

1 New Mexico Supreme
2 Court Judicial Information Systems Council
3 Online Access Subcommittee
4 Public Comment meeting
5 December 8, 2016

6 Attending:

7 Brenda Castello, New Mexico Compilation Commission

8 Ian Bezpalko, New Mexico State Bar

9 Senior Justice Petra Jimenez Maes

10 Genevieve Grant

11 Weldon Neff

12 Gregory J. Saunders, JID

13 Honorable Karen Mitchell, Chair, JIFFY, Harding County Mag.

14 Joey D. Moya, NM Supreme Court

15 Barry Massey

16 Arthur W. Pepin, AOC

17 Hon. Henry A. Alaniz, Bernalillo County Metro Court

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19 Staff: Terri Saxon

20 Margie Lueras

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1 CHAIRPERSON CASTELLO: Good morning. My name is
2 Brenda Castello. I have the privilege of serving as chair
3 of the New Mexico Supreme Court Judicial Information Systems
4 Council Online Access Subcommittee. We welcome you to the
5 subcommittee's public hearing today regarding its proposed
6 policy for online access to state court records.

7 Joining me at the head table are Online Access
8 Subcommittee members and staff. I'd like to introduce first
9 two distinguished members. Our liaison for the New Mexico
10 Supreme Court is Justice Petra Jimenez Maes. And the chair
11 of the Judicial Information Systems Council, Judge Karen
12 Mitchell. We'll have the remaining Online Access
13 Subcommittee members introduce themselves, beginning with
14 Judge Alaniz.

15 JUDGE ALANIZ: Henry Alaniz, judge of the
16 metropolitan court.

17 MR. PEPIN: Artie Pepin, director of the
18 Administrative Office of the Courts.

19 MR. MASSEY: Barry Massey, communications officer
20 with the Administrative Office of the Courts.

21 MR. MOYA: Joey Moya, clerk of the court and chief
22 counsel for the New Mexico Supreme Court.

23 MR. SAUNDERS: Greg Saunders. I'm the judiciary
24 chief information office, and I run the technology for the
25 Judiciary.

1 MR. NEFF: Weldon Neff, chief executive officer
2 for the Eleventh Judicial District Court in San Juan and
3 McKinley Counties.

4 MS. GRANT: Genevieve Grant, IT manager here at
5 the Judicial Information Division.

6 MR. BAZPALKO: Ian Bazpalko, representative of the
7 State Bar of New Mexico.

8 MS. SAXON: I'm Terri Saxon. I'm a paralegal at
9 the Supreme Court, and I'm staff for this subcommittee.

10 CHAIRPERSON CASTELLO: If you would be kind enough
11 to mute your phones at this point in time because we are
12 transcribing minutes of the meeting and then we have video
13 conferencing in other locations. Those locations being
14 Metro Court in Bernalillo, Roswell, Taos, Farmington, and
15 Las Cruces. So if you'd be so kind, we'd appreciate it.

16 MR. SAUNDERS: And, Madam Chair, if I may, just
17 housekeeping, those of you that are appearing on video, can
18 you please mute your systems until you're ready to talk.
19 Thank you.

20 CHAIRPERSON CASTELLO: Thank you very much. The
21 order for the public hearing today is first an explanation
22 of the policy being proposed. Then we'll begin accepting
23 comments. We'll begin with participants here at JID.
24 Videoconferencing is offered in five other locations, as I
25 mentioned, to ensure that interested parties, public and

1 private, have an opportunity to personally address the
2 subcommittee. These locations comprise six judicial
3 districts. Therefore, we will circulate in order of each
4 judicial district by district number. This means that first
5 is the First Judicial District here at JID. The Second
6 Judicial is Bernalillo County Metro Court. Third Judicial
7 District is Las Cruces, so it will be third. The Fifth
8 Judicial District is Roswell; it will be fourth in rotation.
9 Taos is the Eighth; it will be fifth. And Farmington is the
10 Eleventh, so it will be the sixth in rotation.

11 This is our time to listen to you and to consider
12 your input. The proposed policy will be reviewed again with
13 your input in mind before it's finalized and recommended to
14 the Judicial Information Systems Council. Ultimately, the
15 decision rests with the New Mexico Supreme Court.

16 The Online Access Subcommittee has invested
17 significant time in researching existing laws, court rules,
18 best practices from other states, the federal government
19 system called PACER, existing and near future technology
20 capabilities, financial impacts and budget projections, the
21 First Amendment rights of the press, and the needs of the
22 public. This research was balanced with our express intent
23 of protecting personal identifying information such as
24 Social Security numbers and dates of birth.

25 The package that comprises the proposed policy for

1 online access to New Mexico state courts consists of three
2 components. The proposed policy is in table form for ease
3 of reference and at-a-glance view to the policy being
4 proposed. The second component are proposed Supreme Court
5 rule amendments, and third component are five proposed
6 applications for each access group in the proposed policy.

7 So let's take them, the policy, and walk through
8 exactly what is being proposed by access group and by what
9 is being accessed. The policy that was posted that you-all
10 had access to shows the access groups, the definition of
11 each of those groups, the view and current access that is
12 being proposed and the access form.

13 This policy is a draft policy. It is for
14 discussion purposes only at this point, awaiting your input.
15 This version of the policy was approved by JIFFY, which is
16 the Judicial Information Systems Council, on November 17th
17 of 2016.

18 The access groups comprise attorneys, attorney
19 staff, pro hac vice attorneys, justice partners, the press,
20 self-represented litigants, and the public. The definition
21 of the first group, attorneys, are attorneys licensed by the
22 New Mexico Supreme Court and in good standing. The
23 attorneys, as officers of the court, have access to all
24 public records in the magistrate, metro, district, and
25 appellate court case files. The access point is the access

1 point for all of the categories except the public, and that
2 is the Secured Odyssey Public Access, acronym of SOPA.

3 The attorney staff is defined as all staff working
4 for attorneys directly under their supervision with online
5 access credentials. Because they often work in roles where
6 they are filing and doing research for attorneys, they have
7 access to all the public records from magistrate,
8 metropolitan, district, and appellate court case files.

9 Pro hac vice attorneys are defined as out-of-state
10 licensed attorneys admitted to practice by the New Mexico
11 Supreme Court on a specific case. They are able to see the
12 public records in the cases in which they are admitted as
13 pro hac vice attorneys.

14 Justice partners, critical component to the
15 administration of justice in the state, defined as state,
16 municipal pursuant to New Mexico Statutes Annotated 1978,
17 Section 3-1-2(G) or federal law enforcement, corrections
18 agencies, compliance programs per New Mexico Statutes
19 Annotated Section 31-20-5.1, municipal judges and court
20 staff, and any state or federal agency involved in adult,
21 family, or child welfare. They also have access to all
22 public records in magistrate, metro, district, and appellate
23 court cases available through SOPA.

24 The press includes any person who regularly
25 gathers, prepares, photographs, records, writes, edits,

1 reports, or publishes news or information about matters of
2 public interest in any medium and who successfully applies
3 to participate in online access and agrees to comply with
4 all court rules. They will have access to all public
5 records from the magistrate, metropolitan, district, and
6 appellate court case files pursuant to their First Amendment
7 rights.

8 Self-represented litigants are self-represented
9 parties in litigation, often termed as pro se parties.
10 These are those who will have access to the public records
11 in which they are a party, and it will be restricted to
12 that.

13 The public is any person not defined above. And
14 because of the statute that requires redaction for records
15 that are accessible through a public accessible website,
16 those are confined to case lookup, meaning it is the
17 registry of actions. There are no documents involved until
18 we can secure the funding from the legislature for the
19 redaction that is required to protect the personal
20 identifying information.

21 To elaborate on our footnotes at the bottom of the
22 table, the view/print document access required redaction, as
23 I just mentioned, to remove the protected personal
24 identifier information. That is not currently available,
25 and it is contingent upon the Judiciary obtaining an

1 appropriation to implement necessary redaction technology.
2 View/print access is case by case. Bulk record download is
3 prohibited by New Mexico Supreme Court order No. 10-8500
4 dated September 15, 2010 and Supreme Court Order No. 13-8500
5 dated August 28, 2013. Parenthetically, there is a budget
6 request for 1.25 million being requested at the legislature
7 in this coming legislative session for the redaction
8 software.

9 And last footnote is that public records do not
10 include cases or records that are sealed or otherwise
11 confidential under statute, court rule, or court order. The
12 content in SOPA varies by court depending on court case
13 files currently digitized. Appellate court records are
14 unavailable under current technology and funding.

