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*Before the New York State Commission  
On Public Access to Court Records*

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The significance of the issue of how open New York's courts should be is borne out by Chief Judge Judith Kaye's creation of this commission, and by the distinguished members of the panel and your reputations in this field. Thank you for the opportunity to be heard.

The history of technology seems replete with examples of how the advances preceded clear societal systems, rules and customs for dealing comfortably with the innovations. The Buffalo News feels strongly that because technology will improve public access to court records, this commission should in no way restrict that access under the guise of slowing down or blunting the technology's promise.

In other words, as current real restrictions disappear – such as locating a case file in a dusty storeroom, finding a clerk to retrieve it, having a pocket full of quarters to copy the needed documents – we would urge the commission not to introduce speed bumps to the free flow of information to the public.

Newspapers – and especially their reporters – thrive in a free society where access to factual information is unhindered. Every newspaper in America would prefer to start with the unspun, unvarnished truth and write articles based on that beginning point.

As you know well, however, that is seldom the case. Reporters start with second- or third-hand sources and work their way back, hoping to get as close to the facts as they reasonably can.

New York, in its commendable protection of journalistic rights and legislative support for Freedom of Information and open meetings, has a

lengthy history of choosing openness and maintaining the public's right to know.

David Tomlin described this tradition forcefully in his testimony for The Associated Press in your New York City hearing and such universals bear repeating:

- We believe in the presumption of openness for all court records.
- We believe that anyone seeking to thwart or overcome this presumption must be held to rigorous standards.
- If that standard is met, we believe restrictions on access should be narrowly targeted to the interests that require that specific protection.
- And, we believe that “the appropriate way that these principles are observed is on a case-by-case basis.”

Rules in the public's broader interest should be enacted to open or maintain public access to court records, and, in this electronic age, openness should be the “default key.” The person who wants to close records has to make the case that keeping them open is damaging.

Since long experience of newspaper reporters and editors – and their attorneys – has shown that a law as written is not always a law as practiced, this commission would be well advised to lean toward maintaining and giving the public the freest possible access.

We would not urge this commission to allow public access to information that could be shown on a case-by-case basis to damage people. Embarrassment, even justified humiliation, however, should not come under the umbrella of damage.

What is of use is not just the contents of a sensational trial, but also the routine, day-to-day facts that can make reporting more accurate, thereby better serving society. Correct determination of suspects' prior criminal records, for instance, ensures fairness; after-hours access to lawsuits provides information for a complete story, rather than one based on what a plaintiff's lawyer might leak at 5 p.m. on a Friday, not that that's ever happened; and

citizens can get information to make decisions about grievances they may want to pursue against a corporation or individual, such as in class action suits.

Open records means better journalism and an enhanced level of public knowledge.

Among the other lessons that the leaps of technology have taught us is that trying to “hold back” new realities technology creates is misguided at best. Just as the typewriter inevitably made way for the personal computer, paper files will make way for databases of court information on the Internet. Your charge should not be interpreted as a search for ways to stifle or restrict the inevitable flow of such information, but how to make best use of it in a free society and to the benefit of the most people.

Even though the perception is that the media look under every rock and into everyone’s life, the actual abilities of the media, as you know, are more limited. Even in a profession that deals with hundreds and hundreds of people, stories and events daily, journalists barely affect even a tiny percentage of lives in any one region. But when crucial information about one life, or case, or person, is needed, it is likely crucial and should be available in the quickest, clearest, easiest fashion possible.

Finally, since earlier I discussed the difference between the way a law is written and how it is often interpreted, let me also reassure you with an example of how journalists police themselves, in real, everyday situations.

At my newspaper and many others, we print bankruptcies and real estate transactions; we also report marriages, births, deaths and weddings; we offer news of job promotions, public honors and arrests. While most of these are routine and cause barely a ripple, we do get calls each year from people who may be negatively affected by release of this information. When we do, we consider them on a case-by-case basis and often withhold publication if we believe damaging them is real.

For instance, a sheriff’s deputy may call and say he or she recently bought a house and for their protection would not want to have their address published in the real estate listings. We usually agree and omit the information. We thereby demonstrate in ways that few know a level of responsibility and common sense most would not ascribe to us.

To sum up our view, the editors of The Buffalo News would like to see continued and enhanced free and open access to court records. Sensible limits on some information that if released could cause harm makes sense. But we would urge this commission to emphasize and hold dear the public's right to know, maintaining and ensuring swift, easy and free access to court records.

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*The Buffalo News is an independent daily newspaper, serving eight counties of Western New York, where it is the dominant information source, both in print and via buffalo.com. A division of Berkshire Hathaway, The News has the highest penetration rate in its primary circulation area of any top 50 newspaper in the country.*