

# Editorial: Privacy Vs. Public Right to Know

## Privacy Vs. Public Right to Know

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In this digital age, the notion of wiping the information slate clean seems almost quaint. The Internet, after all, is the elephant in the room: It never forgets. What exists in cyberspace exists forever.

The law takes a different view, however. It provides that in certain instances, records of court cases may be annulled — legally abolished — by a judge when he or she finds it in the public interest to do so. When that happens, the case is treated by the court system as if an arrest and trial never occurred. There are sound reasons for this attempt to unring the bell, prominent among them to prevent future employment discrimination against defendants who have been found not guilty.

But as a pending case in the New Hampshire Supreme Court suggests, complications abound. The court recently held a hearing on a dispute that poses the question whether privacy interests and the fact of annulment trump the state's Right to Know law when it comes to police and prosecution records, as opposed to court records. It arises out of an attempt by Norwich documentary filmmaker Liz Canner to gain access to the files of the Grafton County Attorney's Office and the Hanover police related to the widely publicized prosecution of Parker Gilbert, who was charged with and acquitted of raping a fellow Dartmouth student on campus three years ago.

The case apparently has since been annulled. But Canner, who filmed the trial for an upcoming documentary that will focus on issues such as sexual assault and hazing on campus, had questions about how the matter was handled by police and prosecutors, and so sought their records. It appears that a Superior Court judge sided with her argument that the records were subject to the state's Right to Know law, and the Supreme Court was hearing an appeal from Gilbert, who no longer attends Dartmouth.

We say "appears," because, as was reported in the *Sunday Valley News*, the only thing public in the whole affair is a 32-minute video of the high court's March 3 hearing. The lawyers' briefs and related documents remain sealed, thus creating the odd — some might

say surreal — circumstance that the public is allowed to witness the recorded arguments, but not to read the documents that underlie them.

It's anybody's guess how the court will ultimately rule, and even if the Right to Know law is held to apply, Gilbert may still prevail at the Superior Court level by invoking the law's exemptions to prevent the files from being made public. But as news editor John P. Gregg and staff writer Jordan Cuddemi wrote on Sunday, some of the justices seemed troubled — appropriately so, in our view — by the idea that such a high profile case could be airbrushed from history when legitimate journalistic questions are raised about how two of society's most powerful institutions, police and prosecutors, performed their duties. Balancing privacy interests against the public interest is always a tricky proposition. But if one has to trump the other, we think the public interest must prevail.

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