15 The package then includes necessarily amendments
16 to New Mexico rules, court rules; and the draft provisions,
17 the draft proposed amendment was also posted. We are using
18 Rule 1-079(D)(1) as the example with the identical language
19 appearing in each of the other rules as identified in the
20 proposed amendment. It is geared toward protection of
21 personal identifier information, and the added language to
22 the rules reads as follows: "Any attorney or other person
23 granted electronic access to court records containing
24 protected personal identifier information shall be
25 responsible for taking all reasonable precautions to ensure

1 that the protected personal identifier information is not
2 unlawfully disclosed by the attorney or other person or by
3 anyone under the supervision of that attorney or other
4 person. Failure to comply with the provisions of this
5 subparagraph may subject the attorney or other person to
6 sanctions or the initiation of disciplinary proceedings."

7 The third component to the package underneath this
8 policy are the five applications, one for each category.
9 The applications carry with them the necessary information
10 requirements -- obviously, name, address, contact
11 information -- but also in terms of there are state bar
12 license numbers that are required and other information,
13 depending upon the specific access group that is applying.
14 There are particular requirements for the press. And if
15 there is a request for access to juvenile cases, for
16 example, there is a specific blank or blanks that must be
17 completed. And those requests may come before the Online
18 Access Subcommittee to be reviewed evaluated before access
19 is given.

20 We take this process, this policy, and each of the
21 component parts very seriously. Our express intent, as
22 noted earlier, is to protect the public, to protect their
23 personal identifying information, while making this content
24 available to those who need it in order to carry out justice
25 within our system.

1 So with that, we will move into our comment
2 period. The procedure for comment is as follows: When your
3 name is called, please approach the podium, state your name;
4 please spell your name because, as I mentioned, we are
5 taking minutes and will be transcribing those minutes. So
6 for our transcriptionist, if you will please spell your
7 name, state your organization if you are coming as an
8 affiliate or representing an organization.

9 Given the number of participants that we have as
10 of right now, we are going to take five from each location,
11 starting here at JID, and each participant will have five
12 minutes to speak.

13 Terri Saxon is our timekeeper. She has a yellow
14 card that she will display when you have 30 seconds
15 remaining of your five minutes. The red card, when it's
16 displayed, it will be expected that you relinquish the
17 podium for next person to be called to speak.

18 With that, let's begin with comments here at the
19 Judicial Information Division in Santa Fe. And our first
20 participant is Mr. Mark Coble.

21 MR. COBLE: I'm going to sit if nobody has any
22 objections.

23 CHAIRPERSON CASTELLO: Yes. Good morning, sir.

24 MR. COBLE: Good morning. Thank you. So is
25 everybody aware here of what we, the public, how we have

1 access to the court records now here in New Mexico in the
2 First District? Everybody is familiar with that process?
3 Okay. We have to go to courthouse physically, we have to
4 wait in line, take a number. When we have time, they will
5 allow us to a locked room, and we have access to your
6 records. If I understand it correctly, attorneys can access
7 their records from their home, their office, 24 hours a day.
8 Is that correct?

9 CHAIRPERSON CASTELLO: Yes, sir, that is the
10 proposed policy.

11 MR. COBLE: So attorneys can access it 24 hours a
12 day, 7 days a week. We pro se public are going to be
13 limited to Monday through Friday, courthouse hours. We're
14 not going to have access Saturday, we're not going to have
15 access Sunday, we're not going to have access on holidays.
16 Is that correct?

17 MR. PEPIN: Yes.

18 MR. COBLE: That's correct?

19 MR. PEPIN: That's correct.

20 MR. COBLE: Would you please speak up so it's
21 recorded and we can know who is speaking and agreeing with
22 this? Thank you.

23 What you're proposing now is you're going to limit
24 our access to our own records. Is that correct?

25 CHAIRPERSON CASTELLO: We are here to listen to

1 you. So please explain to us what the issues are, and that
2 will help us.

3 MR. COBLE: Well, I need to understand the issues
4 correctly. If I -- I want to make sure I understand it
5 before I speak to those issues. If I understand the new
6 proposal, I will be able to go down -- I have to go to
7 courthouse Monday through Friday, courthouse hours, I will
8 only have access to my own records. Is that correct?

9 JUDGE MITCHELL: No, sir. That's not correct.

10 MR. COBLE: Okay. I will have access to the whole
11 body of records.

12 JUDGE MITCHELL: If you go to courthouse, you'll
13 have the same access -- if you go to the -- after this is
14 put into place, assuming it is, if you go down to the
15 courthouse, you still have the same access that you have
16 today if you go to the courthouse.

17 MR. COBLE: Okay.

18 JUDGE MITCHELL: If you are a pro se litigant --
19 in other words, if you are a self-represented litigant --
20 you will have online access to just your cases.

21 MR. COBLE: At the courthouse?

22 JUDGE MITCHELL: No, online.

23 MR. COBLE: Oh, any -- online.

24 JUDGE MITCHELL: On the Internet.

25 MR. COBLE: At home.

1 JUDGE MITCHELL: So you could sit at your home and
2 call up through your access --

3 MR. COBLE: Right.

4 JUDGE MITCHELL: -- the documents, the registry of
5 actions, any filings that have been filed in your case or
6 cases.

7 MR. COBLE: So at home, I'll be able to do that --

8 JUDGE MITCHELL: Yes.

9 MR. COBLE: -- but it's only the headers.

10 JUDGE MITCHELL: No.

11 MR. COBLE: And I won't be able to read the whole
12 document.

13 JUDGE MITCHELL: No, sir. If you sign up as a pro
14 se litigant, you'll have access to all of it.

15 MR. COBLE: And I'll be able to print it from
16 home?

17 JUDGE MITCHELL: Yes, sir.

18 MR. COBLE: Okay.

19 JUDGE MITCHELL: Okay. Now, you will not have
20 access to my cases from your home. You would still have to
21 go down to the courthouse to get my case or get Mr.
22 Saunders' case.

23 MR. COBLE: Okay. Thank you. That clarifies it.

24 JUDGE MITCHELL: Does that clarify it for you?

25 MR. COBLE: Yes.

1 JUDGE MITCHELL: And I'll just ask my colleagues,
2 I believe I have represented correctly what the change is.

3 MR. COBLE: Okay. Very good.

4 JUDGE MITCHELL: Okay?

5 MR. COBLE: As a pro se litigant, like attorneys,
6 I need to do research to find out other cases, how they're
7 handled in other jurisdictions. It's very helpful for me to
8 go to look into the Harding County, as we have access now,
9 and look up specific records. So under this proposal, as a
10 pro se litigant, I would not have that access any longer?

11 JUDGE MITCHELL: You'd still have the -- we're not
12 taking away any access that you currently have. So whatever
13 access you currently have, you can go online and look at the
14 registry of actions throughout the state.

15 MR. COBLE: Right.

16 JUDGE MITCHELL: You can't see the documents.

17 MR. COBLE: Right.

18 JUDGE MITCHELL: That -- you'll still have the
19 exact same access you have today. What access we are
20 extending to you is access to your cases, documents,
21 everything.

22 MR. COBLE: So why is this change needed to
23 protect the public? I've looked at hundreds and hundreds of
24 pro se cases or represented cases where both parties had
25 attorneys in civil or foreclosure cases. I have never seen

1 anybody's Social Security number printed, I've never seen
2 their birthdays printed. None of those things are in there.
3 So if a document has to be redacted before -- will a
4 document have to be redacted before I can see it?

5 JUDGE MITCHELL: Not if it's your personal case.

6 MR. COBLE: Excuse me. Somebody else's -- if I
7 request a foreclosure case in your county, will they use an
8 excuse that it has to be redacted and I won't be able to
9 have a look -- be able to see that?

10 CHAIRPERSON CASTELLO: Mr. Coble, while the red
11 card is up, let me see if I just explain -- this is just a
12 restatement of the policy, and I appreciate the clarifier
13 that you've made. You will be able to see, as Judge
14 Mitchell said, all documents in any case in which you are a
15 party as a self-represented litigant. Outside of that, it
16 falls under the redaction statute. So those documents need
17 to be redacted before made available unless you're in one of
18 the other access groups like attorney, justice partner,
19 attorney staff.

20 MR. COBLE: Okay. Thank you. Let me just ask
21 this one last question regarding that. So to understand,
22 I'm not a party to a case, I want to find out about
23 something in Bernalillo County, are they going to say that
24 these records need to be redacted before I look at them
25 when -- if there are no redactions to be had?

1 CHAIRPERSON CASTELLO: You may go to the
2 courthouse to see them.

3 MR. COBLE: In -- no -- oh, here, Santa Fe.

4 CHAIRPERSON CASTELLO: If you go to the
5 courthouse, just like you do now, you can see the court file
6 now.

7 MR. COBLE: As-is?

8 CHAIRPERSON CASTELLO: As-is.

9 MR. COBLE: Okay. Thank you very much.

10 CHAIRPERSON CASTELLO: Thank you, Mr. Coble. All
11 right. Our next participant is Margaret Macnab. And, Ms.
12 Macnab, if you would please also spell your name.

