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12 and Phoenix Newspapers, Inc.

13 ARIZONA SUPREME COURT

14 In the Matter of:

15 AMENDED PETITION TO  
16 AMEND RULES 2.3, 13.2, 16.1,  
17 26.4, 31.13, 31.8 & 35.1,  
18 RULES OF CRIMINAL  
19 PROCEDURE, RULE 111 & 125  
20 RULES OF THE SUPREME  
21 COURT, AND RULES 15, 24, 34,  
22 106 & 107, RULES OF  
23 PROCEDURE FOR THE JUVENILE  
24 COURT.

25 Supreme Court No. R-12-0004

26 **FINAL COMMENT OF KPNX  
27 BROADCASTING CO. AND  
28 PHOENIX NEWSPAPERS,  
INC. IN OPPOSITION TO  
PROPOSED AMENDMENTS  
OF RULES GOVERNING  
VICTIM IDENTIFICATION,  
AND REPUBLIC MEDIA'S  
ALTERNATIVE PROPOSED  
CHANGES TO ARIZ. R. SUP.  
CT. 123 AND ARIZ. R. CRIM.  
P. 2.3**

29  
30 KPNX Broadcasting Co., which produces "12 News," and Phoenix  
31 Newspapers, Inc., which publishes *The Arizona Republic* (collectively, "Republic  
32 Media"), respectfully oppose the proposed amendments to the Arizona Rules of  
33 the Supreme Court, Rules of Criminal Procedure and Rules of Procedure for the  
34 Juvenile Court prohibiting victim identification. However, Republic Media  
35 submits the attached alternative proposal that would limit remote electronic access  
36 to court records of sex crimes that would identify victims, adult or juvenile. [See  
37 Exhibit 1]



1 measure would provide an added layer of protection for victims in sex crime cases  
2 by keeping these court records off the Internet, while preserving the public's right  
3 to inspect the full court file at the courthouse.

4 By contrast, Petitioner's proposal is dangerously overbroad,  
5 blocking access to criminal court records and inviting law enforcement agencies  
6 to follow suit (despite the public's historic right to inspect related offense reports).  
7 *See, e.g., Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984).<sup>1</sup>  
8 Importantly, the proposal would not be effective in preventing the perceived  
9 harm: because courtrooms would remain open to the public, bad actors could  
10 continue to learn the names of victims in these proceedings and post them online  
11 or elsewhere. *E.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 565-66 (1976).  
12 As such, the changes would serve only to burden the First Amendment rights of  
13 journalists, who need timely access to victims' names in court records for  
14 newsgathering and accuracy purposes. *E.g., id.* [See Exhibit 2, Statement of Pat  
15 Flannery to Ad Hoc Committee on Victims' Names]

16 In brief, the Court should adopt a measured, narrowly-tailored  
17 approach that would block *online* access to victims' information without  
18 impairing the public's historic right to inspect court records. *See Ariz. R. Sup. Ct.*  
19 *123(c)(1)* ("Historically, this state has always favored open government and an  
20 informed citizenry."). Removing online access to court records in cases involving  
21 sex crimes strikes the appropriate balance between protecting crime victims and  
22 preserving the public's right-to-know.

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25  
26 <sup>1</sup> Petitioner contends that his proposal would not block access to the names of  
27 victims of sex crimes in law enforcement records. But if the Arizona Supreme Court  
28 were to prohibit access to all such identifying information about sex crime victims in  
court records, it would only be a matter of time before police departments and law  
enforcement agencies throughout the state similarly blocked access to such historically  
accessible information.

1 Argument

2 I. PETITIONER'S PROPOSAL IS OVERBROAD AND WOULD BE  
3 BOTH INEFFECTIVE AND UNDULY BURDENSOME ON THE  
4 NEWSGATHERING RIGHTS OF JOURNALISTS.

5 However well-intentioned, Petitioner's proposed revisions to court  
6 rules are overbroad and inconsistent with the longstanding tradition of open courts  
7 and records under the First Amendment and the Arizona Constitution. As a  
8 matter of well-settled constitutional law, the public and the news media have a  
9 right to attend criminal proceedings and inspect judicial documents related to  
10 those proceedings. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555,  
11 580 (1980) (holding "the right to attend criminal trials is implicit in the guarantees  
12 of the First Amendment"); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1,  
13 13-14 (1986) ("*Press-Enterprise II*") (First Amendment right of access attaches to  
14 records of court proceedings). As courts have repeatedly observed, criminal  
15 proceedings and related records must be open to the public except where  
16 "specific, on the record findings are made demonstrating that closure is essential  
17 to preserve higher values and is narrowly tailored to serve that interest." *Press-*  
18 *Enterprise II*, 478 U.S. at 13-14 (quotation marks omitted); *see also Oregonian*  
19 *Publ'g Co. v. District Court*, 920 F.2d 1462, 1465 (9th Cir. 1990) ("Under the  
20 first amendment, the press and the public have a presumed right of access to court  
21 proceedings and documents.").

22 The tradition of open court records and proceedings is explicitly  
23 recognized in the Arizona Constitution. *See* Ariz. Const. art. 2, § 11. As Rule  
24 123 makes clear, "[i]n the tradition, the records in all courts and administrative  
25 offices of the Judicial Branch . . . are presumed to be open to any member of the  
26 public for inspection or to obtain copies at all times during regular office hours . .  
27 . ." Ariz. R. Sup. Ct. 123(c)(1) (emphasis added). Even before the U.S. Supreme  
28 Court recognized a First Amendment right of access to court proceedings, the  
Arizona Supreme Court observed: "[c]ourts are public institutions. The matter in

1 which justice is administered does not have any private aspects.” *Phoenix*  
2 *Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 259, 418 P.2d 594, 596  
3 (1966).

