Consumer Product Safety Improvement Act] nor the Administrative Procedure Act confers upon district courts carte blanche to conduct secret proceedings, and, more importantly, the Constitution forbids it.”

(6) “The First Amendment right to petition the government secures meaningful access to federal courts. *** . It does not provide for a right to petition the courts in secret.”

(7) “we take this opportunity to underscore the caution of our precedent and emphasize that the public and press generally have a contemporaneous right of access to court documents and proceedings when the right applies.”

(8) “The district court’s nine-month delay in ruling on the sealing motion ostensibly was based upon its belief that the merits of Company Doe’s claims were ‘inextricably intertwined’ with the issues of sealing. But the right of public access under the First Amendment or the common law is not conditioned upon whether a litigant wins or loses. The district court erred by failing to act expeditiously on the sealing motion.”

(9) “when a party seeks to litigate under a pseudonym, a district court has an independent obligation to ensure that extraordinary circumstances support such a request by balancing the party’s stated interest in anonymity against the public’s interest in openness and any prejudice that anonymity would pose to the opposing party.”

(10) The district court abused its discretion in allowing Company Doe to litigate under a pseudonym.

The Court of Appeals reversed the sealing and pseudonymity orders and remanded with instructions to unseal the entire record.

In a concurring opinion, a circuit judge noted that, “the equities here lie with Company Doe. Common sense tells us that some harm will befall Company Doe by the publication of the false and misleading reports at issue ***. In the electronically viral world that we live in today, one can easily imagine how such publications could be catastrophic to Company Doe’s fiscal health ***. However, the First Amendment jurisprudence requires more than a common sense feeling about what may befall Company Doe.”

DOCKETS & JUDICIAL RECORDS

PLEADINGS & ORDERS

Courthouse News Service v. Planet, 750 F.3d 776 (9th Cir. 2014)

The plaintiff news organization had been given daily access to newly filed complaints by the defendant. Citing budget pressures, the defendant changed his practice and began withholding complaints until these had been fully processed, “which sometimes may take days or months.” The plaintiff filed a Section 1983 action, contending that the new procedure violated its right of access under the First Amendment and federal common law. The district court abstained and dismissed the complaint, concluding that the relief sought would interfere with the day-to-day administration of a State court and that construction of a State statute might resolve the dispute. The Court of Appeals reversed because it concluded that abstention was not appropriate and remanded: “There may be limits on the public’s right of access to judicial proceedings, and mandating same-day viewing *** may be one of them. ***. We decline to leave CNS and those who rely on its reporting twisting in the wind while the state courts address a different question entirely—the interpretation of a state law that itself recognizes the importance of public access to judicial proceedings.”

DOCKETS & JUDICIAL RECORDS

In re Google Inc. Gmail Litig., Case No. 13-MD-02430-LHK (N.D. Ca. Aug. 6, 2014).

The plaintiffs and Google entered into a settlement after the plaintiffs' class certification motion had been denied. Google then moved to seal documents related to the class certification motion. The court concluded that its denial of class certification was "most likely dispositive" because, after it ruled, the parties settled and the case closed. The court applied a "compelling reasons" analysis to the sealing motions and granted in part the relief sought. However, the court denied Google's motion to seal portions of a hearing transcript: "where, as here, the parties did not request closure of the courtroom, Google explicitly represented that the open nature of the hearing supported its request to seal documents associated with the briefing, and the disclosures were not inadvertent, the Court will not permit an ex post facto redaction of statements made in open court in the transcript."

COURT PROCEEDINGS

DOCKETS & JUDICIAL RECORDS

Legal Newsline v. Garlock Sealing Technologies LLC, 3:13-CV-004464. 2014 WL 3696576 (W.D. N.C. July 23, 2014)

This is an appeal by a media organization from bankruptcy court orders related to a hearing to make an aggregate estimate of a bankrupt's liability for present and future mesothelioma claims. The bankruptcy court sealed the hearing as well as evidence that it relied on over the objections of the organization. Sitting in an appellate role, the district court reversed: "the only basis relied on by the bankruptcy court other than judicial efficiency *** was the existence of protective orders and the representations of interested counsel that such documents were confidential. While designations of a document as 'confidential' may well be the impetus for attorney requesting a court to seal a document, it is by no means an endpoint." The district judge remanded to the bankruptcy court for further consideration.