13 MS. MACNAB: Sure. It's M-A-C-N-A-B. Good
14 morning. I am a pro se litigant. I have similar concerns
15 to Mr. Coble. For instance, my particular case is in the
16 Second District Judicial Court. And at that particular
17 district, pro ses are not allowed to take in cells phones,
18 we're not allowed to take in laptops if we needed to have
19 something available to present in court. And I don't know
20 if that's the case in other districts in New Mexico, but I
21 am concerned that our rights to due process are being
22 gradually eroded sometimes under the guise of doing good for
23 the public which may not necessarily be so.

24 And I'm not just here representing myself. I'm
25 here representing the many pro se litigants or the people

1 who don't even know that they can be pro se litigants who
2 aren't here today that know they can actually fight for
3 themselves. And being able to do research, be able to
4 research other cases that have already had rulings on them
5 that perhaps have been appealed to other court levels are
6 very important for us to be able to see.

7 If we have to travel to another county, for
8 example, to look at those records, it puts another undue
9 hardship on us. So I just -- I wanted to make that
10 statement that even though this is presented in a way that
11 it might be good for the public, I'm suggesting there are
12 things about it that may be very detrimental to pro se
13 litigants.

14 And so I'm requesting that this aspect be really
15 reviewed. As Mr. Coble also remarked, I have never seen in
16 documents I've researched anything that contained personal
17 compromising information such as a birthdate, a Social
18 Security number, or anything that would put that person in
19 jeopardy were it seen. So those are my comments. Thank you
20 very much.

21 CHAIRPERSON CASTELLO: Thank you very much, Ms.
22 Macnab. Our next participant is Paula Maes. Good morning.

23 PAULA MAES: Good morning. I'm Paula Maes,
24 M-A-E-S.

25 CHAIRPERSON CASTELLO: Thank you.

1 PAULA MAES: And I am representing New Mexico
2 Broadcasters. I represent about 250 radio and television
3 stations across the state. And the proposal which provides
4 for a two-step plan in making the judicial court records
5 available at all times is favored by the New Mexico
6 Broadcasters Association. And we are also in concurrence
7 with the written comments that were submitted by the
8 Albuquerque Journal, KOAT-TV, and the Forum for Open
9 Government, FOG, which is represented by Greg Williams. So
10 we are in support of this. No other comments. Thank you.
11 And we also submitted our comments in written form as well.
12 Thank you very much.

13 CHAIRPERSON CASTELLO: We have those. Thank you
14 very much. Our fourth participant is Pat Rogers. Good
15 morning, Mr. Rogers.

16 PAT ROGERS: Good morning. Good morning, Justice,
17 Judge, Judge, Judge, Judge, and Judge, and members of the
18 committee. Thank you for the opportunity. I represent
19 Courthouse News Service. That's a nationwide news gathering
20 agency that write original content, and it has more than
21 1 million readers. They operate here in New Mexico as well
22 as the 50 other states.

23 I want to acknowledge the time and the public
24 services you've provided, and we appreciate that and the
25 years it's taken to come to this point and time. We also

1 appreciate the decision that has been made to place the
2 press media in the position of having access to records on a
3 timely basis. We think that this not only serves the
4 public, but we think this honors both the letter and the
5 spirit of Inspection of Public Records Act as well as the
6 First Amendment. So thank you.

7 CHAIRPERSON CASTELLO: Thank you, Mr. Rogers. And
8 our fifth participant -- there are question marks here, so
9 I'm not sure if Ms. Christine Malcolm would like to speak.

10 CHRISTINE MALCOLM: Yes. Christine Malcolm,
11 C-H-R-I-S-T-I-N-E M-A-L-C-O-L-M. I'm a paralegal.

12 CHAIRPERSON CASTELLO: Good morning.

13 CHRISTINE MALCOLM: I would like to know if the
14 citizen, the person, the corporation, that's how it's
15 defined, other than the press, the lawyers, and the other
16 legal types of persons, so if a citizen cannot get -- what
17 kind of records could a citizen get? Ruling out pro se and
18 all those other categories that you have written down, what
19 records from the court would be available as a citizen with
20 the right to see public records?

21 CHAIRPERSON CASTELLO: You may see all court
22 records that are available at the courthouses, the complete
23 file. You can go to courthouse and see those files.
24 Online, there is case lookup, and you can look up and see
25 from the registry of actions there. From there, you can see

1 what documents will be available at the courthouse and go to
2 the courthouse to retrieve those records.

3 CHRISTINE MALCOLM: So if I copies when I'm down
4 at the courthouse, it's my understanding that they must be
5 redacted and that the clerk or whomever is in charge of that
6 must give them, if you put it in -- if you request it in
7 writing, you've got three days to find out -- if they can't
8 give it to you, 15 days, they must give them to you or give
9 you a written paper -- a written response that says why
10 they're denying it. There are only, I believe, three
11 redaction requirements, and that is just the last four --
12 not the full Social Security, birthday, and some type of an
13 account number which I'm not sure if that's a bank account
14 or what account.

15 So I've never seen, and I worked at the court for
16 a while as an intern with a judge -- except for parents --
17 you know, the domestic violence and, you know, child issues,
18 and I'm not sure about criminal, but I saw very few criminal
19 cases, criminal hearings -- cases. But as I understand,
20 criminal cases, perhaps you get it with the full date of
21 birth and Social Security, but that's a separate issue.

22 What was my point? I didn't --

23 I've never seen that in there, but those are just
24 -- those are just three things that can easily be done, but
25 I don't even know why they would be in civil records such as

1 tort, you know, hearings and just regular civil cases. So I
2 don't understand why we can't have that because that it is
3 our right to have public access.

4 And I'm not sure, you can correct me if I'm wrong,
5 that if somebody actually wanted copies of e-mails of
6 individuals working at the court, they have the right to get
7 what looks like private e-mails, but they're not private
8 because it's public. To me, that's much more invasive than
9 looking at cases.

10 And then there's a bias that happens. If you're a
11 pro se or self-represented litigant, there's a bias; and it
12 doesn't look fair if they don't get the same access as the
13 attorneys. That, to me, is a bias for a person who's
14 self-represented in court. And so I feel it must be on
15 equal footing. And I know the higher courts -- maybe it's
16 the federal courts -- have asked the lower courts, which
17 would be our other courts, Supreme, appeals, and district,
18 to -- well, maybe it's more the district court -- to make
19 certain concessions that they actually have options with pro
20 ses that they don't -- that they can each choose to select
21 what they'd like, but that it would be good to make the --
22 make the hearing be fair and for it to be fair.

23 Now, on Second District Court, which I go to as a
24 plaintiff, self-represented, and that's because all the
25 judges had to recuse themselves up here because they know

1 me. I'm under First District rules. I'm not allowed to
2 bring in anything. Only the lawyers or other court
3 personnel could bring in a recorder, a phone, a computer.
4 And I know they stopped this over two years ago. And I'm
5 under First District rules. I want the right to First
6 District rule.

7 So what happened when I had a hearing, is that I
8 was only allowed to get a transcript, not a tape -- i mean,
9 a CD for \$4 like we do here. And I had to pay a lot of
10 money for it, and the transcript was not accurate. And so I
11 feel that my rights were taken away. And the person is in
12 the reporter's office, that they say is separate from the
13 court, but they don't have a copyright on what I say in
14 court. They don't own -- I asked over and over, let me buy
15 the tape. She actually taped it and then did the
16 transcription incorrectly. She left out things. That's a
17 record that can go to appeals, and that's taking away my
18 rights. I know this is probably not the place to say it.

19 CHAIRPERSON CASTELLO: We appreciate your
20 comments. We're taking notes. We've heard you. We have
21 our transcript --

22 CHRISTINE MALCOLM: Okay.

23 CHAIRPERSON CASTELLO: -- and we will incorporate
24 your thoughts and your comments into the consideration on
25 the policy.

1 CHRISTINE MALCOLM: Okay.

2 CHAIRPERSON CASTELLO: We appreciate you bring
3 them, and we appreciate your views.

4 CHRISTINE MALCOLM: Okay. One more quick thing.
5 Can I get copies when I'm down at the courthouse on any
6 record I want in the civil cases, and then that means they'd
7 have to redact it and maybe they can't give it to me that
8 day, but am I allowed to have copies? I have gone in there
9 and gotten copies like two years ago, like 140 pages and pay
10 over a hundred dollars. They didn't redact them, though.