4           Petitioner’s proposal turns this presumption of access to court  
5 records on its head by excising the names of victims of sex crimes from *every*  
6 court record, from indictment to Arizona Supreme Court opinion. The proposal  
7 would require the removal of victims’ names from court records in *all* cases,  
8 including those where there is no pattern or likelihood of harassment or  
9 intimidation. As such, the proposal is overbroad and unnecessary. Indeed,  
10 nothing prevents prosecutors or victims’ advocates from moving to seal court  
11 records (or portions thereof) in particularly sensitive cases under the current rules.  
12 And nothing prevents courts from sealing such records, provided “closure is  
13 essential to preserve higher values and is narrowly tailored to serve that interest.”  
14 *Press-Enterprise II*, 478 U.S. at 13-14.

15           The proposal presents additional problems, including requiring a  
16 parallel docketing system for victims’ names with the creation of a “confidential  
17 victim information form,” which would be available for inspection only by the  
18 State, the victim, the defendant, court personnel, the probation department and  
19 persons authorized by court order. This dual-docketing system violates the  
20 command of “openly” administered justice in the Arizona Constitution, and  
21 would set a dangerous precedent for secrecy in the judicial system. Ariz. Const.  
22 art. 2, § 11; Ariz. R. Sup. Ct. 123(c)(1).

23           As Petitioner conceded at the Ad Hoc Committee, the proposal  
24 would also require the creation of a statewide, searchable database for the  
25 “confidential victim information form,” which would provide defense counsel a  
26 means of conducting background searches and research on victims in alleged sex  
27 crimes. It is unclear how this system would be implemented, how long it would  
28 take to develop or how much it would cost. However constructed, the database

1 would be of no use to journalists or the public, who would be required on every  
2 occasion to petition the court for an Order to view court records containing  
3 victims' names.

4           Ironically, most news organizations – including *The Arizona*  
5 *Republic* and KPNX – observe ethics policies that generally *prohibit* the naming  
6 of victims of sex crimes in articles and broadcasts. Nevertheless, journalists rely  
7 upon court records to ensure precise and accurate reporting about crimes.  
8 Prohibiting access to this information would lead to less accurate reporting – and  
9 less public information about the criminal justice system. *See, e.g., Phoenix*  
10 *Newspapers, Inc. v. Jennings*, 107 Ariz. 557, 561, 490 P.2d 563, 567 (1971).  
11 (“Democracy blooms where the public is informed and stagnates where secrecy  
12 prevails.”).

13           As Pat Flannery of *The Arizona Republic* and Heather Dunn of  
14 KPNX told the Ad Hoc Committee, journalists rely upon court records containing  
15 victims' names to “triangulate” information in police records and eyewitness  
16 accounts to ensure accuracy. Indeed, *The Republic's* ethics policy requires  
17 reporters to consult as many first-hand sources of information as time will allow  
18 to report a story – including court records. [See Exhibit 2, Statement of Pat  
19 Flannery to Ad Hoc Committee on Victims' Names] While journalists do not  
20 identify victims of sex crimes in their stories without permission from the victims,  
21 they rely on court records to verify information in probable cause statements and  
22 police reports. Unlike some other public records, information in court records has  
23 been vetted by attorneys who are bound by the Rules of Professional Conduct,  
24 which increases the reliability of judicial records over others.

25           As Mr. Flannery, the newspaper's Government Accountability  
26 Editor, explained, *The Arizona Republic's* recent series on 400 sex crime cases in  
27 Maricopa County that were not adequately investigated by the Maricopa County  
28 Sheriff's Office would not have been possible without access to court records

1 containing victims' information. In that four-part series of articles, reporter JJ  
2 Hensley relied upon court records containing victims' information to find victims  
3 and their family members to discuss the cases. [See Exhibit 2, at 2 ("This sort of  
4 journalism is impossible without access to victims' names in the court record.")]  
5 Cf. *Richmond Newspapers*, 448 U.S. at 572 ("People in an open society do not  
6 demand infallibility from their institutions, but it is difficult for them to accept  
7 what they are prohibited from observing.").

8 The series helped shine a light on gaps in the system and the impact  
9 on victims and their families. This is the essence of watchdog journalism, and it  
10 serves the public, participants in the criminal justice system and crime victims.  
11 As one victim's family member wrote Mr. Hensley after the series was published:  
12 "You have done a major good thing for our family . . . ." [*Id.*] Simply put,  
13 "[p]ublic scrutiny of a criminal trial enhances the quality and safeguards the  
14 integrity of the factfinding process, with benefits to both the defendant and  
15 society as a whole." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606  
16 (1982).

17 The proposal should be rejected for the independent reason that it  
18 would not be effective in preventing the perceived harm. Because criminal  
19 proceedings are open to the public, prohibiting public access to victims' names in  
20 court records will not prevent rogue actors from learning the names in open court  
21 and disseminating the information publicly. E.g., *Richmond Newspapers*, 448  
22 U.S. at 580. Consequently, the proposed rule would impose a significant burden  
23 on the First Amendment rights of journalists and the public while failing to  
24 remedy the potential harm identified by Petitioner. E.g., *Nebraska Press*, 427  
25 U.S. at 565-66. At a minimum, before adopting such sweeping restrictions on  
26 access to court records, the Court should consider a less-restrictive alternative, as  
27 described more fully below. See, e.g., *Press-Enterprise II*, 478 U.S. at 13-14  
28 (requiring the use of less-restrictive alternatives before closing court proceedings).

1 II. LIMITING ONLINE ACCESS TO COURT RECORDS IN ALL SEX  
2 CRIME CASES WOULD PROTECT VICTIMS WITHOUT  
3 BURDENING FIRST AMENDMENT RIGHTS.

