Stanford Law School | Deborah L. Rhode Center on the Legal Profession

Policy Brief
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Sealing Order Reform: Lessons for Judges & Policymakers

A Transparency Debate in the Dark

For decades, American law has embraced a foundational principle: **judicial records should be open to the public.** Transparency allows citizens to monitor the exercise of power, evaluate risks, and understand how the law operates in practice. Open courts are, as the Fifth Circuit recently put it, "Law 101."[1] Given this principle, most circuits subject the sealing of judicial records to what is, in effect, strict scrutiny: any sealing order must be narrowly tailored and supported by a compelling justification.

Yet in a series of high-profile cases, judges have nevertheless sealed judicial records, cutting off public access to crucial, public-health related information. In other cases, questionable sealing practices are on vivid display. For instance, in one recent case, a judge sealed public-health-related documents that were already in widespread circulation, including "an arrest report from a police department's public website [and] articles from *The New York Times*."[2]

Recognizing this disjunction, we set out to ask a critical question: Do courts actually enforce the strict standards that govern sealing? Until now, the answer has remained elusive—and that elusiveness has worked to the advantage of those who oppose reform. Defenders of the status quo have argued that, in the absence of reliable empirical evidence of judicial noncompliance, there is no demonstrated need for new rules or formal guidance.

To get to ground, we analyzed more than 2 million cases, providing the most comprehensive empirical account to date of sealing practices in federal courts. We find a system of widespread sealing that diverges sharply from the law on the books: Sealing requests are usually unopposed and almost always granted. Worse, judicial orders approving these requests are facially inconsistent with governing legal standards, raising serious concerns about transparency, public safety, and judicial accountability.

Key Takeaways

A team of researchers, led by David Freeman Engstrom and Nora Freeman Engstrom of Stanford Law School and Jonah B. Gelbach of UC Berkeley Law, analyzed over 2 million cases and discovered that judges rubber stamp sealing requests. The vast majority of motions to seal are unopposed, and at least 9 in 10 are granted. Further, although judges, when granting sealing motions, are duty-bound to supply specific on-the-record findings, most don't. Most do not so much as cite the governing standard, and, when a standard is offered, it is very frequently wrong.

Three systemic failures create the observed gap between practice and law: (1) local court rules do not always reflect the correct appellate standards, (2) there are no incentives for litigants to oppose requests to seal, and (3) due to heavy caseloads and lack of opposition, judges often treat sealing as a routine administrative matter rather than conducting an independent legal analysis.

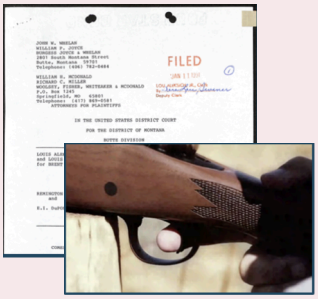
The sealing status quo is not working. The law governing sealing is demanding, but in practice, judicial review is often cursory. That gap has real costs. When judicial records are sealed without appropriate scrutiny, that failure of oversight leads to over-sealing—and over-sealing conceals threats to public health and safety, distorts the development of law, and undermines the legitimacy of the courts.

Policymakers and judges should consider three potential steps towards reform. First, federal rulemakers should enact a sealing-specific rule with a "compelling reason" standard. Second, courts should incentivize third-party intervention to challenge sealing requests. Third, judicial education programs should help to reinforce appellate standards and explain the need for lower court adherence to governing standards.

The Stakes

Secrecy kills

9-year-old Gus Barber was shot and killed when a Remington Model 700 misfired during a family hunting trip in Montana. He wasn't the first child victim of this defective trigger: 12 years earlier, in neighboring Butte, Montana, 14-year-old Brent Aleksich was shot in both legs when the Model 700 misfired. But the Barbers didn't know about the Aleksich family's ordeal because, for years, that record had been sealed by federal court order.