11 MR. NEFF: Yeah, the simple answer is yes. Of
12 course, we have thirteen judicial districts, but yes.

13 CHRISTINE MALCOLM: Okay.

14 MR. NEFF: Yeah, you can get copies. You have to
15 pay for the copies just like anybody else.

16 CHRISTINE MALCOLM: And how much does it cost for
17 copies.

18 JUSTICE MAES: Excuse me, but your time has really
19 passed and you're really interfering in other people --

20 CHRISTINE MALCOLM: Okay. If it's a dollar a
21 copy, that's too much.

22 CHAIRPERSON CASTELLO: Those are questions that
23 can be addressed --

24 CHRISTINE MALCOLM: Okay. Thank you.

25 CHAIRPERSON CASTELLO: Thank you very much. All

1 right. So at this point -- Greg, did we have other --

2 MR. SAUNDERS: Yes, we do. In Metro Court, we
3 have two people. That's all we have in the field right now.

4 CHAIRPERSON CASTELLO: All right. So we move to
5 the location of Metro Court now, and we have Ms. Patricia
6 Gallindo, please.

7 PATRICIA GALINDO: Good morning, members of the
8 committee. My name is Patricia Gallindo, G-A-L-I-N-D-O. I
9 am a staff attorney with the Administrative Office of the
10 Courts. I just have comments regarding this rule that
11 relates to domestic violence cases; specifically, orders of
12 protection. The orders of protection are really a hybrid of
13 most of our court cases because they are not sealed or
14 sequestered, but they are not available on case lookup
15 pursuant to state statute, which I've provided in the
16 comments, to 40-13-12. This statute states that the court
17 shall not make available publicly on the Internet any
18 information that would likely reveal the identity or the
19 location of the party protected under an order of
20 protection.

21 Currently as the rule is written, attorneys or pro
22 se or self-represented litigants may be able to access that
23 information, which would be in direct violation of this
24 statute.

25 My suggestion to the committee is to draft an

1 exclusion that can be included in the current rule. And the
2 exclusion would state that no order of protection cases
3 filed under the Family Violence Protection Act would be
4 available under the SOPA.

5 I would also suggest that a subcommittee be formed
6 from representatives from service providers and attorneys
7 and the family bar to talk about whether there could be any
8 future guidelines for granting certain individuals access to
9 these court records. And I would stand for any questions
10 that you may have. Thank you.

11 CHAIRPERSON CASTELLO: Thank you, Ms. Galindo. We
12 appreciate that -- that's a very important point that you
13 have raised, and we do appreciate you bringing it to our
14 attention. And also we had --

15 MR. SAUNDERS: Celina. Celina Jones.

16 CHAIRPERSON CASTELLO: Yes. And Ms. Jones, Celina
17 Jones. Would you care to comment, please?

18 CELINA JONES: Good morning. I'm here with
19 Patricia, and I echo her my concerns, but I don't have
20 anything additional to add.

21 MR. PEPIN: Madam Chair, I'd note this point was
22 also raised in some of the online comments we received. And
23 I don't think you noted at the beginning, we did receive
24 several dozen pages of comments online. But this was among
25 the points raised.

1 CHAIRPERSON CASTELLO: That's correct, Mr. Pepin.
2 That's absolutely correct. All right. Now, let's see, we
3 have -- Las Cruces is next in rotation, and we have, let's
4 see, no participants in Las Cruces. We have none in Taos or
5 Farmington, so we will move back to here at JID.

6 So, Mr. Horan, there's a question mark, sir, if
7 you would like to present or not? Good morning, sir.

8 TOM HORAN: Good morning. How are you?

9 CHAIRPERSON CASTELLO: Very well, thank you.

10 TOM HORAN: I'm not sure where I'm supposed to
11 stand for your microphone. Is this -- is this okay?

12 CHAIRPERSON CASTELLO: That is perfect. And if
13 you'd be kind enough to spell your last name for our
14 transcriptionist.

15 TOM HORAN: Right. I'm Tom -- Thomas -- Tom
16 Horan, H-O-R-A-N. And I'm a registered lobbyist on behalf
17 of the New Mexico Press Association, and I also represent
18 Albuquerque Publishing Company. I don't know if Martin has
19 been here yet from the Espanola paper. I had to go outside
20 the room for a minute. He was supposed to be here to speak
21 on behalf of the Press Association. But they are both
22 heartily in favor of what you're attempting to do. The
23 Press Association says this would bring us in line with what
24 the federal government does, and we're in favor of that.
25 We'd like to be supportive of your efforts when you go to

1 the legislature and try to seek some funding to help get
2 this -- it sounds like, if you're going to get software,
3 maybe, but that would be a capital outlay project for which
4 there may be some money. If it's general fund, it's going
5 to be a difficult session, as you all know, probably better
6 than I do. But we just wanted to say we're supportive of
7 your proposal.

8 CHAIRPERSON CASTELLO: Thank you, Mr. Horan. I
9 appreciate that. We'll look forward to your support.

10 MR. PEPIN: Madam Chair, I had a question for Mr.
11 Horan, if I could.

12 CHAIRPERSON CASTELLO: Yes, Mr. Pepin.

13 MR. PEPIN: Does the support include support for
14 the provisions that violation of the agreement not to misuse
15 the information otherwise protected, for example, under the
16 IPRA would result in restriction to that member of the
17 press' access?

18 TOM HORAN: Madam Chair, I think that I heard
19 that, and I put a question mark in my own brain. I haven't
20 had a chance to run that by the principals. I don't know
21 how deep they got into the document in terms of that. I
22 could see where that could raise an issue sometimes where
23 you'd have a balance between the freedom of the press and
24 what they think is their rights and a balancing test with
25 the court and what it -- how it deems its interpretation of

1 the rules. So I guess I would say that I heard that and it
2 raised some question in my pre-legal mind, when I used to
3 have a legal mind.

4 And so I think in general, we're in support of
5 this. And if there's any -- I will raise that question to
6 them, and they can, I suppose, still get back to you in
7 writing if they have some input on that.

8 MR. PEPIN: I appreciate that.

9 TOM HORAN: I think it's a fair question.

10 MR. PEPIN: I note that in places where this type
11 of approach has been made, there really haven't been those
12 kinds of problems. But the remedy is there because if there
13 were, I think the remedy would be important.

14 TOM HORAN: Right. Thank you.

15 CHAIRPERSON CASTELLO: Thank you. Mr. Greg
16 Williams. Good morning, sir.

17 GREG WILLIAMS: Good morning. Thank you. Thank
18 you all for having this public meeting today. We appreciate
19 you giving us this opportunity. I didn't state my name for
20 the record, so I will. I'm Greg Williams. I'm an attorney
21 in Albuquerque with the firm of Peifer Hanson & Mullins.
22 And I am here today on behalf of the entities the
23 Albuquerque Journal, KOAT-TV, and the Foundation for Open
24 Government. I currently am the president of the board of
25 directors for FOG, the Foundation for Open Government. I

1 have submitted a letter to the committee, which I think that
2 you have received. We appreciate the opportunity to present
3 thoughts in writing. I just wanted to add a couple of
4 points to that.

5 Certainly our starting point is that we do support
6 the policy as has been presented here today and specifically
7 very much support the extension of online access to court
8 files to members of the press. It's our position that
9 allowing this type of access to online court records is
10 really a very important step for our court system to take.
11 There's really few matters of more public importance to the
12 members of our community than access to our judicial system.

13 If you look at the front page of almost any paper
14 in our state or watch the nightly news broadcast, you see
15 how much our court system and matters that are within our
16 Judiciary are of interest. If you had just looked at the
17 paper this week, for example, you'd see a report about a
18 lawsuit involving the president of the University of New
19 Mexico against the university. There's a report this week
20 about a lawsuit filed by someone against an abortion clinic
21 in Albuquerque. These are obviously matters of great public
22 importance. And when we talk about media access to court
23 records, what we're talking about is the media's important
24 role as a surrogate for the public. The public cannot be
25 everywhere and cannot see everything at all times the way

1 the press can. Anytime that you can expand media access to
2 our judicial system including court records, then you are
3 benefiting the public because the public has greater access.

4 Now that we are in an age where we can put court
5 records online and make them available online, then this
6 only makes sense to be able to expand access. Any access
7 that can be improved to the media only serves to benefit the
8 public. And for those reasons, we very much appreciate and
9 support the policy as written to expand the access as set
10 forth in the policy. Thank you all very much.

11 CHAIRPERSON CASTELLO: Thank you, Mr. Williams.

12 MR. PEPIN: Madam Chair, I have a question.

13 CHAIRPERSON CASTELLO: Go ahead.

14 MR. PEPIN: Your letter references your
15 representation of the Journal and KOAT-TV, but today you
16 mentioned an addition of the Foundation for Open Government.

