

# NEW YORK NEWSPAPER PUBLISHERS ASSOCIATION, INC.

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**Diane Kennedy**  
*President*

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Dunkirk—The Observer  
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Geneva—Finger Lakes Times  
Glens Falls—The Post - Star  
Gloversville—The Leader-Herald  
Herkimer—The Evening Telegram  
Hornell—The Evening Tribune  
Hudson—Register-Star  
Ithaca—The Ithaca Journal  
Jamestown—The Post-Journal  
Kingston—Daily Freeman  
Little Falls—The Evening Times  
Lockport—Union-Sun & Journal  
Long Island—Newsday  
Malone—The Malone Telegram  
Massena and Potsdam—  
Courier-Observer/The Advance News  
Medina—The Journal-Register  
Middletown—The Times Herald-Record  
New York City—New York Times  
New York City—The Wall Street Journal  
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Norwich—The Evening Sun  
Ogdensburg—Ogdensburg Journal  
Olean—The Times Herald  
Oneida—Oneida Daily Dispatch  
Oneonta—The Daily Star  
Oswego—The Palladium Times  
Plattsburgh—Press-Republican  
Poughkeepsie—Poughkeepsie Journal  
Rochester—Democrat and Chronicle  
Rome—Daily Sentinel  
Salamanca—Salamanca Press  
Saranac Lake—Adirondack Daily Enterprise  
Saratoga Springs—The Saratogian  
Schenectady—The Daily Gazette  
Staten Island—Staten Island Advance  
Syracuse—The Post-Standard  
Tonawanda—Tonawanda News  
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Watertown—Watertown Daily Times  
Wellsville—Wellsville Daily Reporter  
White Plains—The Journal News

## Commission on Public Access to Court Records May 16, 2003

### Testimony of Diane Kennedy, President New York Newspaper Publishers Association

Good afternoon, Judge Graffeo and members of the Commission. My name is Diane Kennedy, and I am president of the New York Newspaper Publishers Association. NYNPA is the trade association which represents the publishers of the state's daily newspapers. Our 54 member newspapers are read by more than five million New Yorkers every day. They range in size from *The New York Times* and *Wall Street Journal* to the *Adirondack Daily Enterprise* and *Hornell Tribune*, and span the state from *Newsday* on Long Island to the *Buffalo News* in the west and the *Courier Observer* in Massena to the north.

Our members provide their readers with an accounting of the actions of the legal system. Their reporting concerns both criminal and civil court proceedings, from town justice court arraignments for drunken driving to constitutional arguments before the Court of Appeals. The questions of law they present to their readers involve everything from public safety to product safety, from gun permit applications to taxpayer lawsuits against the state.

Few citizens have the free time needed to search court records for items of interest. Many, however, show great interest in learning about the legal system through stories prepared by our journalists. These citizens support the courts and the government through their tax dollars and are entitled to oversee their activities.

Providing the broadest and most affordable possible access to a wide array of legal documents helps to accomplish this purpose. As a report issued in October 2002 by the National Center for State Courts and the Justice Management Institute\* found, access to court records promotes government accountability in at least three major areas 1) the operations of the judiciary, 2) the operations of other governmental agencies, and 3) the enforcement of laws. The report found that, “open court records allow the public to monitor the performance of the judiciary and, thereby, hold it accountable. Public access to court records allows anyone to review the proceedings and the decisions of the court, individually, across cases, and across courts, to determine whether the court is meeting its role of protecting the rule of law, and does so in a cost effective manner. Such access also promotes greater public trust and confidence in the judiciary. Openness also provides accountability for governmental agencies that are parties in court actions, or whose activities are being challenged in a court action. Finally, open court proceedings and open court records also demonstrate that laws are being enforced. This includes civil regulatory laws as well as criminal laws.”

Our newspapers serve their readers by examining these court documents, sifting through reams of raw data and placing the findings in context. It is then up to our informed readers to voice their opinions about the information we have presented. Their opinions may result in a change in the administration of justice in their communities where necessary, and their involvement in this process can only serve to strengthen it. We agree with the National Center for the Courts study finding that, “open access serves many public purposes. Open access supports the judiciary in fulfilling its role in our democratic form of government and in our society. Open access also promotes the accountability of the judiciary by readily allowing the public to monitor the performance of the judiciary.”

It is our position that the existing level of public access to paper court records should be maintained and may even be enhanced through digitization. The ability to efficiently search large numbers of court documents filed in courthouses throughout the state could enable newspapers to examine and report on important trends in the legal system, such as an increase in certain types of product liability proceedings. Dangers posed by products such as defective tires or health supplements containing the herb ephedra might have been disclosed sooner given enhanced court records access.

For this reason, we would urge the courts to adopt a system which would make possible full-text searches of electronic court documents. As the above-cited report notes, “one reason court records are publicly accessible is to allow the public to monitor the performance of the judiciary. One method of monitoring performance is to examine the information in a set of cases to see whether the court’s decisions across cases are consistent, predictable, fair and just. This sort of examination requires access to all information considered by the court in making its decision, as it is difficult to say ahead of time that any piece or category of information is not relevant and therefore should not be made available.”

We would also urge that the courts keep submissions up to date to ensure that our reporters are not presenting “stale” information to their readers. The courts should also do everything possible to ensure consistency in the digitization of court documents to ensure that there are not large holes in the array of records which are accessible. A failure to accomplish these two goals could result in our members inadvertently drawing incomplete or inaccurate conclusions from a compilation of court documents. We realize that these issues present great challenges, as there are variations throughout the court system in the form of filings and the way those documents are maintained.

Naturally, we are aware that significant costs could be attached to providing this level of access, and, given the state’s current fiscal status, additional funding might not be forthcoming to offset these costs. Accordingly, the imposition of some form of fee for access might be necessary, although we would urge that any such access fee be set so as to offer the greatest possible access to New Yorkers of all income levels, and to journalists from even the smallest newspapers of very limited means.

We are also aware that the digitization of court records poses some privacy concerns, such as facilitation of identity theft. We recognize that a narrow range of data, such as social security numbers, credit card information and bank account information should be withheld, most likely through redaction. This might be accomplished by permitting litigants or their attorneys to redact a specified list of such data from filings before they are compiled and made available by the courts. Technology could also make it simple to redact some data through the inclusion of data “tags” on electronically prepared documents.

Data should never be redacted simply because it could be embarrassing to a litigant or some other participant in the legal process. The light of public scrutiny is intended to occasionally find faults in the legal system, and to cure those faults as expeditiously as possible.

On behalf of the New York Newspaper Publishers, I thank you for this opportunity to make our views heard, and for your interest in our opinions.

\* “Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts” by the National Center for State Courts and the Justice Management Institute on behalf of the Conference of Chief Judges and Conference of State Court Administrators.