4 Recent amendments to Rule 123 provide a workable framework to  
5 strengthen protections for victims of sex crimes. Rule 123(g)(1)(C)(ii)(h)  
6 prohibits online access to “all documents” in cases in which a juvenile is a victim  
7 of a sex crime. By amending Rule 123 and Criminal Rule 2.3, the same  
8 protections can be applied to all sex crime cases. While this would burden  
9 newsgathering by restricting online access to court records that are otherwise  
10 publicly-available, the approach is narrowly-tailored to the problem identified by  
11 Petitioner: the availability on the Internet of court records in sex crime cases.  
12 *E.g., Press-Enterprise II*, 478 U.S. at 13-14. Although journalists and the public  
13 could not access these court records online, they would be free to complete a  
14 request form at the courthouse and inspect the records. Ariz. R. Sup. Ct.  
15 123(c)(1). While this would not entirely prevent someone with a bad motive from  
16 seeking these records, it would dramatically reduce the availability of the  
17 information. This, in turn, would lessen the likelihood of malicious use of the  
18 information.

19 Courts have embraced this concept of “practical obscurity,” or  
20 preserving the *availability* of paper-based information, such as court records,  
21 while restricting the *accessibility* of such information online. See Ariz. R. Sup.  
22 Ct. 123(f), (g). As the U.S. Supreme Court observed, “there is a vast difference  
23 between the public records that might be found after a diligent search of  
24 courthouse files . . . and a computerized summary located in a single  
25 clearinghouse of information.” *U.S. Dep’t of Justice v. Reporters Comm. for*  
26 *Freedom of the Press*, 489 U.S. 749, 764 (1989) (interpreting federal Freedom of  
27 Information Act). Consequently, restricting online access to victims’ identities in  
28 criminal cases involving sex offenses is a reasonable alternative to Petitioner’s  
proposal to remove victims’ names from *all* court records. At a minimum, the

1 Court should consider this less-restrictive alternative before adopting Petitioner's  
2 sweeping proposal that overturns the presumption of access to court records under  
3 the First Amendment and Arizona law. *E.g., Press-Enterprise II*, 478 U.S. at 13-  
4 14.

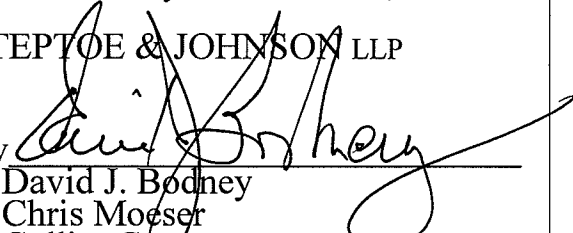
5 Adopting the alternative proposal is preferable to Petitioner's  
6 approach for the independent reason that it can be implemented quickly and  
7 cheaply without burdening court staff. Indeed, the framework is already in place  
8 to prohibit online access to these court records. In addition, it is unclear how a  
9 request for victims' names submitted by the media or the public would be decided  
10 by the court, or what standard would be applied to decide the issue. What is clear,  
11 however, is that the process set forth in the proposal would obstruct and delay  
12 access by journalists to information that is critical for accurate newsgathering and  
13 reporting. [See Exhibit 2] In sum, the Court should reject Petitioner's overbroad  
14 and costly proposal and consider instead the restriction of *online* access to court  
15 records in sex crime cases.

16 Conclusion

17 For the foregoing reasons, Republic Media urges the Court to reject  
18 Petitioner's proposed amendments to Arizona's court rules regarding the  
19 identification of victims in judicial records.

20 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2012.

21 STEPTOE & JOHNSON LLP

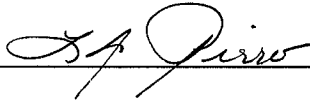
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27 Attorneys for KPNX Broadcasting  
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1 COPY of the foregoing  
2 mailed this 13<sup>th</sup> day of  
3 November, 2012 to:

4 Hon. Ronald Reinstein  
5 Chair, Commission on Victims in the Courts  
6 Superior Court Judge (Ret.)  
7 1501 W. Washington  
8 Phoenix, AZ 85007-3231  
9 Petitioner

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# Exhibit 1

**Exhibit 1**

### **Criminal Rule 2.3. Content of Complaint**

**a.** A complaint is a written statement of the essential facts constituting a public offense, that is either signed by a prosecutor, or made upon oath before a magistrate, or made in accordance with A.R.S. § 13-3903.

**b.** Upon filing a charging document in a criminal case in which a defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 ~~juvenile is alleged to be the victim of any offense listed in A.R.S. Title 13, chapters 14 or 35.1,~~ the prosecuting agency shall advise the clerk that the case is subject to the provisions of Supreme Court Rule 123(g)(1)(C)(ii)(h).

## **Rule 123. Public Access to the Judicial Records of the State of Arizona**

**(a) Authority and Scope of Rule.** Pursuant to the administrative powers vested in the supreme court by Article VI, Section 3, of the Arizona Constitution, and the court's inherent power to administer and supervise court operations, this rule adopted to govern public access to the records of all courts and administrative offices of the judicial department of the State of Arizona.

### **(b) Definitions.**

(1) *Bulk Data.* As used in this rule "Bulk Data" means all, or a significant subset, of the non-confidential case data maintained in a court case management system, either with or without modification or customized compilation.

(2) *Closed or Confidential (Records).* "Closed" or "Confidential," when used in this rule in reference to records, means that members of the public may not inspect, obtain copies of, or otherwise have access to such records unless authorized by law.

(3) *Commercial Purpose.* As used in this rule "Commercial Purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such public records. "Commercial Purpose" does not mean the use of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

(4) *Court.* "Court" means the Supreme Court, the Court of Appeals, Superior Court, Justice Courts, Municipal Courts and all judges of those courts.

(5) *Court Administrator or Clerk of the Court.* "Court Administrator" or "Clerk of the Court" means a person employed, appointed or elected for the purpose of administering the operations of any court or court system.

(6) *Criminal History Record Information (CHRI).* "Criminal History Record Information" means only those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been

provided to the court by the National Crime Information Center (NCIC), Arizona Crime Information Center (ACIC), or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

(7) *Custodian*. “Custodian” is the person responsible for the safekeeping of any records held by any court, administrative office, clerk of court's office or that person's designee who also shall be responsible for processing public requests for access to records.