17 GREG WILLIAMS: I did. Well, at the time I wrote
18 the letter, it was only on behalf of those entities. But I
19 am speaking here today on behalf of FOG.

20 MR. PEPIN: My question is: Do the statements
21 made in the letter, do they also represent the position of
22 FOG? Because I'm particularly interested in the letter
23 support for urging the other branches of government to make
24 available the funds requested for redacting which would
25 allow for much broader online public access, and I

1 appreciate that very much. And I believe now I will be
2 informing that all three of the folks you represent support
3 the appropriation.

4 GREG WILLIAMS: Please feel free to proceed.

5 MR. PEPIN: Thank you.

6 CHAIRPERSON CASTELLO: All right. And Mr. Jake
7 Arnold. Good morning, sir.

8 JAKE ARNOLD: Good morning. I'm sorry to have
9 been here late, so I may have missed what some of the other
10 people had to say and don't mean to repeat that too much.
11 And I don't know if there's a time limit. I saw the lady
12 holding up a red card a little while ago.

13 CHAIRPERSON CASTELLO: Five minutes. And if you
14 have a yellow card, 30 seconds left.

15 JAKE ARNOLD: Okay. So I have worked for various
16 established news media for the past 40 years both here in
17 New Mexico and elsewhere. Currently, I do submit on
18 occasion op-ed columns published in daily newspapers, also
19 work for some organization that have Internet newsletters
20 that are sent out in duplicitous news, and I would just like
21 to compliment the definition of press that I see in the
22 proposal. It's expansive, and I think it ought to be. In
23 this day and age, virtually everybody can be a member of the
24 press via social media, via newsletters, things like that,
25 and I would compliment that.

1 I would just recommend that you expand that
2 definition, the working definition a little bit and include
3 the word "dissemination" before "published" there because I
4 think that there are other ways beyond "published." I
5 realize there's a court term, "publish." For instance,
6 publishing evidence to the jury means to simply
7 demonstrating and presenting that, but I think it has to be
8 there.

9 Again, today with social media, you're talking
10 about Facebook, you're talking about Twitter, I mean, I
11 think that President-elect Trump has become, you know, in a
12 sense, a member of the press the way he's been using Twitter
13 to communicate for better or for worse, and I would
14 paraphrase George Clemenceau, the prime minister of France,
15 who mentioned that war is too important to be left to the
16 generals. I would say that the First Amendment is too
17 important to be left to the establishment press. And I
18 think that we have to expand that to include that.

19 One thing that does concern me, though, is the
20 application procedure that is proposed. And we're asking
21 people to basically establish that they're legitimate
22 members of the press. And I would caution that we should be
23 careful about the concept of licensing what the press is. I
24 think that this does fall -- you know, it goes to the First
25 Amendment. I think that the press -- the freedom of the

1 press, according to the Constitution, and I realize that
2 we're not trying to debate constitutional issues here, but
3 if we use that as a baseline, is that the freedom of the
4 press is really an extension of the freedom of speech as
5 established in the Constitution. The reason founders put it
6 in there was basically in memory of Tom Payne, who put out
7 his pamphlets that were so critical to the American
8 Revolution. And at that time, he was doing it anonymously,
9 and they had to, you know, protect people who were
10 anonymous.

11 I noticed that court rule 79, and I've had some
12 concerns about this, the existing 79 and the revised 79, if
13 I go down to the district court and -- getting away from the
14 internet access -- they're asking me for my name, for a
15 photo ID, let's say, or a photo ID, my telephone number.
16 Right now, virtually all the case files are imaged. So it's
17 not a question of getting the paper files and having the
18 opportunity to mutilate them or steal a page out of them,
19 which I think was one of the rationales in the past when it
20 was all paper files. I'm not sure what the necessity of
21 that is for someone to come in and demonstrate, "Here's my
22 here's my telephone number, here is my address."

23 I think there's a lot of confusion just statewide
24 and perhaps nationwide about things like address, and maybe
25 that's been prompted by the Real ID. Right now, MVD -- and

1 this is -- I'm going off on a little bit of a tangent
2 here -- no longer is going to send anything to my mailing
3 address. They will only send things now to my physical
4 address. I live in a community where there's no mail
5 delivery at my physical address. I can't get things from
6 MVD anymore if the postmaster doesn't want to do that. So
7 there's a lot of confusion about what your real address is,
8 points of contact.

9 Beyond the IPRA, there's an exclusion about my
10 birthdate being part of my voter registration records. Yet
11 when the county clerk sends me my voter registration card,
12 it has my complete birthdate on it. There's just a whole
13 lot of confusion that I don't think that as a society we
14 have really dealt with a lot of these things about data.

15 So I would recommend that you amend 79 so that
16 anybody at least going into the courthouse, when the records
17 are imaged and are using a computer terminal, can do that
18 access without establish -- here's my name, here's my ID,
19 here's -- here's everything else. So --

20 CHAIRPERSON CASTELLO: Thank you.

21 JAKE ARNOLD: Thank you for your time.

22 CHAIRPERSON CASTELLO: Thank you very much.
23 Appreciate your comments. All right. We will just continue
24 on here at JID with -- and I am so sorry, I'm going to
25 mispronounce this, I'm quite sure -- Aja Oshi?

1 AJA OISHI: Very close.

2 CHAIRPERSON CASTELLO: I can't handle that name
3 well. Would you be kind enough to please say your name for
4 us and spell it, please.

5 AJA OSHI: Sure. It's Aja Oishi, A-J-A O-I-S-H-I.
6 I want to thank you for opening this up.

7 CHAIRPERSON CASTELLO: Thank you.

8 AJA OISHI: I'm here on behalf of the University
9 of New Mexico School of Law and New Mexico Innocence in
10 Justice Project. And I wanted to add a quick plug for
11 academic programs that may have use for these types of open
12 records. We have several projects that are out of state, so
13 they wouldn't fall under the basic allowance for practicing
14 attorneys licensed in the state of New Mexico to have access
15 to records, but they are conducting all kinds of research.
16 And we have students with programs where the students would
17 also --

18 JUSTICE MAES: Would you speak up, please?

19 oja: Yes, ma'am. We have clinics and programs
20 where the students would also benefit from having access to
21 these records without having to go through the process of
22 paying for them as we usually do. So, for example, the New
23 Mexico Innocence in Justice project often requests court
24 records and the complete court files from district court,
25 but we have to pay for those copies, usually at ten cents a

1 page or more, so that does cut into our grant program. So
2 we just encourage perhaps the expansion of the justice
3 partners definition to include academic research, students
4 and out-of-state attorneys who are working for some type of
5 academic program to have access to these records as well.
6 Thank you.

7 CHAIRPERSON CASTELLO: Thank you very much. All
8 right. And Mr. Martin Salazar. Good morning, sir.

9 MARTIN SALAZAR: Committee members, thank you so
10 much for allowing us this opportunity. I'm the editor and
11 publisher of the Las Vegas Optic, a small newspaper in
12 northern New Mexico, and I'm speaking in support of the
13 Judiciary's proposed policy to provide online access to
14 court records to the news media and other groups. I'm also
15 the past president of the New Mexico Press Association and
16 the incoming president of the New Mexico Foundation for Open
17 Government, organizations that also supports this proposal.

18 The proposal would boost transparency, but it
19 would also make the process for accessing court records more
20 efficient for both the courts and news media. I have
21 covered courts for nearly two decades. I have good working
22 relationships with the court clerk staffs of both San Miguel
23 and Mora County magistrate courts, as well as the staff at
24 the district court in Las Vegas. But with each passing
25 year, we notice lines are getting longer, times to access

1 court records are also getting longer; and, you know, at the
2 same time, we see hours at magistrate courts decreasing.
3 Magistrate court in Las Vegas, for example, is, I think, now
4 half day on Friday, if I'm not mistaken, and so there's less
5 access to the courts. I mention this not as a complaint but
6 to point out that court staffs throughout the state are
7 dealing with dwindling resources.

8 Unfortunately, newspapers are in the same boat.
9 That's why this proposal being considered makes so much
10 sense to me and other journalists in New Mexico. As I
11 understand it, if this proposal is approved, members of the
12 news media will have access to the same court records that
13 we currently have access to. The only difference is it
14 eliminates the need to go to courthouses, you know, which
15 may be down the street or which may be 30, 40, 50 miles
16 away.

17 Having online access will be a huge benefit for
18 news media organization and the readers and viewers. It
19 will help us do a better job of covering newsworthy court
20 cases; and in a rural state like ours, it eliminate the need
21 to drive to remote courthouses to look at court filings that
22 may or may not be newsworthy.