COURT PROCEEDINGS

DOCKETS & JUDICIAL RECORDS

PLEADINGS & ORDERS

Oliner v. Kontrabecki, 745 F.3d 1024 (9th Cir. 2014).

The parties to a bankruptcy proceeding settled and agreed to seek permission to seal all documents related to it and related district court and court of appeals proceedings. The district court denied the parties' request to seal the record of an appeal, including its decision to dismiss for lack of jurisdiction. The Court of Appeals concluded:

(1) The order was appealable either as a final order or a collateral order.

(2) The “compelling reasons” standard applied because the parties sought to seal the entire record, including the district court’s decision.

(3) “The only reasons provided for sealing the records, to avoid embarrassment or annoyance to Kontrabecki and to prevent an undue burden on his professional endeavors—are not ‘compelling,’ particularly because the proceedings had been a matter of public record since at least 2004.”

The Court of Appeals also rejected the argument that “the integrity of judicial proceedings is a compelling reason *** because the parties would not have entered into the settlement agreement had they known that the record of the district court proceedings would not be sealed. However, the express terms of the settlement agreement, which are well known to the parties, belie this assertion.”

DOCKETS & JUDICIAL RECORDS

PLEADINGS & ORDERS

Sullo & Bobbitt, P.L.L.C. v. Milner, 13-10869, 2014 WL 3845227 (5th Cir. Aug 6, 2014) (per curiam).

The plaintiffs brought a Section 1983 action against various municipal criminal court officials, alleging that they had been denied their right to “quick access” to records in violation of the First and Fourteenth Amendments and federal common law. The plaintiffs sought access to misdemeanor records within 24 hours’ of filing to advertise their services to defendants. The district court dismissed. The Court of Appeals affirmed. The pleadings failed to satisfy the experience test of *Press-Enterprise II*: “While they [the plaintiffs] may be correct that the Supreme Court has not described at length what is required for a practice to be adopted nationwide, appellants’ failure to even allege that other municipalities provide access *** within one business day *** simplifies our inquiry.”

DOCKETS & JUDICIAL RECORDS

United States v. Erie County, 13-3653-CV, 2014 WL 4056326 (2d Cir. Aug. 18, 2014).

The parties settled a civil rights action arising out of the death of two inmates at the defendant's correctional facilities. The dismissal order provided that reports which measured the defendant's progress in improving conditions were to be prepared and filed with the district court, which retained jurisdiction. The order also provided that either party could move to reopen and that the reports would constitute the record for any enforcement action. The defendant was granted leave to file the reports under seal. An organization moved to intervene and secure access to the reports. The district court granted the motion to intervene but denied access. The Court of Appeals reversed:

(1) The compliance reports are "relevant to the performance of the judicial function and useful in the judicial process" and are therefore "judicial documents."

(2) The reports are subject to a First Amendment right of access under the experience and logic test because of the public nature of the parties.

(3) The right of access was not overcome by any countervailing interest.

DOCKETS & JUDICIAL RECORDS

United States v. Index Newspapers LLC, 13-35243, 2014 WL 4376296 (9th Cir. Sept. 5, 2014).

"This case requires us to decide the extent to which the public's qualified right of access to court proceedings must give way to the need for secrecy when a grand jury witness is held in criminal contempt and confined. We consider the district court's order granting in part and denying in part a newspaper's motion to unseal transcripts and filings related to a grand jury witness's contempt and continued confinement proceedings." To quote the summary of the opinion:

"The panel affirmed in part and reversed in part the district court's order denying in part a newspaper's motion to unseal transcripts and filings related to grand jury witness Matthew Duran's contempt and continued confinement proceedings. The panel held that direct appeal, rather than a petition for writ of mandamus, was the appropriate procedure for the newspaper to seek review of the district court's order; and the panel dismissed the newspaper's petition for a writ of mandamus.