(8) *Custodian of Bulk Data*. In a superior court or appellate court, “Custodian of Bulk Data” means, depending on local practice, either the clerk of court or the presiding judge. In a justice of the peace or municipal court, the custodian is the sitting justice of the peace and the presiding judge of the municipal court, respectively.

(9) *Dissemination Contract and Disclaimer*. “Dissemination Contract and Disclaimer” means a contract between a custodian of court records and a person or entity requesting bulk data.

(10) *Information*. “Information” is any recognizable alpha/numerical data which constitute a record or any part thereof.

(11) *Judge*. “Judge” means any justice, judge, judicial officer, referee, commissioner, court-appointed arbitrator or other person exercising adjudicatory powers in the judicial branch.

(12) *Law*. “Law” means statute, rule, administrative order, court order or case law.

(13) *Presiding Judge*. “Presiding Judge” means the presiding judge of the superior court for each county, or the chief judge for each division of the court of appeals or the chief justice of the supreme court. For municipal and justice courts “Presiding Judge” means the presiding judge of the superior court.

(14) *Public*. “Public” means all users of court records, including Arizona judicial officers and employees, employees of government agencies and private organizations.

(15) *Public Purpose Organization*. “Public Purpose Organization” means a private organization that serves a public purpose, such as criminal justice, child welfare,

licensing, mental health treatment, or that engages in research for scholarly, journalistic, or governmental purpose.

(16) *Record*. “Record” means all existing documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of any official business by the court, and preserved or appropriate for preservation by the court as evidence of the organization, functions, policies, decision, procedures, operations or other governmental activities.

(A) *Administrative Record*. “Administrative record” means any record pertaining to the administration of the courts, court systems or any non-adjudicatory records.

(B) *Case Record*. “Case Record” means:

(1) any record that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;

(2) any order, judgment, or minute entry that is related to a judicial proceeding; and

(3) any index, calendar, docket, or register of actions associated with a case or in connection with a judicial proceeding.

(17) *Remote Electronic Access*. “Remote Electronic Access” means access by electronic means that permits the viewer to search, inspect, or copy a record without the need to physically visit a court facility.

(18) *Sensitive Data*. “Sensitive Data” means social security number, bank account number, credit card number, and any other financial account number.

**(c) General Provisions.**

(1) *Open Records Policy*. Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records. However, in view of the possible countervailing interests of confidentiality,

privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law.

(2) *Creation, Production and Management of Records.*

(A) Court personnel, who generate or receive paper or electronic records known or marked as containing confidential information, shall identify and segregate the confidential information from the record whenever practicable.

(B) The custodian shall utilize reasonable records management practices and procedures to assure that all closed records are properly identified as “confidential” and maintained segregated or apart from records open to the public. Whenever possible, records containing both public and confidential information shall be identified as “containing both public and confidential information.”

(C) Upon request, the custodian shall reproduce any record containing public information that would otherwise be closed, by redacting all confidential information from the record unless release of the entire record is prohibited by law. Records that are reproduced after redaction shall contain a disclosure that they were redacted, unless such disclosure would defeat the purpose of the redaction. Identification of redacted records shall include a description of the nature and length of the matters contained therein, unless the description, if given, constitutes a disclosure of confidential information. Upon request, the custodian shall identify the legal authority for the redaction.

(3) *Confidential and Personal Financial Records.* Documents containing social security, credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order.

(4) *New Records.* The court is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.

(5) *Judicial Officers and Employees.* Arizona judicial officers, clerks, administrators, professionals or other staff employed by or working under the

supervision of the court shall have such access as needed to carry out their assigned duties and as directed by their supervisor.

(6) *Employees of Government Agencies and Private Organizations.* Employees of federal, state, tribal, and local government agencies and political subdivisions, and private organizations, the objective of which is to serve a public purpose, such as criminal justice, child welfare, licensing, mental health treatment, or research for scholarly, journalistic, or governmental purposes, may be granted such access to court records as required to serve that purpose according to this rule or as provided by any supplemental supreme court policies or court order.

(7) *Access To Bulk Data.* Persons who execute a dissemination contract and disclaimer containing provisions specified by the supreme court may have such access as permitted by paragraph (j) of this rule.

**(d) Access to Case Records.**

All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

(1) *Juvenile Delinquency Proceedings Records.*

(A) Records of all juvenile delinquency and incorrigibility proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court or by law.

(B) Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ARS § 8-321) or the family counseling fund (ARS § 8-261 et seq.) are confidential and shall not be released unless authorized by rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or his family may be identified, wherever such

records are maintained by the court.

(2) *Adult Criminal Records.*

(A) Criminal History Records, diagnostic evaluations, psychiatric and psychological reports, medical reports, alcohol screening and treatment reports, social studies, probation supervision histories and any other records maintained as the work product of pretrial services staff, probation officers and other staff for use by the court are closed and shall be withheld from public inspection, including such records associated with the interstate compact pursuant to ARS § 31-461. However, the bail determination report, any related pretrial service records, the presentence report, and any related probation office records are open to the public when: (i) ordered by the court, (ii) filed with the clerk of court or attached to any filed document and not segregated and identified as being closed or confidential, or (iii) considered or used for any purpose in open court proceedings unless restricted by law or sealed by the court.

(B) In adult criminal cases the pretrial services unit, probation department, limited jurisdiction court, or other primary user shall separate and identify as “confidential” all records defined herein as “criminal history record information,” and those records identified in paragraph (d)(2)(A). Such records shall be closed and placed in an envelope marked “confidential”, or otherwise stored as a confidential record, and shall only be disclosed as authorized by ARS § 41-1750 *et seq.* or by court order.

(C) All other information in the adult criminal case files maintained by the clerk of the court is open to the public, unless prohibited by law or sealed by court order.

(3) *Judicial Work Product and Drafts.* Notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.