23 The benefit for clerks' offices throughout New
24 Mexico is that it will free up much of the time that they
25 are currently spending assisting journalists.

1 It's worth nothing that the federal courts have
2 been providing online access to court filings for years, as
3 have some states. In 2003 and 2004, I worked in Washington
4 state as a court reporter, and even back then, I had access
5 to court filings.

6 This is a reasonable proposal, and I really urge
7 you guys to recommended that it be adopted. I think it just
8 makes so much sense for, again, both journalists and members
9 of the news media and for the court clerk staffs throughout
10 the state. You know, just again speaking from personal
11 experience, I always feel a little bit guilty when I show up
12 at San Miguel Magistrate Court and I see the long lines and
13 see just how busy they are, and here I come asking to look
14 at five or six case files. I know I'm tying up their time.
15 You know, you see it in their faces that they're just
16 overwhelmed. And this, I think, makes it a little bit
17 easier for them and for us. So, again, I urge approval of
18 this proposal, and I thank you guys for allowing us the time
19 to speak about it.

20 CHAIRPERSON CASTELLO: Thank you. All right. We
21 have heard from all of the persons wishing to speak so far
22 today from each location. So I think -- why don't we just
23 take just a brief recess. More may come. We are scheduled
24 to hear comments until noon. So we will just wait, and
25 hopefully we will have more that would like to come to

1 participate. But meanwhile, let's take a ten-minute recess
2 and just wait.

3 JUDGE MITCHELL: Madam Chair?

4 CHAIRPERSON CASTELLO: Yes.

5 JUDGE MITCHELL: May I just ask a question --

6 CHAIRPERSON CASTELLO: Absolutely.

7 JUDGE MITCHELL: -- and maybe we would hear from
8 the press after our break --

9 CHAIRPERSON CASTELLO: Absolutely.

10 JUDGE MITCHELL: -- if we haven't had other people
11 sign up. I'm just curious. I'd like to know if we are
12 successful in securing the redaction software, which changes
13 a lot of things for the state and certainly changes things
14 for the public access, would there be an objection from the
15 press that you would then get access similar to the
16 public -- in other words, you would get redacted documents
17 instead of unredacted documents. So think about that.
18 Maybe you want to comment specifically on that. I would
19 find that information helpful as we move toward trying to
20 secure that funding.

21 CHAIRPERSON CASTELLO: We'd like to have your
22 thoughts on that. And at ten after 10:00, we'll be happy to
23 hear them. All right.

24 (Recess from 10:00 a.m. to 10:25 a.m.)

25 CHAIRPERSON CASTELLO: Let's please resume. All

1 right. Before our break, we posed a question to our friends
2 that are here from the press to help enlighten, to guide, to
3 provide some perspective to the subcommittee with regard to
4 the question of if we are successful with the legislature
5 and obtained a redaction software and then all content is
6 redacted, would the press have an issue with them falling
7 into the category with the public that you are accessing the
8 same content in terms of the breadth of it, but redacted
9 content without personal identifying info. Is there -- I
10 believe Mr. Arnold wanted to make a comment. Are there
11 others that would like to comment as well?

12 MARTIN SALAZAR: I can comment.

13 CHAIRPERSON CASTELLO: Very good. And please
14 approach the podium. And if you would, also restate your
15 name for our transcriptionist.

16 JAKE ARNOLD: My name again is Jake Arnold.
17 Assuming that the courts are subject to IPRA, IPRA right now
18 says that the agency may redact. It doesn't require, but
19 may redact all that information. And I would say that I
20 think the courts are totally justified in redacting that not
21 only in the files as we see them at the courthouse when
22 they're imaged or the paper files or anything. So I would
23 have no particular objection. As an IPRA compliance officer
24 for an agency here in New Mexico, we just finally gave up
25 trying to redact that. It was very, very difficult anyway.

1 And we really didn't have to. And, you know, we'd go there
2 and we'd put the Marks-A-Lot through it, and then you turned
3 it this way, and you can read through the marks and, I mean,
4 it was ridiculous doing that.

5 As far as what the federal courts do to use as a
6 model, not only the paper files but going down to the
7 federal courthouse and seeing them, those files, or using
8 PACER, you don't see any of that personal identifier
9 information anyway. You don't see the Social, you don't see
10 the driver's license number, you don't see the DOB on the
11 indictments. And I just don't see that there's a problem,
12 and I don't think there's any problem, once the funding
13 comes through, with actually redacting those things. I
14 think you're justified in doing it. And if that makes
15 people feel a lot better, you know, that's the way to do it.
16 I think what may be a technical problem in going back and
17 redacting those thousands of thousands of files that already
18 exist for that, but I don't think that that's a problem at
19 all.

20 CHAIRPERSON CASTELLO: Thank you, sir.

21 MARTIN SALAZAR: So, again, my name is Martin
22 Salazar, and I'm with the Las Vegas Optic. I'm the editor
23 and publisher of the newspaper. First of all, I fully
24 support the idea of making these documents available to the
25 public. I think that's a -- you know, it's needed. And I

1 am very supportive of that funding that you guys need to
2 make that happen to purchase the redaction software.

3 As practical matter, I'm going to use myself as an
4 example. Again, I live in Las Vegas, New Mexico. My name
5 is Martin Salazar. There are at least three or four other
6 Martin Salazars in Las Vegas, New Mexico. So the problem
7 that we will run into in the news media if we are not
8 allowed access to personal identifiers like dates of birth
9 and at least the last four digits of a Social Security
10 number, is just trying to identify people who have been
11 charged with crimes.

12 You had a case in Albuquerque where a gentleman
13 allegedly shot and killed three children, shot an
14 ex-girlfriend, and then killed himself. If you've been
15 watching the media coverage of that, one of the things that
16 reporters always try to do is look for context. And, you
17 know, were there warning signs here and what have you. And
18 so as part of that work, they look at the court files and
19 look at were there any other criminal cases against him, you
20 know, how are they resolved, were there any indicators that
21 this might happen and so forth.

22 That becomes harder to do if we don't have access
23 to personal -- to information that can distinguish one
24 Martin Salazar from another Martin Salazar. And so I would
25 argue for, you know, yes, pursue funding to open this up

1 to -- to open up redacted versions to the public, but I
2 would actually argue for allowing press access to unredacted
3 documents. And if anyone has any questions, I'm happy to
4 answer them. Thank you.

5 CHAIRPERSON CASTELLO: Thank you, Mr. Salazar.
6 Yes, Mr. Horan.

7 TOM HORAN: Once again for the record, I'm Tom
8 Horan, H-O-R-A-N. And I'm a lobbyist for the New Mexico
9 Press Association and Albuquerque Publishing, publishes the
10 Albuquerque Journal. I think I'd have the same answer as I
11 had before. I'd have to take it back to the powers that be,
12 the board of the New Mexico Press Association and the
13 leadership of Albuquerque Publishing to get their opinion on
14 it because it wasn't expressed to me before this.

15 And I think they can also make their comments to
16 you. I don't know how long it will be able to be open to
17 having comments, how much longer your process will go.
18 Could you tell me?

19 CHAIRPERSON CASTELLO: That is going to be
20 determined as well this afternoon. We're accepting comments
21 through today. It would optimum if we could have a response
22 today, a written response today. We would welcome that
23 response. If we needed to wait a reasonable amount of time
24 for that response, we would welcome that.

25 TOM HORAN: I'd be happy to pass that on. I'm not

1 sure they could get their board together with the New Mexico
2 Press Association.

3 CHAIRPERSON CASTELLO: Right. Not today?

4 TOM HORAN: They have deadlines, I guess.

5 CHAIRPERSON CASTELLO: But in fairly short order,
6 a reasonable amount of time, we would welcome that input.

7 TOM HORAN: I'll be happy to pass along your
8 request.

9 MR. PEPIN: Sir, I do note that in the documents
10 provided for public comment, page 3 of the information about
11 press access explicitly states both those things; that is,
12 that we may redact the documents provided to the press and
13 reserve right to do so, and that -- the other question as
14 well, that it could be terminated for violation of the terms
15 of the agreement. I'm not sure anybody focused on that, but
16 it's there.

17 TOM HORAN: I heard it when it first came through,
18 and I thought that was significant. What would constitute a
19 violation of that? Sort of then it gets to be a proof
20 issue. You know, the court, I guess, could --

21 MR. PEPIN: Could end up in court.

22 TOM HORAN: Hand it over to the courts to
23 interpret their rules. And, for example, Martin was talking
24 about this current issue in Albuquerque with the shooting.
25 You just see a person's name. It can be a common name, and

1 how do you keep the chaff out from the wheat, and how do you
2 make sure that some innocent person isn't thought by his
3 neighbors to be the parent or sibling of someone who's
4 charged with a heinous crime, so there are some practical
5 issues.