The panel held that there is no First Amendment public right of access to: (1) filings and transcripts relating to motions to quash grand jury subpoenas; (2) the closed portions of contempt proceedings containing discussion of matters occurring before the grand jury; or (3) motions to hold a grand jury witness in contempt. The panel also held that the public does have presumptive First Amendment rights of access to: (1) orders holding contemnors in contempt and requiring their confinement; (2) transcripts and filings concerning contemnors' continued confinement; (3) filings related to motions to unseal

contempt files; and (4) filings in appeals from orders relating to the sealing or unsealing of judicial records. The panel further held that the recognized rights of access were categorical, but were not unqualified.

The panel concluded that there was no substantial probability that disclosing the order holding Duran in contempt would jeopardize grand jury secrecy, and that redacting the remaining documents would adequately protect the government's compelling interest in maintaining the secrecy of the grand jury. The panel also held that it was not sufficient for documents to be declared publically available without a meaningful ability for the public to find and access those documents. Finally, because the government did not offer any alternatives, the panel held that the district court must unseal its docket to allow the public to access those transcripts and filings to which it was entitled.

The panel affirmed the district court's decision to maintain under seal: the transcript and filings related to Duran's motion to quash; the portion of the transcript of Duran's contempt proceedings during which matters occurring before the grand jury were discussed; and the motion to hold Duran in contempt. The panel remanded for the district court to unseal the electronic and paper docket filed in Duran's contempt proceeding. The panel reversed the district court's decision to maintain under seal the order holding Duran in contempt and ordering him confined, and remanded for the district court to unseal that order. The panel remanded for the district court to unseal the transcript and the filings related to Duran's confinement status hearing, the filings related to Duran's request for release, and the district court filings related to the newspaper's motion to unseal, subject to any redactions deemed necessary. The panel granted the newspaper's motion to unseal the file in this appeal, subject to possible redactions."

DOCKETS & COURT PROCEEDINGS

PLEADINGS & ORDERS

United States ex rel. Barko v. Halliburton Co., Case No. 1:05-CV-1276 (D.D.C. Mar. 11, 2014).

This action arises out of a massive oil spill. The court ordered defendants to produce documents related to their internal investigations of the spill. Defendants asked the court to certify its order for interlocutory appeal and to seal the order. The court noted that the defendants' fear of producing the documents was understandable as they made factual representations in a dispositive motion contrary to the content of the documents. The court denied the motion to certify, finding that the defendants failed to "satisfy the high standard required for an interlocutory appeal" under *Mohawk Industries, Inc. v. Carpenter*. However, the court restricted production to afford the defendants an opportunity to seek *mandamus* relief. The court also denied the motion to seal its order:

“The only privacy interests at issue appear to be an interest in secrecy for secrecy’s sake or KBR’s embarrassment” that its investigations revealed bad stuff.

DISCOVERY MATERIALS

STATE JUDICIAL DECISIONS

Circuit Court v. Lee Newspapers, 332 P.3d 523 (Wyo. Sup. Ct. 2014).

A circuit court closed all proceedings in a juvenile sexual assault case and sealed the court file. It did so in reliance on a statute that was intended to protect the identities of the accused and the victim before a preliminary hearing. A newspaper moved to intervene but, prior to a ruling, the accused waived a preliminary hearing. The newspaper and other news agencies brought a declaratory judgment action in the district court, challenging the circuit court's actions. The district court granted summary judgment in favor of the news organizations, holding that a redacted court file and public hearings in which only initials of the victim and the accused were used would serve the "dual purpose" of protecting the parties and providing information to the public. The circuit court appealed.

The Wyoming Supreme Court held that the appeal was not moot. On the merits, the Court held the First Amendment right of access attached to preliminary hearings and the court file and that, regardless of whether protecting the identity of an accused could be a compelling interest, the circuit court made no specific findings in that regard and violated the First Amendment when it closed the proceedings and sealed the records.