(4) *Unofficial Verbatim Recordings of Proceedings.* Electronic verbatim recordings made by a courtroom clerk or at the direction of the clerk and used in preparing minute entries are closed.

**(e) Access to Administrative Records.**

All administrative records are open to the public except as provided herein:

(1) *Employee Records*. Records maintained concerning individuals who are employees or who perform volunteer services are closed except for the following information:

(A) Full name of individual;

(B) Date of employment;

(C) Current and previous job titles and descriptions, and effective dates of employment;

(D) Name, location and phone number of court and/or office to which the individual has been assigned;

(E) Current and previous salaries and dates of each change;

(F) Name of current or last known supervisor; and

(G) Information authorized to be released by the individual to the public unless prohibited by law.

(2) *Applicant Records*. Unless otherwise provided by law, records concerning applicants for employment or volunteer services are open to the public, after the names, home addresses, telephone numbers, social security numbers, and all other personally identifying information have been redacted, except that the names of applicants who are final candidates shall be disclosed.

(3) *Judicial Case Assignments*. Records regarding the identity of any appellate judge or justice assigned to prepare a written decision or opinion until the same is filed are closed.

(4) *Security Records*. All security plans, codes and other records that provide for the security of information, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence, are closed.

(5) *Procurement Records*. Procurement and bid records are open to the public except as provided herein:

(A) Sealed Bids. Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(B) Invitation for Bid. Bid records submitted under Rule 18 of the Judicial Branch Procurement Code or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(C) Competitive Sealed Proposals and Requests for Qualifications. Records containing competitive sealed proposals and requests for qualification submissions under Rules 26 or 35 of the Judicial Branch Procurement Code or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) Trade Secrets. Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

(6) *Preliminary and Draft Reports Concerning Court Operations; Pre-decisional Documents.* Final administrative documents and reports concerning the operation of the court system are open for public inspection and copying by the custodian on court premises. Preliminary drafts of such reports, and pre-decisional documents relating to court operations, shall be open once such draft reports and such pre-decisional documents are circulated to any court policy advisory committee or the public for comment.

(7) *Patron Records.* Records maintained in any court law library, clerk's office or court that link a patron's name with materials requested or borrowed by the patron, or that link a patron's name with a specific subject about which the patron has requested information or materials are closed. This provision shall not preclude a library, clerk's office or court from requiring that the request specify any commercial use intended for the records as provided in paragraph (f) of this rule.

(8) *Remote Electronic Access User Records.* Data or information that would disclose that a user of a remote electronic access system has accessed a particular court record is closed. Record access information shall be accessible by the public only on a showing of good cause pursuant to the process set forth in paragraph (f) of this rule.

(9) *Attorney and Judicial Work Product.*

(A) The legal work product and other records of any attorney or law clerk employed by or representing the judicial branch, that are produced in the regular course of business or representation of the judicial branch are closed unless disclosed by the court.

(B) All notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the course of deliberations on rule or administrative matters are closed.

(10) *Juror Records*. The home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

(11) *Proprietary and Licensed Material*. Computer programs or other records that are subject to proprietary rights or licensing agreements shall only be disclosed in accordance with the terms and conditions of the applicable agreements and licenses, or by court order. No records shall be closed to the public solely because access is provided by programs or applications subject to licensing agreements, or because they are subject to proprietary rights.

(12) *Copyrighted Documents and Materials*. Documents and materials produced and copyrighted by the court are open to public inspection but may not be re-published without proper authorization from the court.

(13) *Judicial Branch Training Materials and Records*. Evaluation materials and records generated by participants in judicial education programs such as test scores, educational assessments, practical exercise worksheets, and similar materials are closed.

(14) *Certification Records*. Proprietary materials required to be submitted to the Supreme Court by applicants for certification or licensing are closed. Applicants for certification or licensure shall be responsible for clearly identifying any material they consider to be proprietary at the time the material is submitted.

**(f) Access to Records in Paper Medium.**

(1) *Filing a Request*. A request to inspect or obtain copies of records that are open

to the public shall be made orally or in a written format acceptable to the custodian. The request shall specify any commercial use intended for the records. All requests for copies must include sufficient information to reasonably identify what is being sought. The applicant shall not be required to have detailed knowledge of the court's filing system or procedures.

(2) *Timely Response.* Upon receiving a request to inspect or obtain copies of records, the custodian shall promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time based upon the following factors:

- (A) Immediate availability of the requested records;
- (B) Specificity of the request and need for clarification;
- (C) Amount of equipment, materials, staff time and other resources required to satisfy the request; or
- (D) Whether the requested records are located at the court or in off site storage.

(3) *Cost; Non-Commercial and Commercial Purposes.*

(A) Applicants who request records for non-commercial purposes shall not be charged any fee for the cost of searching for a record or redacting confidential information from a record, except as provided by statute, nor shall they be required to disclose the intended purpose or use of the records. If no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction.

(B) An applicant requesting copies, printouts or photographs of records for a commercial purpose shall provide a verified or acknowledged statement to the custodian setting forth the commercial purpose and specific use intended for the records. If the custodian has reason to believe an applicant has failed to adequately disclose the commercial purpose or use of the requested records, the custodian may require additional information regarding the intended use of the records. The custodian shall collect a fee for the cost of:

- (i) obtaining the original or copies of the records and all redaction costs; and
- (ii) the time, equipment and staff used in producing such reproduction.

Notwithstanding the above provision, the Clerks of the Supreme Court and the Court of Appeals shall distribute copies of opinions to authorized publishers free of charge for publication pursuant to law and Ariz. Const. Art. 6, § 8.

(C) The custodian may make billing or payment arrangements with the applicant before satisfying the request, and is authorized to receive and hold deposits for estimated costs until costs are finally determined.