6 CHAIRPERSON CASTELLO: Thank you, Mr. Horan.
7 We'll look forward to hearing back from you.

8 TOM HORAN: Thank you.

9 CHAIRPERSON CASTELLO: Ms. Malcolm.

10 CHRISTINE MALCOLM: Yes. Christine Malcolm. It's
11 just -- when statutes are -- are these statutes going to be
12 revised, this particular statute to include this
13 information? Because if it is, why isn't it being put in as
14 a -- or is that separate for the Judiciary?

15 CHAIRPERSON CASTELLO: I'm sorry, I'm not quite
16 following you. As far as redaction goes, the redaction
17 funding --

18 CHRISTINE MALCOLM: Yes.

19 CHAIRPERSON CASTELLO: -- is a budget request.

20 CHRISTINE MALCOLM: Yes.

21 CHAIRPERSON CASTELLO: And so the budget requests
22 are being submitted to the legislature, and then there will
23 be legislative hearings during the session where this
24 funding will be requested and discussed.

25 CHRISTINE MALCOLM: But will you be rewriting or

1 changing, revising any part of that statute? The public
2 access act?

3 CHAIRPERSON CASTELLO: There is no statute as of
4 this subcommittee. We're not proposing any legislation to
5 be changed.

6 CHRISTINE MALCOLM: Okay. So --

7 CHAIRPERSON CASTELLO: Do you have any other
8 comments that you'd like to make?

9 CHRISTINE MALCOLM: Oh, yeah. So how to turn this
10 into a comment. Are we going to be able to have access to
11 the minutes of this meeting?

12 CHAIRPERSON CASTELLO: Minutes will be made
13 available, yes.

14 CHRISTINE MALCOLM: Okay. All right. Thank you.

15 CHAIRPERSON CASTELLO: Any new participants? No?
16 All right. Ms. Grant, you had a comment?

17 MS. GRANT: I did. It's related to the access to
18 the domestic violence cases. We currently have a few users
19 who have been granted access to those cases, and it was
20 based on a case-by-case basis for permission to those cases.

21 CHAIRPERSON CASTELLO: And so to be determined as
22 going forward with regard to one of the comments that were
23 made earlier by Celina Jones and Patricia Galindo, that is
24 something we take very seriously, and that will all be
25 determined as we go through the process.

1 MR. PEPIN: Madam Chair?

2 CHAIRPERSON CASTELLO: Mr. Pepin, I'm sorry.

3 MR. PEPIN: As I understand the proposal, the
4 cases that are currently in categories that are excluded
5 from access, other than inside the court that can be
6 accessed by court personnel to process cases, will remain
7 the same. In other words, we're not opening access to
8 juvenile cases except on a very limited basis for attorneys
9 working juvenile cases. That's the same as now, and the
10 same for order of protection cases and those kinds of cases
11 which are by statute or rule are protected cases or a case
12 in with a judge actually entered a sealing order, for
13 example.

14 But the access is to those things that are already
15 accessible, that you can go to the court to see.

16 CHAIRPERSON CASTELLO: Thank you. All right.
17 Thank you. All right.

18 JUDGE MITCHELL: I have a follow-up to that, and I
19 guess I would pose this to Ms. Galindo and Ms. Jones.
20 Knowing that, what Mr. Pepin just said, and the focus of
21 this proposal, that it doesn't open that up, do you still
22 believe that the proposal runs afoul of statute 40-13-12?

23 PATRICIA GALINDO: Can you hear us now?

24 CHAIRPERSON CASTELLO: Yes.

25 PATRICIA GALINDO: Thank you, Judge Mitchell. In

1 answering your question, I do believe in looking at Statute
2 40-13-12, that opening up any type of access to order of
3 protection cases would violate the statute. And that is why
4 at this point it may be easier to specifically exclude them
5 because they are not sealed, they don't usually have court
6 orders to seal, they're not sequestered, and they are really
7 a different hybrid. And so there are multiple concerns with
8 having any information -- because it says any information
9 that would likely reveal the identify or the location of the
10 protected party. So, you know, the identity of the person
11 could just be the case title. Any type of information
12 should not be on a public website.

13 MR. PEPIN: Can I ask -- Patricia, are the -- is
14 the register of actions currently available on the publicly
15 accessible website in these cases about which you are
16 concerned?

17 PATRICIA GALINDO: That's a great question. No,
18 they are not. There is no information at all. So if you
19 go -- if you go to case lookup, the query, it wouldn't even
20 show up the case names. Nothing is available. And that is
21 basically to comply with -- a couple years ago at the
22 federal level, in order to protect the safety of domestic
23 violence victims, the federal government did request that
24 all state courts change their statutes to ensure that nobody
25 could somehow surf the web and located victims of domestic

1 violence that were fleeing or went underground. So there is
2 no information at all currently available online.

3 JUDGE MITCHELL: Okay. So my understanding, then,
4 to follow up with that, my understanding from that comment
5 and from what Ms. Grant said, is that those case types would
6 not be available under this proposal either unless and until
7 an attorney or an individual got a specific authorization.
8 But it's not a blanket because they're not viewable. Is
9 that -- did I understand your comment correctly? It would
10 be an exception, in other words -- under this proposal even,
11 it would be an exception for an attorney to have access to
12 that case. And the reason they would end up having access
13 to that case, I'm thinking, that they would qualify for an
14 exception is because they were handling that specific type
15 of cases. That's what they do for a living. So I'm just
16 trying to understand how the proposal broadens the statute.

17 MR. PEPIN: I think a follow-up question could
18 answer that. My follow-up question: Patricia, if you go
19 into the courthouse to use the kiosk that's available at the
20 courthouse and you want to search the records, do you find
21 these cases?

22 PATRICIA GALINDO: That's a great question. I'm
23 not certain if you can look it up on the court kiosk. I
24 know that Kennan is there from Roswell, and I think Jody is
25 in Farmington. Maybe they could answer that question. But

1 what I do know is: Any individual can come into a court and
2 request to see the file in person, if they go physically to
3 the court. This is just restricting any kind of online
4 access.

5 MR. PEPIN: Right, and that's what the statute
6 says, that generally publicly available -- available
7 publicly on the Internet is what the statute says. But
8 these records aren't protected by that statute from people
9 who need a paper file. You can physically go and say I want
10 to see the file in the case of, you know, Smith versus
11 Jones, which is a protection order case, right?

12 PATRICIA GALINDO: Yes. That is correct. But if
13 I could just step aside, also, another question that has
14 come up, though, about having attorneys getting access to
15 that is in these types of cases, most of the time the
16 petitioners are going to be self-represented litigants. The
17 numbers overwhelming show that. Usually in a domestic
18 violence situation, there's a power control issue. And the
19 person that has the financial means is the only one that can
20 hire an attorney. So one of the concerns has been with the
21 domestic violence service providers is a petition that goes
22 to a service provider -- a domestic violence shelter or an
23 advocate -- those individuals, under your justice partner,
24 would never be able to access an order of protection and
25 help the petitioner. The only person that would be allowed

1 to under this proposal would be somebody that has the
2 financial means and would be able to hire an attorney to
3 represent them. And so there is some type of question as to
4 whether that justice partner definition should be expanded,
5 and there's several other concerns that are coming to me
6 every day. And so my suggestion was to exclude all of them
7 right now and let a subcommittee develop procedures for all
8 these unique situations.

9 MR. PEPIN: May I ask one more question? This
10 isn't an area in which I know very much, obviously, so
11 forgive me if this is a dumb question. But when a person
12 alleged to be a victim of domestic violence obtains an order
13 of protection, isn't there a requirement that that order be
14 served on the person from whom they require protection? So
15 isn't there at least a limited ability for them to know,
16 certainly, the identity? The point of the statute is to
17 protect the person's identity from being available publicly
18 on a website. But the person about whom they're directly
19 concerned is supposed to know their identity under the law,
20 right?

21 PATRICIA GALINDO: Yes.

22 MR. PEPIN: So this person wouldn't really have to
23 go to the courthouse. They would know this already by
24 having gotten the order, wouldn't they?

