LOHIER, *Circuit Judge*, concurring:

Based on the record in this case, I conclude that the IAU Report prepared by the police department's internal investigation unit is a judicial document entitled to a presumption of public access. Even so, the balance of interests counsels in favor of keeping the Report sealed.

Here, the parties offered to submit the Report to the District Court for its review; indeed, the Report was already part of the record in connection with obtaining the protective order. Joint App'x 374-75, 390. But the District Court decided instead to have a witness testify about the contents of the Report. In my view, the court's efforts were not enough to transform the Report into something other than a judicial document, which we have variously described as an item that "must be relevant to the performance of the judicial function and useful in the judicial process," United States v. Amodeo, 44 F.3d 141, 145 (2d Cir. 1995) ("Amodeo I"), or the contents of which are central to the court's determination of a party's "substantive legal rights," United States v. Amodeo, 71 F.3d 1044, 1049 (2d Cir. 1995) ("Amodeo II"); Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 121 (2d Cir. 2006). Keeping that description in mind makes it relatively easy for me to conclude that the Report is a judicial document: although it was never

filed, its contents were central to the District Court's determination of Schmitt's "substantive legal rights" in the contempt proceeding. See United States v. Graham, 257 F.3d 143, 151-53 (2d Cir. 2001) (common law right of access applies to documents "relevant to the performance of the judicial function and useful in the judicial process," regardless of "whether they were formally admitted as evidence" or filed).

That the District Court never directly reviewed the Report hardly negates this conclusion, any more than ignoring an elephant in the room eliminates the elephant. To the contrary, the court's efforts to avoid "relying" on the Report by not reading it simply underscore why the Report is a judicial document. During the contempt proceeding, the parties referenced the Report, while Assistant Chief Neil Delargy, a significant witness during the hearing, reviewed the Report to refresh his recollection and then testified about the Report's contents. In short, based on Amodeo I and Amodeo II, I have a hard time viewing the proceeding as adjudicating whether Schmitt's disclosures were based on the Report without relying on part of the Report itself to do so. As the majority opinion acknowledges, "the entire contempt proceeding was, in some sense, about the Report." Majority Op. at 24.

Although, as a judicial document, the Report should have triggered a presumption of public access, that does not end the story. There remains a concomitant need to balance competing interests before the Report can be unsealed. On this point, although the District Court did not engage in this precise balancing test, I believe we are equipped to engage in it ourselves based on the developed record. The balance of relevant interests involves, on the one hand, the public's interest in having the information it needs to "monitor[] the federal courts" in their exercise of Article III judicial power, Amodeo II, 71 F.3d at 1049, and, on the other hand, the law enforcement privilege and individual privacy interests, id. at 1050-51; Amodeo I, 44 F.3d at 147. Like the majority, I am persuaded that the public's interest in scrutinizing the District Court's contempt determination is only very minimally furthered by releasing the Report, particularly since the hearing transcript will now be made public. In this regard I note that sealed law enforcement reports historically have not been made public merely to facilitate scrutiny of a judicial determination of whether someone disclosed their contents in violation of a court's protective order. See Amodeo II, 77 F.3d at 1050 ("[T]he weight to be accorded to the presumption of access" is "stronger" for documents that "are usually filed with the court and are generally available" and weaker where they are "generally under seal."). I doubt,

moreover, that the District Court could have meaningfully redacted this particular Report. See Amodeo II, 71 F.3d at 1052-53. Because neither "experience" nor "logic" counsels in favor of publicizing the Report, see Lugosch, 435 F.3d at 120, even though it is a judicial document, I agree that it should remain sealed and would affirm the District Court's judgment on that basis.

For this reason I concur in the result.