(4) *Delay or Denial; Explanation.*

(A) The custodian is required to comply with any request for records, except requests that are determined:

(i) to create an undue financial burden on court operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request;

(ii) to substantially interfere with the constitutionally or statutorily mandated functions of the court or the office of the custodian;

(iii) to be filed for the purpose of harassing or substantially interfering with the routine operations of the court; or

(iv) to be submitted within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

(B)(i) If a request cannot be granted within a reasonable time or at all, the custodian shall inform the applicant in writing of the nature of any problem delaying or preventing access, and if applicable, the specific federal or state statute, law, court or administrative rule or order that is the basis of the delay or denial. If access to any record is denied for any reason, the custodian shall explore in good faith with the applicant alternatives to allow access to the requested records, including redaction of confidential information.

(ii) If unsuccessful, the custodian shall meet with the judge having immediate, supervisory responsibility for the daily operations of the respective court, to determine if an alternative means of access to the records may be provided for

the applicant. Thereafter, as soon as practicable, the judge shall inform the applicant if the denial is affirmed. Reviews of the foregoing denial and all other denials shall be conducted in accordance with the provisions of paragraph (f)(5) below.

*(5) Review of Denials to Access Records.*

(A) Any applicant who is denied access to or copies of any record, bulk data, or compiled data pursuant to this rule, shall be entitled to an administrative review of that decision by the presiding judge. The request for review must be filed in writing with the custodian who denied the request within 10 business days of a denial made under paragraph (f)(4) above. The custodian shall forward the request for review, a statement of the reason for denial, and all relevant documentation to the presiding judge or a designee within 5 business days of receipt of the request for review. The presiding judge or designee shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than 10 business days from the date the written request for review was received.

(B) Any party aggrieved by the decision of the presiding judge or designee may seek review by filing a special action pursuant to the Rules of Procedure for Special Actions. If the decision challenged by the special action was issued by a judge of the superior court or court of appeals, the special action shall be filed in the court of appeals. If the decision was issued by a supreme court justice, the special action shall be filed in the supreme court.

**(g) Remote Electronic Access to Case Records.**

(1) A court may provide remote electronic access to case records as follows:

(A) *Parties, Attorneys, and Arbitrators.* Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) *Governmental Entities and Public Purpose Organizations.* Any federal, state, tribal, or local governmental entity or public purpose organization may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records.

(C) *General Public, Registered Users.*

(i) Members of the public who hold an Arizona driver license or nonoperating identification license may be provided remote electronic access, upon registering and paying any established fee, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) Civil case records in any action brought to enforce, redress, or protect a private or civil right but not:

- Juvenile dependency and delinquency or other matters brought under ARS Title 8;
- Family law, paternity, or other matters arising out of ARS Title 25;
- Orders of protection, injunctions against harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt; or
- Probate proceedings brought under ARS Titles 14 and 36.

(b) Civil traffic case records in any action brought as such under ARS Titles 28 or 41 or a matter expressly designated as a civil traffic violation by a traffic ordinance of a city or town, and any boating violation punishable by a civil sanction under ARS Title 5, chapter 3, articles 1 through 11, or a non-traffic ordinance expressly designated a civil violation or a boating ordinance by a city or town.

(c) Criminal case records in any action instituted by the government to punish offenses classified as a misdemeanor or felony brought pursuant to ARS Titles 4, 13, 28, or local ordinance and case records in any action instituted to punish

petty offenses classified by ARS § 13-601.

(d) Case records in any action instituted by a county to enforce an ordinance that provides for criminal and civil penalties pursuant to ARS §§ 11-251 and 11-808.

(ii) The following documents shall not be accessible by remote electronic access to users registered under paragraph (g)(1)(C) due to the inability to protect sensitive data that is likely to be contained within these documents:

(a) booking-related documents;

(b) warrants, including search warrants, confidential wiretaps, pen registers, handwriting exemplars, trap and trace, and bench warrants;

(c) charging documents, including criminal and civil traffic charging documents;

(d) pre-sentence reports;

(e) defendant's financial statement;

(f) disposition report;

(g) transcripts; and

(h) all documents in criminal cases in which a defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1. ~~juvenile is alleged to be the victim of any offense listed in ARS Title 13, chapters 14 or 35.1.~~ The prosecuting agency, upon filing a charging document described in this paragraph, shall advise the clerk that the case is subject to this provision.

Upon motion by a party, by any person, or upon the court's own motion, and for good cause shown, the court in which such action is pending may issue an order to allow remote electronic access to members of the public, as provided in paragraph (g)(1)(C), to any case in which a juvenile is alleged to be the victim under paragraph (g)(1)(C)(ii)(h). The order may include any appropriate provision required to protect the juvenile from embarrassment or oppression. The burden of showing good cause for an order shall remain with the person seeking remote electronic access to the case record. Irrespective of an order

limiting electronic access under this paragraph, the clerk shall provide non-registered users remote electronic access as set forth in paragraph (D)(ii) herein when the court generally provides such non-registered user access in other cases.

(D) *General Public, Non-Registered Users.* Unless otherwise provided by rule or law, members of the public may be provided remote electronic access, without registering, to:

(i) the following data elements in closed cases, including juvenile delinquency, mental health, probate, and criminal cases ~~in which a juvenile is alleged to be the victim,~~ as identified in paragraph (g)(1)(C)(ii)(h) above:

- party names,
- case number,
- judicial assignment, and
- attorney names

(ii) except as provided in paragraph (g)(1)(C)(ii)(h) above, individual case information extracted from a case management system in all civil, criminal, and civil traffic cases identified in paragraphs (g)(1)(C)(i)(a) through (d), and family law cases, including a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, charges filed or claims made, interim rulings, and case outcomes, including sentence, fines, payment history, minute entries, and notices.

(iii) court of appeals and supreme court opinions and decisions in all case types, except that any appendix in criminal cases in which a defendant is charged with an offense listed in A.R.S. Title 13, Chapters 14, 32, 35 or 35.1 ~~juvenile is alleged to be the victim,~~ as identified in paragraph (g)(1)(C)(ii)(h) above, shall not be provided by remote electronic access.