COURT PROCEEDINGS

DOCKETS & JUDICIAL RECORDS

City v. Superior Court, 225 Cal.App. 4th 75 (2014).

The Superior Court held that an individual had a right under the California Public Records Act to inspect written communications sent or received by City personnel on their private electronic devices using their private accounts. The communications were not stored on City servers or directly accessible by the City. The Court of Appeal reversed: "the Act does not require public access to communications between public officials using exclusively private cell phones or e-mail accounts" as these did not meet the statutory definition of "public records." The Court of Appeal noted: "That city council members may conceal their communications on public issues by sending and receiving them on their private devices from their private accounts is a serious concern; but such conduct is for lawmakers to deter with appropriate legislation."

STATE FOIA

***Commonwealth v. Alebord*, 467 Mass. 106 (Mass. 2014).**

The defendant was convicted of murder. The courtroom had been closed during jury selection, “as was the custom and practice at the time.” The Massachusetts Supreme Judicial Court affirmed the denial of the defendant’s motion for a new trial. His Sixth Amendment right to a public trial had been violated and that was a “structural” error that required reversal. However, the defendant waived that error because his attorney, “who had practiced extensively ***, was aware that the court room was closed *** and he did not object thereto.” The Supreme Judicial Court also held that the attorney’s failure to object did not constitute ineffective assistance.

COURT PROCEEDINGS

***Commonwealth v. Pon*, 469 Mass. 296 (Mass. 2014).**

A former criminal defendant whose case had been dismissed sought to seal his criminal record under a Massachusetts statutory scheme. His application was denied under “the stringent standard for discretionary sealing” articulated by the Supreme Judicial Court in 1995. “This case concerns the balance between the public’s right of access to criminal records and the State’s compelling interest in providing privacy protections for former criminal defendants to enable them to participate fully in society.” The Court set forth a new standard given legislative concerns about the “negative impact of criminal records ***, particularly in an age of rapid informational access through the Internet and other new technologies.” In so doing, the Supreme Judicial Court held that, under the experience and logic test articulated by the United States Supreme Court, “records of closed criminal cases resulting in these particular dispositions [dismissal or an entry of *nolle prosequi*] are not subject to a First Amendment presumption of access, and therefore the sealing of a record *** need not survive strict scrutiny.” The Court did hold that the common law presumption of access attached but that a showing of “good cause” was sufficient to overcome that presumption.

DOCKETS & JUDICIAL RECORDS

***Cortez v. Johnston*, 06-13-00120-CV, 2014 WL 1513306 (Tex. Ct. App. Apr. 16, 2014).**

The plaintiff, a sitting State judge, sought to seal discovery materials that the defendant had filed in a defamation action brought by the judge. The plaintiff nonsuited his complaint and requested that the materials be sealed. Intervenors then sought access to the materials. The trial court held that the filed materials were “court records” presumptively subject to public access and denied the request. On the merits of the

plaintiff's appeal from that ruling, the Court of Appeals held that the trial court had not abused its discretion: "The trial court sought to balance the interest in privacy against the public interest in disclosure, in light of the historical preference that court proceedings be open to the public absent a strong reason to close or keep them from the public." Although the documents were "embarrassing and offensive," the plaintiff was "an elected official whose privacy rights are limited by virtue of his public status."

DISCOVERY MATERIALS

DOCKETS & JUDICIAL RECORDS

***Fiorella v. Paxton Media*, 424 S.W.3d 433 (Ky. Ct. App. Feb. 26, 2014).**

The former president of a public college brought a defamation action against, among others, a college vice president. The parties agreed to keep portions of the vice president's deposition and accompanying materials confidential to avoid possible embarrassment to the vice president. These discovery materials were *filed* in envelopes marked "confidential." However, no sealing order was issued. A newspaper moved to intervene, seeking access. The trial court allowed intervention and granted access. The Kentucky Court of Appeals affirmed: "we conclude *** that once filed with the courts, 'the fruits of pretrial discovery are, *in the absence of a court order to the contrary*, presumptively public.'" Since there was no sealing order, the materials were subject to the presumption. The Court of Appeals then balanced the presumption against the privacy interests of the vice president and concluded that she had not shown good cause sufficient to overcome the presumption.