25 PATRICIA GALINDO: Well, I think the situation

1 that's been concerning in the process is when a petitioner
2 comes in and files the initial petition for an order of
3 protection, some courts do not grant that ex parte temporary
4 order that same day. So it could take several days to get
5 that issued. There's concerns that the potential
6 respondent, before an order is executed, can go online and
7 search to see if there's been a petition filed in order to
8 avoid service. That's another sub-concern that's been
9 brought to my attention. So that could actually, you know,
10 create a situation that's difficult. Because currently,
11 especially in small towns, if somebody gets wind that their
12 partner is filing an order of protection, they are required
13 to physically go to the courthouse to inquire. And
14 customarily, they are served then when they go to the
15 courthouse with that temporary order. So there's some
16 concerns that there could be a manipulation of the process
17 in order to get a heads up that an order has been filed and
18 possibly a temporary order has been issued, and they could
19 access it online and try to avoid service so that that
20 permanent order is not issued. So there's a lot of other
21 innuendos in these types of cases that really need some
22 further examination to make sure that we are looking at all
23 possible scenarios and making it fair for all of the
24 litigants involved, the petitioner and the respondent.

25 MR. PEPIN: So then can I ask Genevieve or Greg,

1 is there a case code that specifies it's an order of
2 protection case?

3 MS. GRANT: No.

4 MR. PEPIN: I would assume -- there is, right?

5 MS. GRANT: No.

6 MR. PEPIN: There's not?

7 MS. GRANT: No.

8 MR. PEPIN: Okay.

9 MR. MOYA: There's not a specific case type or.

10 MS. GRANT: Not a case type.

11 MR. MOYA: Or a case category?

12 MS. GRANT: No. The documents -- what's in the
13 domestic violence case --

14 MR. MOYA: So do we know, are these cases viewable
15 in the kiosk?

16 MR. NEFF: No. It's my understanding no. These
17 cases are not viewable.

18 JUSTICE MAES: If the petitioner does not want the
19 address known, there is a separate document that is filed
20 that basically says that you don't want the respondent to
21 have the petitioner's address. And while you're saying you
22 think there should be a different committee set up that
23 deals with this, we have a domestic relationship
24 subcommittee, and so I would hate to create another
25 subcommittee particularly when all these issues are so

1 intertwined with what's going on with domestic relations.
2 Because if an attorney is handling the divorce, that
3 attorney that's handling the divorce needs to have access to
4 these domestic violence protection orders because they're
5 related. So there's a lot of issues here, and I think if we
6 need to have more discussions about this, all of these
7 different scenarios you're raising, I think there's other
8 ways to handle this.

9 PATRICIA GALINDO: If I could just clarify, when I
10 talk about domestic violence cases, you know, Senior
11 Justice, you're correct. There could be a filing for a
12 divorce, custody. These are order of protection cases. So
13 under our current system, they are under the civil-family
14 type cases. And there is a way to differentiate orders of
15 protection specifically. There are case types in Odyssey
16 that would identify those cases, and that is what I'm
17 saying. That one subsection, orders of protection only,
18 would be excluded from any type of access under the SOPA
19 proposal.

20 MR. PEPIN: I understand your concern.

21 JUSTICE MAES: I don't understand the concern
22 because they are under statute and they are isolated. And
23 so, as I said, attorneys who are doing a divorce, I think
24 giving them access to these cases, they already have the
25 information about the person's identity.

1 PATRICIA GALINDO: I guess the concern has been
2 for the petitioner. So an example could be there's an order
3 of protection has been issued, the petitioner has to flee
4 for safety reasons and leaves the protection order at home,
5 and typically the petitioner -- the protected parties are
6 unable to access civil legal services because they were
7 self-represented in that case. And so if they go to a
8 domestic violence shelter, even if they go to local legal
9 aid offices, if there's an attorney trying to assist them at
10 that crisis point, they have not entered their appearance in
11 the order of protection, and so they wouldn't be able to
12 access those records. And the only party then who would
13 have access is if the restrained party had hired counsel at
14 the protection order hearing. So there seems to be some
15 type of disparity for these parties in being able to access
16 those records and giving access because the individuals who
17 are assisting these victims of domestic violence are not
18 going to fit your justice partner definition.

19 JUSTICE MAES: Well, that's not a justice partner
20 issue. If you're going to a legal aid attorney, a legal aid
21 attorney is going to have access to these cases if he has --
22 and so if he's entered an appearance and is representing
23 the -- but if you're basically saying just some random
24 attorney wants to be able to access this information -- I
25 think that all these discussions is just really not helpful

1 at this level and need to go to a subcommittee, and I think
2 it needs to go to the domestic relations subcommittee as
3 opposed to creating a whole new committee.

4 PATRICIA GALINDO: That sounds like a great idea.
5 I would just urge that they be specifically exclude to be
6 viewed by anyone at this point in time under this proposal,
7 waiting for further review of all these processes.

8 CHAIRPERSON CASTELLO: Thank you, Ms. Gallindo. I
9 appreciate your comments. All right. At this time, are
10 there any more comments that those participants here at JID
11 would like to offer? If not, I believe we have no other
12 participants in any of our other locations, and we may just
13 move to break until the call of the chair subject to the
14 call of the chair. So before we do that, are there any
15 other comments that you would like to provide us today?

16 Any more questions from the subcommittee? All
17 right. We will to be here until noon, and we shall remain.
18 Any participants that show up, we will reconvene. So we
19 will just wait. And if you stay, you will be notified that
20 we will resume at the call of the chair. Thank you very
21 much.

22 (Recess from 10:51 a.m. to 11:19 a.m.)

23 CHAIRPERSON CASTELLO: We are ready to take your
24 comment, please. If you would approach the podium, and if
25 you'd be kind enough to state your name for the record and

1 spell your last name for us, please, as we are transcribing
2 minutes.

3 NANCY LAFLIN: My name is Nancy Laflin, and it's
4 L-A-F-L-I-N. And I am a reporter with KOAT-TV.

5 CHAIRPERSON CASTELLO: Good morning.

6 NANCY LAFLIN: Good morning. Thank you-all for
7 allowing us this opportunity to speak to you as well. And
8 just to reiterate what Greg Williams has said about this is
9 -- it is vital and imperative for us to do our job to have
10 access to court records and -- all court records. And right
11 now, we do -- you know, we can go online and see the
12 history. But I'll use the case that's happening right now,
13 the gentleman who they say shot and killed three children.
14 To get his history, it takes -- it's extremely time
15 consuming. And I know yesterday, I went to -- I had to IPRA
16 the records from the Albuquerque Police Department, I went
17 down to district court to get his records. Then you have to
18 go upstairs to get other records, if there were restraining
19 order, so -- and then to metro court to get his other
20 records involving additional restraining orders and police
21 reports. So it's extraordinarily time consuming, but it's
22 also imperative that we have this so we know -- so we can do
23 accurate reporting that the public might absolutely be
24 interested in. So from this end, from what I do on a daily
25 basis, and I'm using that case as an example, if there is

1 just -- the more open and transparent and available these
2 documents are, the better we can do our job and the better
3 we can serve the public.

4 CHAIRPERSON CASTELLO: Questions for Ms. Laflin?
5 No? We appreciate you taking the time to be here.

6 NANCY LAFLIN: Thank you so much. Thank you-all
7 for --

8 CHAIRPERSON CASTELLO: Your comments will be
9 incorporated into the deliberations as we work up this
10 proposed policy and then presenting it to the Judicial
11 Information Systems Council for its approval. Ultimately
12 the decision rests with the Supreme Court, but your comments
13 are welcomed and appreciated.

14 NANCY LAFLIN: And I just wanted to ask if you-all
15 had any questions as far as the case I was referring to?
16 All right. Thank you-all.

17 CHAIRPERSON CASTELLO: Thank you very much. All
18 right. Given that our participants are exhausted once
19 again, we will stand in recess subject to the call of the
20 chair. Thank you.

21 JUSTICE MAES: So how many total people have we
22 had? Do we know?

23 CHAIRPERSON CASTELLO: Senior Justice, we've had,
24 as far as speakers, eleven.

25 JUSTICE MAES: Eleven people who appeared at one

1 of our sites or here?

2 CHAIRPERSON CASTELLO: Yes.

3 JUSTICE MAES: And then we had about 40 comments
4 that we received through the --

5 CHAIRPERSON CASTELLO: Written comments.

6 JUSTICE MAES: -- written comments and stuff, so
7 we've had a fair amount of participation.

8 CHAIRPERSON CASTELLO: The comments varied from
9 the public to media to attorneys to self-represented
10 litigants --

11 JUSTICE MAES: Law school.

12 CHAIRPERSON CASTELLO: - law school, staff. Quite
13 varied.

14 JUSTICE MAES: So we're in adjournment?

15 CHAIRPERSON CASTELLO: We are in adjournment.

16 Thank you.

17 (Recess from 11:23 a.m. to 12:00 p.m.)

18 CHAIRPERSON CASTELLO: The public hearing is now
19 officially closed.

20 (Hearing adjourned at 12:00 p.m.)

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