(2) Registration and fees. The registration process and fees for remote electronic access to case records shall be established by the Supreme Court upon the recommendation of the Arizona Judicial Council, and shall be an amount as reasonable as possible to develop, implement, maintain, and enhance the remote

electronic access to case records system. All information provided by a potential user for registration purposes shall be closed. Remote access provided pursuant to paragraph (g)(1)(B) shall not require registration or payment of any fees.

(3) Courts and clerks of court shall not display case records online except as provided herein, as provided by ARS § 12-283(I), or as ordered by the court in a particular case. Any remote electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, not to attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements. The court or clerk of court that establishes remote electronic access to case records may also establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(4) Courts and clerks of court must clearly and prominently display current charge dispositions for any case that the court or clerk of court makes publicly available online.

(5) Removing case records from online access.

(A) Courts or clerks of court may remove case management system data and case records from online display once the applicable records retention schedule period is met.

(B) For cases scheduled to be retained more than 25 years, courts or clerks of court may remove case management system data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record.

(6) The clerk of the court, court, court agency, or their employees shall be immune from suit for any conduct relating to the electronic posting of case documents in accordance with this rule.

(7) Data or information that would disclose that a user of a remote electronic

access system has accessed a particular court record is closed. Record access information shall be accessible by the public only on a showing of good cause pursuant to the process set forth in paragraph (f) of this rule.

(8) This paragraph (g) shall not limit the public's right of access to records at a court designated facility, whether in paper or electronic format.

**(h) Access to Audiotape, Videotape, Microfilm, Computer or Electronic Based Records.**

(1) *Scope.* This section applies to all requests to access or obtain copies of any audiotape, videotape, microfilm, computer or electronic based records maintained by the court, except for requests initiated by judges, court administrators, or clerks of the court for use in the administration or internal business of the court.

(2) *Authority; Procedures.*

(A) Except by court order, only the custodian or designee is authorized by this rule to provide access to or copies of computer or electronic based records.

(B) All the requirements set forth in paragraph (f), except subparagraph (3) thereof, are incorporated herein by reference and shall apply to requests for records submitted pursuant to this section.

(3) *Cost to Obtain Copies.*

(A) The custodian shall first meet with the applicant to understand the scope of the request so it can be defined as precisely as possible. The cost to obtain copies of information held electronically, which requires no programming or translation, shall be limited to the cost of materials. If a request requires programming or translation, the applicant shall bear the actual cost incurred by the court to comply with the request for copies of records. If no fee is prescribed by law, the custodian shall collect a fee covering the cost of producing the requested records, including staff time, computer time, programming costs, equipment, materials and supplies.

(B) Unless otherwise prescribed by law relating to the collection and deposit of fees by the custodian, the custodian may retain the fees collected pursuant to paragraph (h)(3)(A) to compensate for the expenses related to reproduction of electronic records.

*(4) Databases, Operating Systems and Network Programs.*

(A) Databases and electronic records containing case and administrative records are open to the public. However, databases and electronic records containing confidential information that may not be entirely redacted, may be closed in accordance with the provisions of paragraph (f)(4).

(B) Documentation and other records that describe the technical location, design, function, operation, or access control features of any court computer network, automated data processing or telecommunications systems, are closed to the public.

(C) Consistent with the court's obligation to provide public access to its records, and subject to resource limitations, the design and operation of all future automated record management systems shall incorporate processing features and procedures that maximize the availability of court records maintained in electronic medium. Automated systems development policy shall require the identification and segregation of confidential data elements from data base sections that are accessible to the public. Whenever feasible, any major enhancement or upgrade to existing systems shall include modifications that segregate confidential information from publicly accessed data bases.

*(5) Correcting Data Errors; Administrative Review.*

(A) Data entry inaccuracies in court calendars, case indexes, or case dockets in a court's case management system may be corrected at any time by the custodian of the record on the custodian's own initiative or on request of an individual as provided in paragraph (h)(5). Clerical errors in judgments, orders, or other parts of the record may be corrected as provided by the applicable rules of procedure.

(B) An individual seeking to correct a data error or omission in an electronic case record shall be entitled to apply for relief with the court in which the original record was filed. The individual shall submit the request to correct the error to the clerk of the court, if any, or to the justice of the peace or municipal court judge. If the custodian to whom the request was submitted determines that the data entry is inaccurate, the custodian shall correct the error as soon as practicable.

(C) If the request is denied by the clerk of an appellate court, the individual may apply for administrative review of the denial by the designated appellate judge or

justice. If the request is denied by the clerk of a superior court or by a justice of the peace or municipal court judge, the individual may apply for administrative review of the denial by the presiding superior court judge. The request for administrative review must be filed in writing with the custodian who denied the request within 10 business days of issuance of a denial. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding or designated judge or justice within 5 business days of the request for review. The presiding or designated judge or justice shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not later than 10 business days from the date the written request for review was received by the custodian. If the decision of the presiding or designated judge or justice is that the data entry is inaccurate, the custodian shall correct the error as soon as practicable.

(D) Any party aggrieved by the decision of the judge or justice may seek review by filing a special action pursuant to the Rules of Procedure for Special Actions. If the decision challenged by the special action was issued by a judge of the superior court or court of appeals, the special action shall be filed in the court of appeals. If the decision was issued by a supreme court justice, the special action shall be filed in the supreme court.

**(i) Inspection and Photocopying.**

(1) *Access to Original Records.* During regular business hours a person shall be allowed to inspect or obtain copies of original versions of records that are open to the public in the office where such records are normally kept. If access to original records would result in disclosure of information which is not permitted, redacted copies of the closed records may be produced. If access to the original records would jeopardize the integrity of the records, or is otherwise impracticable, a copy of the complete records in other appropriate formats may be produced for inspection. Unless expressly authorized by the custodian or court order, records shall not be removed from the office where they are normally kept.

(2) *Access to Certain Evidence.* Documents and physical objects admitted into evidence shall be available for public inspection under such condition as the responsible custodian may deem appropriate to protect the security of the evidence.