DISCOVERY MATERIALS

DOCKETS & JUDICIAL RECORDS

***Gulliver School, Inc. v. Snay*, 137 So.3d 1045 (Fla. Dist. Ct. App. 2014).**

A former headmaster settled an age discrimination action against his school. The settlement included a confidentiality provision that its "existence and terms" were to be kept confidential and that the headmaster would forfeit \$80,000 if he breached confidentiality. Four days after the agreement was signed their college-aged daughter posted on Facebook, "Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer." The school refused to pay the \$80,000. The headmaster moved to enforce the settlement. The trial court found that neither the headmaster's disclosure to his daughter or her posting (to 1200 of her friends, including current or former students of the school) constituted a material breach.

The Florida District Court of Appeal reversed: “before the ink was dry *** , and notwithstanding the clear language *** , Snay violated the agreement *** . His daughter then did precisely what the confidentiality agreement was designed to prevent, advertising to the Gulliver community that Snay had been successful *** .” The headmaster was left with \$10,000 in back pay. His attorneys received \$60,000.

SETTLEMENT

Los Angeles County Dep’t of Children and Family Services v. J.P., B242179 (Ca. Ct. App. Mar. 3, 2014).

The Los Angeles Juvenile Dependency Court issued a “blanket order” that allowed press access to dependency hearings unless there was a reasonable likelihood that access would be harmful to a juvenile’s best interests. The standing order imposed the burden to show harm on an objector to press access. A juvenile appealed from the application of the order to her case. The Court of Appeal reversed on the merits, holding that the blanket order was contrary to California law:

(1) “Section 346 [a statute that governs press access] is the product of a long history of presumptively private or closed dependency hearings.”

(2) “The blanket order changes these presumptively private hearings to presumptively public hearings, and then places the burden on the child to object and to prove a likelihood of detriment before he or she may have the private hearing that has always been contemplated in dependency matters. This the court may not do.”

(3) “There may be merit in effecting the reforms provided in the blanket order, but it is not the role of the judiciary to provide a more open system of dependency adjudications.”

COURT PROCEEDINGS

***Morris Pub. Grp. v. State*, 2014 WL 1665920 (Fla. Dist. Ct. App. Apr. 25, 2014).**

The judge in a high-profile criminal trial excluded the press from the courtroom during the jury selection process. The judge found that there was insufficient space for the press and that press access to a video feed did not constitute a “closure.” The press appealed. The District Court of Appeal held that the appeal was not moot because there had been a mistrial on the most significant charge and access issues were capable of repetition. On the merits, the Court held that, “[b]y limiting their observation of the

proceedings to audio, Petitioners were deprived of the ability to see the judge, prospective jurors, and attorneys to evaluate their demeanor, body language, and other non-verbal behavior.” Although the right of access was subject to the defendant’s right to a fair trial, the trial judge had made findings that were unsupported by the record and would not infringe the *defendant’s* right. Moreover, the trial judge failed to consider alternate solutions to the space question.

The Court also rejected the argument that the juror challenge proceeding was a “bench conference” which the press had no right to attend. There was no audio feed and neither the press nor the public were present. The Court held that the proceeding was a substantive part of the trial and the press had a right to attend both under the First Amendment and the Florida common law right of access.

COURT PROCEEDINGS

Nissen v. Pierce County, No. 44852-1-II (Wash. Ct. App. Sept. 9, 2014).