Gus's case is just one of many examples of judges sealing even important public safety information. Here are just a few other famous examples:

- In West Virginia's first state suit against Purdue, the court sealed evidence about OxyContin's risks, even as overdose deaths skyrocketed.[3]
- In roof-crush litigation against GM, courts repeatedly granted requests to seal crash-test results showing that modest roof-strength improvements would save lives.[4]
- In litigation against Bridgestone/Firestone tires, documents revealing a deadly tire tread defect were suppressed, even as accidents piled up.[5]
- In the Uber sexual assault litigation, a court allowed the sealing of evidence showing that Uber knew certain drivers posed a danger but let them stay on the road.[6]

The Implications

Regulatory

Sealed records conceal threats to public health and safety, thereby preventing consumers and regulators from identifying risks and adjusting behavior.

Procedural

Transparency makes law legible. Without access to judicial records, future litigants are condemned to reinvent the wheel.

Regulatory

Sealing inhibits oversight. As the Supreme Court has observed, "it is difficult for [the public] to accept what they are prohibited from observing." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (plurality opinion).

These concerns are especially acute in an era of vanishing trials, where written records play a central role in shaping law and accountability. As trials become increasingly rare, pre-trial court filings and dispositive orders, like summary judgment, become the only source of information available to the public. So, when those records are sealed, all transparency is lost.

The Governing Law of Sealing

Despite some circuit-by-circuit variation in the formal law of sealing, certain baseline requirements apply across district courts.

- Judges must conduct a balancing test, weighing the party or parties' interest in secrecy against the public's interest in open court records. Generally, a court can grant a motion to seal only if the movant demonstrates a "compelling" interest in secrecy.
- An order to seal is distinct from a protective order and requires a stronger showing. Per Rule 26(c), "good cause" standard governs protective orders. But (except in the Eleventh Circuit) a showing of good cause is not sufficient to seal court records.
- When granting a sealing request, judges must articulate specific justifications. Conclusory statements do not cut it. And grants must be narrowly tailored. When authorizing the sealing of judicial records, a court cannot operate on a wholesale basis. The court must go document-by-document, or even line-by-line.
- Motions to seal are subject to the same level of scrutiny regardless of whether they are contested, stipulated, or unanswered.

Key Empirical Findings

~90% of motions to seal are granted

Analyzing over 2 million federal civil cases, we find that grant rates for motions to seal approach 90%. Some judges granted every sealing request they encountered during the study period. These findings directly contradict claims that sealing is rare or carefully constrained.

~75% of motions go unopposed

Sealing motions often receive little to no opposition. Most requests exist in an adversarial no-man's-land we term "shadow consent": not formally agreed upon but rarely contested. Without opposition, judges often treat sealing as a routine administrative matter rather than a constitutional or public-interest question.

~50% of orders to seal cite no legal standard

A detailed review of 600+ sealing orders reveals that courts rarely provide the reasoning and specific findings required by governing law. Roughly half of orders do not reference *any* legal standard.

And when judges supply a legal standard, they often supply the wrong one, incorrectly citing the lax "good cause" standard rather than the more rigorous "compelling reasons" standard required in most circuits.

Why the System Deviates

The Article identifies three primary drivers of this gap between law and practice:

Local Rules

Appellate standards are not consistently or accurately reflected in local rules, leading to confusion at the trial level.

Litigants & Lawyers

Parties often prefer secrecy and lack incentives to oppose sealing, even when public interests are at stake.

Judges

Facing heavy caseloads and limited input from adversaries, judges appear to rely on shortcuts, party consent, or prior protective orders rather than conducting an independent, searching analysis.

Together, these dynamics produce a system in which sealing becomes routine rather than exceptional.

Sealing Reset: A Three-Pronged Approach

Courts are not applying the law that appellate courts have established, and there is no good justification for that disjunction. There is genuine and reasonable disagreement on exactly how much transparency in civil litigation is optimal, particularly given the fragility of reputation and virality of information. But regardless of how one strikes a balance between secrecy and privacy, it's clear that we currently have a widespread lack of judicial fidelity to governing law—and that is a problem, full stop. We offer three potential steps towards reform.