**(j) Bulk or Compiled Data Dissemination in Bulk.**

(1) *Requests for bulk or compiled court data.*

(A) A custodian may release bulk data to an individual, a private company, or a public organization under this policy. Before releasing bulk data, a custodian shall require the recipient to execute a dissemination contract and disclaimer containing provisions specified by the supreme court.

(B) A custodian may contract with a private company or public organization to provide specialized reports to those requesting them.

(2) *Denying requests for bulk data.* The custodian may deny a request for bulk data in compliance with paragraphs (c), (f)(4), and (h)(4)(A).

(3) *Personal identifiers available in bulk court data.* The custodian of bulk data may release data that contains the following personal identifying information about a petitioner, plaintiff, respondent, or defendant other than a petitioner seeking an order of protection:

(A) name,

(B) address,

(C) date of birth, and

(D) last four digits of the social security or driver license number.

(4) Dissemination of bulk or compiled data is not permitted except as provided in this rule or as permitted by court order.

# Exhibit 2

To the Ad Hoc Committee on Victim Names:

Good newspaper journalism requires accuracy and immediacy, both of which would suffer immeasurably if the names of victims of sexual crimes are suppressed. Please understand, we do not seek victims' names for gratuitous or exploitative purposes. It is *The Arizona Republic's* policy – as it is at most newspapers – not to publish a sex-crime victim's name unless there is a compelling reason to do so, and that reason must be approved by upper-level management. We will not name a victim simply because another media outlet already has done so. There must be an important journalistic or legal reason to do so, and that is a rarity.

However, there are important reasons why access to victims' names is critical to the work we do:

- 1) It is a matter of professional ethics for reporters to contact as many first-hand sources of information as time will allow in any given story. The Gannett Newspaper Division's Principles of Ethical Conduct for Newsrooms has a number of provisions on point:

--"We will be persistent in the pursuit of the whole story."

--"We will seek to gain sufficient understanding of the communities, individuals and stories we cover to provide an informed account of activities."

--"We will treat people with dignity, respect and compassion."

--"We will strive to include all sides relevant to a story."

--"We should make a good-faith effort to seek appropriate comment from the person (or organization) before publication. When that is not feasible, we should be receptive to requests for a response or try to seek a response for a follow-up story."

--"Be sure that the person quoted is in a position to know."

--"Don't make assumptions. Don't guess at facts or spellings."

In the aggregate, these provisions make it imperative in some situations that reporters try to contact victims to gather or check necessary facts. Often, the only way to obtain the necessary information pertaining to the victim is via court records.

- 2) Reporters often contact victims or their families to verify the accuracy of information contained in initial police reports. Everyone working in the justice system understands the importance of accurate, factual information. It should be noted for the record (and any member of the Bar will attest) that basic information contained in police reports and so-called "Form 4s" is frequently inaccurate. Even information disseminated by public information officers in the moments after an incident can be badly flawed – it is the nature of the work. Sometimes, the only way to fact-check critical information before publication is to call victims or their families. When we do so, we are sensitive, as non-intrusive as possible, and DO NOT persist with questions if they decline to speak to us. More often than not, these victims and their families are thankful that we are trying to get the story straight.

- 3) We often need access to victims' names in order to follow up on cases well after a crime is committed. Our jobs as journalists do not stop with the initial report of a crime. We frequently pursue stories examining the efficiency and fairness of the justice system, policy actions that affect how criminals and victims are treated, etc. These stories necessarily entail contact with victims and their families to discuss how their cases were handled within the system. Case in point this week: Reporter JJ Hensley's four-day series on sex-crime investigations mishandled by the Maricopa County Sheriff's Office. It would have been next to impossible to present the personal stories of victims and how the mishandling of their cases affected them without having records in hand that contained their names. Some were obtained via law-enforcement records. Some were obtained via court records. Many of those victims were eager to tell their stories about how their cases had been neglected. Some even volunteered to put their names in print, but the newspaper opted NOT to out of a sense of responsibility to these victims. The salient point: This sort of journalism is impossible without access to victims' names in the court record. Relying only on police reports is perilous, particularly if court records are available that are far more authoritative. The proof of how important these records are in telling victims' stories is in this statement, taken from an email sent by a sexual-molestation victim's family to reporter Hensley on Oct. 2, 2012: "You have done a major good thing for our family, so as we know things that can help you, we will let you know." This is the most powerful argument for access: We can help victims and act responsibly as watchdogs when the system is failing.

The argument that we could obtain similar information from police reports is flawed. As noted early, information in police reports is often inaccurate. It is not a knock on police officers; it is simply a truth that information taken in haste at a crime scene can be riddled with errors. So it is with names, and a bad name makes it impossible to locate a victim to discuss the case. Information in police reports is also hearsay. Responsible reporters will always try to speak directly to those involved if time allows, and that means having a good name.

We also believe that if the courts were to start redacting victim names, it would only be a matter of time before police follow suit. It is a slippery slope we should not hope to descend.

What sets this country's legal system apart from most others is the transparency of its judicial processes. I firmly believe the free press we enjoy in this country also has a healthy role in our democracy. The two go hand-in-hand when journalists cover crime, the judiciary and justice issues. Taking away a very basic part of that delicate equation by withholding victims' names diminishes justice – and journalists' ability to do the job properly. I might also add that it creates a special class of victims enjoying rights none other enjoy. And it damages suspects' basic rights to face their accusers. I fully understand victims' concern about their information being disseminated via the Internet. We generally are not a part of that problem. And I think that is a concern everyone shares – and suffers from. Arrestees complain to us that their arrest information lives in perpetuity on the Web, even if they eventually are exonerated. To what remedy are they entitled? I don't think the answer is censorship. From my perspective as a journalist, and as a citizen interested in democratic institutions, this proposal is a mistake.

Respectfully submitted,

Pat Flannery  
Government Accountability Editor  
*The Arizona Republic*