In connection with a “whistleblower” action she filed against her employer, the plaintiff sought access pursuant to the Washington Public Records Act to cell phone records of the county prosecutor. The trial court dismissed her action to compel access. The prosecutor “has a County-provided cellular phone, which he rarely uses, apparently preferring instead to use his personal cellular phone to conduct Government business.” The Court of Appeals reversed: “(1) call logs for a government official’s private cellular phone constitute ‘public records’ only with regard to the calls that relate to government business and only if these call logs are used or retained by a government agency; (2) text messages sent or received by a government official constitute ‘public records’ only if the text messages relate to government business; and (3) because some of the private cellular phone calls logs and text messages Nissen requested may qualify as ‘public records,’” the trial court erred in dismissing the complaint. The Court of Appeals remanded for the development of the record.

STATE FOIA

Oahu Pub. Inc. v. Ahn, 133 Hawai’I 482 (Hawai’I Sup. Ct. 2014).

The judge in a murder trial conducted five separate proceedings that were not open to the public and sealed the transcripts of those proceedings. Two news organizations petitioned for writs directed to these actions. The Hawai’i Supreme Court addressed procedures “that a court must undertake to protect the constitutional right of the public to attend criminal trials while also protecting a defendant’s potentially countervailing constitutional right to a fair and impartial jury” and “that a court is required to follow before denying public access to a transcript of a closed proceeding.” The Court held:

- (1) “the Hawai’i Constitution provides the public with a qualified right of access to observe court proceedings in criminal trials.”
- (2) “The trial court must articulate the interest closure protects, ‘along with findings specific enough that a reviewing court can determine whether the closure order was necessary.’”
- (3) “if the court is contemplating whether closure of the courtroom is necessary, it must provide a reasonable opportunity for the public to object.”
- (4) “If objections are made by those ‘actually present,’ the trial proceedings should be conducted to allow those objecting to removal to be heard before a closure order is entered.”
- (5) “To the extent practicable, a reasonable attempt should be made to notify entities or persons who have requested ‘Extended Coverage’ of a case. Extended Coverage means any recording or broadcasting of proceedings ***.”
- (6) “The requirements that must be satisfied by a court in order to overcome the qualified right of access to criminal trials may be divided into procedural and substantive elements.”

The Court considered whether the right of access applied to the portions of the trial that had been sealed:

- (1) Two proceedings were conducted in court during the trial and addressed allegations of juror misconduct. “When a court investigates allegations of juror misconduct ***, its actions constitute trial proceedings, and rights of access *** may apply.”
- (2) “the experience prong of the ‘logic and experience’ test provide little guidance *** and it is appropriate to give greater weight to the ‘logic prong’ of the tradition and logic test.”
- (3) “Logic” led to a conclusion that proceedings on juror misconduct should be subject to the right of access.
- (4) Three proceedings “took place in chambers or at sidebar and involved questions of procedure rather than the actual questioning of jurors.” The Court did not address these.
- (5) The trial judge failed to make specific findings to justify closure of the two sealed proceedings.

The Court then considered whether there was a post-trial right of access to the transcripts of the *five* proceedings: (1) “under the logic prong ***, precedent requires the

release of the transcript once any competing interests that militate for closure of a hearing traditionally open to the public are no longer viable.”

(2) “the same procedural and substantive protections that must be observed by a court considering closure of courtroom proceedings *** must also be applied if a court is contemplating to deny access to the transcript of the closed proceeding.”

(3) The trial court failed to afford the protections and “improperly continued to deny access to this transcript when the potential risk of harm to any compelling interests that has precipitated closure had passed.”

TRIAL PROCEEDINGS

Washington State Dept. of Transp. v. Mendoza De Sugiyama, 330 P.3d 209 (Wash. Ct. App. 2014).

The Washington Public Records Act provides that “[r]ecords that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery *** are exempt from disclosure.” The plaintiff in an employment discrimination action sought the production of over 174,000 e-mails from the agency. The trial judge issued a protective order, finding the request unduly burdensome. The plaintiff then made a request for the e-mails under the Act. The agency denied the request, citing the exemption. This led to the “extraordinary result that Mendoza de Sugiyama became the only person in the state that could not obtain the requested records.” The agency filed a separate action seeking a declaration that it need not comply with the request. The judge in that action ruled against the agency. The Washington Court of Appeals affirmed. The exemption was for records subject to work product protection and attorney-client privilege. The trial court in the employment discrimination “did not determine that the e-mails *** were undiscoverable and thus unavailable under the civil rules, only that her particular request created undue burden.” Therefore, the plaintiff could seek the e-mail under the Act.

