

STATEMENT TO THE COMMISSION ON ACCESS TO COURT RECORDS

David Tomlin, The Associated Press

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Members of the Commission, good afternoon and thank you for giving me the opportunity to appear before you today on behalf of The Associated Press.

My name is David Tomlin, and I am assistant to the president of AP at our headquarters here in New York City. Although I am an attorney and some of my work at AP is now performed in that capacity, I was admitted to the bar only a little more than a year ago. Most of my 30-year AP career has been as a journalist and news executive, and therefore much of what I will submit today for your consideration is offered from that perspective.

The Associated Press is a mutual news cooperative operating under the Not-for-profit Business Corporation Law of the state of New York. We trace our history and name to an association of New York City publishers formed in 1848. The members of this association believed they could reduce the cost of gathering news from distant locations by sharing it. It turned out to be an excellent idea that spread to other regions, and in 1901 newspapers throughout the country formed the corporation that has become today's AP.

The AP cooperative now numbers 1,700 daily and non-daily newspapers and 5,000 broadcast stations among its members. We have 147 bureaus and offices nationwide, at least one in every state. We also serve 8,500 newspapers and other customers outside the United States and maintain permanent operations in 95 countries.

We produce news reports in words, photos, informational graphics, audio and video. Our services range from international news reports in five languages, to reports that contain only the news of individual states.

Here in New York, we serve 72 newspapers and 150 broadcast stations with our New York state and New York City news reports. We have a large metro staff in New York, another substantial bureau in Albany, and smaller offices in Buffalo, Rochester, Syracuse, Garden City and White Plains.

I will begin by stating for the record that AP accepts and agrees with the general principles articulated already by other media representatives you have heard from.

We believe that constitutional, statutory and case law require a presumption of openness for all court records.

We believe that the showing demanded of anyone seeking to overcome this presumption is and should be rigorous.

We believe that when such a showing is successfully made, the restrictions to access should be narrowly targeted to the interests that have been shown to require such protection.

We believe that the appropriate way to assure that these principles are observed is on a case by case basis.

And finally, we believe that the manner of access to court records does not change these principles. What governs access to the paper records in the courthouse applies equally to electronic records accessed from a kiosk or across the Internet from a remote location.

AP recognizes that even if all these principles are accepted without qualification, the commission has many practical issues to resolve. The list of questions you have set out to frame these hearings capture many of the hardest ones.

But we see none that cannot be resolved, and we are excited by the rewards and opportunities that will ensue in the form of news reporting that can more powerfully serve both the interests of justice and the public interest.

With our statewide coverage of the news of New York city and state, and our national perspective arising from our operations in all 50 states and the nation's capital, we think AP is uniquely situated among news organizations to see where electronic access to court records can eventually lead.

We cover particular stories that emerge from proceedings in individual courthouses in every county and state. And we also produce stories that draw on information gleaned from records in dozens, or even hundreds of courthouses.

For example, AP reporters spent much of the year 2001 documenting the systematic expropriation of rural land owned by black families through abuse of the executive and judicial powers of government, and through barely concealed fraud.

The series required access to records from hundreds of courthouses throughout the southeastern United States, including civil and criminal court proceedings. It took months of reporter time and a large travel budget to do the job.

Much more recently, an AP reporter made extensive use of case files to help prove the innocence of three mentally disabled defendants in Alabama who were charged in the death of a newborn baby which it turned out never existed.

And an AP reporter is at work as we speak on a series that will examine whether changes in rates of specific crimes in the U.S. and abroad are being caused by deportation of aliens convicted of felonies. Because federal immigration authorities don't track the particular crimes that deportees committed, we need to search state court records for that information. As matters stand, much of the information we need will only be obtainable if we travel in person to where it is stored.

In all these cases and countless others, the time and expense involved is daunting. Projects that do not show at least the promise of compelling results are unlikely to attract the resources.

Simply put, electronic access to court records will produce more journalism of higher quality,

and the effect will multiply as such access spreads to more states.

Such stories are among the kinds of journalism that press freedoms are designed to encourage and protect. At their best, they can reverse injustice, increase public interest in and knowledge of the justice system, and help guide public policy makers to strengthen what works well and fix what doesn't.

We at AP know that electronic access of the volume and scope we envision will not come easily, that this Commission must consider the potential for harm to privacy interests, to public safety and to the integrity of the judicial process in developing its recommendation.

But great opportunities always come associated with some risks. Progress usually comes to those whose first determination is to seize opportunities, rarely to those for whom avoiding or minimizing risks is the paramount consideration. We hope the former spirit is the one that motivates this Commission.

Thank you again for giving AP a chance to be heard, and good luck to you in your work.