1. A Sealing-Specific Federal Rule

The Rules Committee should enact a new Federal Rule of Civil Procedure to specifically address sealing. We envision an analogue to Rule 26(c)'s treatment of protective orders. Rule 26(c) provides that a court may issue a protective order "for good cause." A sealing rule should supply a more exacting standard—most likely, "compelling reasons"—that reflects the common-law right of public access and formalizes the rule most appellate courts already apply. Such a rule would cut through confusion and discipline trial-court practice.

2. Third Party Intervention

To counteract the low rates of party opposition to sealing requests, courts should incentivize third parties to intervene on behalf of public access. One approach would be to offer successful intervenors attorneys' fees. Third-party objectors in class action settlements offer a useful model. In the class settlement context, there is an adversarial breakdown, and so outsiders are incentivized to be the judge's eyes and ears. So too, here.

3. Judicial Education & Accountability

Judicial education programs could improve understanding of the law on the books and promote appreciation of the social costs of secrecy. Appellate courts could also engage in more visible oversight by spot-checking sealing orders, issuing supervisory opinions, and encouraging application of the "compelling reasons" test in district courts.

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For further information, please contact legalprofession@law.stanford.edu.

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Nora Freeman Engstrom
is the Ernest W. McFarland Professor of Law at Stanford Law School and the Co-Director of the Deborah L. Rhode Center on the Legal Profession (Rhode Center).

David Freeman Engstrom
is the LSVF Professor in Law at Stanford Law School and the Co-Director of the Rhode Center.

Jonah B. Gelbach
is the Herman F. Selvin Professor of Law at UC Berkeley School of Law and a Non-Resident Fellow at the Rhode Center.

Matthew Brundage
is a Civil Justice and Innovation Fellow at the Rhode Center at Stanford Law School.

Othman Bensouda Koraichi
is a research data scientist at the Rhode Center at Stanford Law School.

Amy Cass
is a third-year law student at Stanford Law School and a Civil Justice Student Fellow at the Rhode Center.

This policy brief was prepared by Malka Herman, the Executive Director of the Rhode Center at Stanford Law School.

[1] Binh Hoa Le v. Exeter Fin. Corp., 990 F.3d 410, 417 (5th Cir. 2021).
[2] June Med. Servs., L.L.C. v. Phillips, 22 F.4th 512, 515 (5th Cir. 2022).
[3] Benjamin Lesser, Dan Levine, Lisa Girion, & Jaimi Dowdell, *How Judges Added to the Grim Toll of Opioids,* REUTERS (June 25, 2019).
[4] Jaimi Dowdell & Benjamin Lesser, *These Lawyers Battle Corporate America—And Keep Its Secrets*, REUTERS (Nov. 7, 2019).
[5] Van Etten v. Bridgestone/Firestone, Inc., 117 F. Supp. 2d 1375, 1377–80 (S.D. Ga. 2000); David S. Sanson, *The Pervasive Problem of Court-Sanctioned Secrecy and the Exigency of National Reform*, 53 DUKE L.J. 807, 815 (2003) (citing *Class Action Status Given to Ford and Firestone Suits*, N.Y. TIMES (Nov. 29, 2001)).
[6] Bonnie Eslinger, *Uber Asks Judge to Look Into Leak of Sealed Records to NYT*, LAW360 (Sep. 23, 2025); *see also* Emily Steel, *Flagged for Sexual Misconduct, Many Uber Drivers Stay on the Road*, N.Y. TIMES (Dec. 29, 2025).

Reference
Nora Freeman Engstrom, David Freeman Engstrom, Jonah B. Gelbach, Austin Peters, Matthew Brundage, Othman Bensouda Koraichi & Amy Cass, *[Sealed Document]: An Empirical Study of Sealing Orders in the Federal Courts,* forthcoming in 76 DUKE L.J. (2026).