DISCOVERY MATERIALS

STATE FOIA

FEDERAL STATUTES, REGULATIONS, ETC.

“Changes to Information Available on PACER,”

Notification of August 11, 2014, change to PACER architecture “in preparation for the implementation of the next generation of the judiciary’s Case Management/Electronic Case Files (CM/ECF) system,” available at <https://www.pacer.gov/announcements/general/webpacer.html> (for more information, see below under “Articles”)

DOCKETS AND JUDICIAL RECORDS

Local Rules, United States District Court for the United States District Court for the Southern District of Indiana:

- Rule 5-8: “Public Access to Cases Filed Electronically”
- Rule 5-11: Addressing procedure for filing papers under seal
- Criminal Rule 4.1: Prohibiting “Court supporting personnel” from disclosing certain information
- Criminal Rule 5.1: Prohibiting attorneys from releasing certain information
- Criminal Rule 11.1(a): Providing that papers related to preparation of presentence investigation reports deemed confidential

Note: These local rules of a particular United States district court are included for illustrative purposes – many district (and State) courts have similar provisions.

DOCKETS & JUDICIAL RECORDS

ARTICLES

J. Aresty, D. Rainey & J. Cormie, “State Courts and the Transformation to Virtual Courts,” *Litigation* (ABA Sec. of Litigation: Spring 2013)

(“The differences between yesterday’s and today’s litigation practice could not be starker—and that includes the courtroom. State courts are rapidly developing technology to make their paper-based and face-to-face systems more efficient, and it is not hard to imagine the tipping point where virtual courts will be the venue for most civil cases and even some criminal cases.”)

COURT PROCEEDINGS

DOCKETS & JUDICIAL RECORDS

A. Conley, et al., “Sustaining Privacy and Open Justice in the Transition to Online Court Records: A Multidisciplinary Inquiry,” 71 *Maryland L. Rev.* 772 (2012)

(“The conclusion of our inquiry is that courts have an obligation to rewrite rules governing the creation of, and access to, public court records in light of substantive changes that online access augers.”)

DOCKETS & JUDICIAL RECORDS

D.D. Cross & J. Levine, “Protecting Confidential Information: Lessons from the *Apple v. Samsung* Litigation,” 14 *DDEE* 91 (2014)

(“Judge Grewal’s decision teaches that certain safeguards are expected—and if and when those fail, certain immediate actions, exhibiting responsibility and accountability, are also expected.”)

DISCOVERY MATERIALS

H.B. Dixon, Jr., “Information Technology Disaster: Disaster Recovery Planning for Court Institutions,” *The Judges’ Journal* 36 (ABA: Fall 2013)

(“the creation of an IT discovery recovery plan is an extremely complex, detailed, and technical exercise *** this article is intended to encourage discussion about the process to develop such a plan so that the courts are ready to protect the community’s rights, even during a time of catastrophe.”)

DOCKETS & JUDICIAL RECORDS

R.J. Hedges, “Princeton’s Center for Information Technology Explores the Future of Privacy and Public Access in Civil Litigation in the 21st Century,” 11 *DDEE* 340 (2011)

(reporting on program addressing public access)

COURT PROCEEDINGS

DOCKETS & JUDICIAL RECORDS

R.J. Hedges, *Private Information, Data Breach, and the First Amendment* (May 11, 2011) (unpublished: available from the author)
(discussing *Rocky Mountain Bank v. Google Inc.*, 2011 WL 1453832 (9th Cir. Apr. 15, 2011)).

DOCKETS & JUDICIAL RECORDS

C. Hutchins, “More Cops Are Wearing Body Cams. When Will the Footage Be a Public Record?” *Columbia Journalism Rev.* (posted Sept. 23, 2014) (“Police departments *** are rapidly embracing the use of body-mounted cameras worn by officers. While the move is generally applauded as a government-accountability measure, it raises a serious question: When and how will members of the public and the press have access to the footage?”)

MISCELLANEOUS

STATE FOIA

V. Li, “Who Owns the Law?” *ABA Journal* 48 (June 2014)

(“This article looks at a debate going on in businesses, between different crafts and their regulators, and before judges: How public must public information be, and who absorbs the costs and earns the profits of providing it?”)

MISCELLANEOUS

G.J. Linhares & N. Raaen, To Protect and Preserve: Standards for Maintaining and Managing 21st Century Court Records (COSCA 2012-2013 Policy Paper)

(“In the changing world of 21st Century court records management, courts and the public have a right to insist on professional records management standards ***. This policy paper proposes a framework ***.”)

DOCKETS & JUDICIAL RECORDS

J. Mullin, “US Courts Trash a Decade’s Worth of Online Documents, Shrug It Off,” *Ars Technica* (posted Aug. 26, 2014)

(“For pre-2010 documents in three appeals courts, you’ll have to go in person”).

Note that, following an outcry, online access is to be restored. J. Gershman, “Judiciary to Restore Online Access to Case Archives,” *Wall St. J.* (posted Sept. 19, 2014).

DOCKETS & JUDICIAL RECORDS

J.P. Murphy & L.K. Marion, “Riley v. California: The Dawn of a New Age of Digital Privacy,” 14 *DDEE* 345 (2014)

(“Recognizing the revolutionary nature of modern technologies—and it is clear that the [Supreme] Court’s analysis extends well beyond cell phones--

the Court affirmed that mobile media is just *different*. With *Riley*, the Court ushers in a new age of digital privacy”).

MISCELLANEOUS

J. Palazzolo, “NSA Phone-Data Collection Program Set for Legal Challenge,” *Wall St. J. A2* (Sept. 2, 2014)

(reporting on appeals from two district court decisions on constitutionality of NSA surveillance).

MISCELLANEOUS

J. Palazzolo, “U.S. Appeals Court Weighs Legality of NSA’s Collecting Phone Records,” *Wall St. J* (posted Sept. 2, 2014)

(reporting on September 2 oral argument before Second Circuit on constitutionality of NSA surveillance).

MISCELLANEOUS

M.J. Quina & S.T. Bychowski, “Protecting Confidential Information During Litigation,” *Corporate Counsel* (ALM: posted Sept. 3, 2014)

(“[c]areful, proactive case management by both in-house and outside counsel is the shortest path to reducing cost and risk, while still ensuring vigorous and effective litigation.”)

DISCOVERY MATERIALS

N. Raaen, “Order in the Courts! RM Principles for the Judiciary,” *Information Management* 28 (ARMA: January/February 2014)

(“The dramatic increase in electronic records is profoundly affecting records management practices in the courts. In response, a judiciary conference has published six recordkeeping principles that are intended to serve as a framework for assessing and implementing effective judicial records management practices.”)

DOCKETS & JUDICIAL RECORDS

T. Ruger, “PACER Changes Draw Ire of Attorneys, Journalists,”
***National L. J.* (ALM: posted Aug. 26, 2014)**

(“The federal judiciary this month removed years of court records from its online archives, drawing concern from attorneys, journalists, researchers and open-record advocates who rely on remote access to files.”)

DOCKETS & JUDICIAL RECORDS

S.G. Swisdak, “The Value of Historical Research to In-House Counsel,”
***In-House Counsel Comm. Newsletter* (ABA: June 2009)**

(“companies should invest in understanding their past, as this understanding can potentially help to mitigate current and future legal liabilities.”)

MISCELLANEOUS

SAMPLE PROTECTIVE ORDER

Appendix A to 16 C.F.R. 3.31: Standard Protective Order

(form of standard order mandated by FTC for administrative adjudications).

THE END (FOR NOW)