Laura Prather and Uvalde Records Lawsuit Receive Continued Widespread Media Coverage

By Laura Lee Prather | March 14, 2023

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The Uvalde records lawsuit continues on and is still awaiting resolution. Partner and Media Law Practice Group Chair Laura Prather received widespread media news coverage after her court hearing on March 9.

Below are excerpts of the coverage:

KHOU 11 News at 10p.m.: Laura's Coverage starting at 8:30

Austin American – Statesman: Uvalde Records Lawsuit Continues, No Closer to a Resolution or Transparency

Nine months after the massacre at Robb Elementary School that left 21 dead and 17 injured, the Uvalde district attorney and the Texas Department of Public Safety continue to fight the release of records, First Amendment attorney Laura Lee Prather told a district judge.

"Calls for transparency and accountability have run loud and clear. They've reverberated in public settings throughout the state," said Prather, lead counsel for a consortium of more than a dozen news organizations who have sued to obtain a trove of records to report on the law enforcement failings in Uvalde. "The district attorney and DPS ... have strived to mandate silence over anyone and everyone who was a part of the response that day."

Arguing the coalition's case Wednesday at the Travis County Civil and Family Courthouse in Austin, Prather asked Judge Daniella DeSeta of the 261st District Court to grant summary judgment, contending that the facts of the case are settled and do not need to be tried. DeSeta adjourned the hearing without issuing a decision.

The media organizations – including the American-Statesman's parent company, Gannett – is seeking dozens of records from the DPS such as recordings of the incident; ballistic and autopsy reports; and officer testimony. The DPS has shared much of the information with third parties – including some Texas lawmakers bound to secrecy by the agency through nondisclosure agreements – while declining nearly every media request.

Austin American – Statesman: Hundreds of Protesters Join Uvalde Victims' Families to Demand Action on Gun Safety Bills

Out of 1 trillion bytes of digital information – the equivalent of about 2 billion double-spaced pages of text – collected by the agency, the DPS has only released about 1,100 pages, said Prather, adding that nearly half of them were duplicates.

Prather argued that the DPS can't pick and choose who gets access to records about the shooting, and that the department hasn't proven that the release of information would interfere with its investigation into the Robb Elementary response, as the agency contends.

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Uvalde District Attorney Christina Mitchell “doesn’t identify a single document” that could endanger her prosecution, Prather said. “Her draconian position flies in the face of the" Texas Public Information Act.

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Mitchell’s counsel pushed back Wednesday: “Who gets to decide if the release will interfere with the prosecution of the crime? Is it the prosecutor who will be prosecuting that crime? Or is it the cable news network?”

Representing the DPS, Mellissa Mather argued that the disagreement over the credibility of Mitchell’s concerns over the release is sufficient reason for the judge to deny summary judgment.

Post-argument briefings to the court are expected to run at least through March 22. DeSeta is under no deadline to render a decision.

The case for transparency

News organizations, which sued in August, have been asking authorities to release information about the May 24 massacre since the tragedy.

In a suit filed weeks earlier, state Sen. Roland Gutierrez, D-San Antonio, whose district includes Uvalde, tried and failed to compel the agency to turn over records, the Statesman reported.

Uvalde Mayor Don McLaughlin and the grieving families of some of the victims have also repeatedly pleaded for transparency and accountability from the agency, most recently calling for DPS Director Steve McCraw's termination. But McCraw refused to resign and the agency continued to withhold records.

Nearly everything the public knows about the Uvalde massacre – including the information gleaned from a 77-minute video captured inside the hallways of Robb Elementary first released by the Statesman and KVUE – came from reporters, Prather said.

Austin American – Statesman: Exclusive: Watch Uvalde School Shooting Video Obtained by Statesman Showing Police Response

The DPS has not even provided a timeline for release of more information, the media coalition said in court filings.

“Allowing DPS to shield information now raises the very real possibility that the agency will be able to forever conceal details about one of the most glaring failures of law enforcement in the history of the state,” the coalition argued.

Benjamin Dower, the lawyer for the Uvalde district attorney, disagreed: “This is not going to go on forever. No one's saying that this information will never be released. The question is should it be released now?”

Austin American – Statesman: Cost of the Uvalde Delay: Austin Doctor Leading Expert Team to Analyze Victim Survival Chances

‘Spinning the narrative’

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In remarks to the court, Prather criticized the DPS for selectively volunteering some pieces of information – many inaccurate or conflicting – while withholding others.

“Col. McCraw (is) spinning the narrative,” she said, suggesting the DPS director is withholding records in an effort to sway public opinion and distance his agency from law enforcement’s botched response on May 24.

In the aftermath of the shooting, the DPS released a trove of information to the Texas House, Texas Senate and the Advanced Law Enforcement Rapid Response Training Center, a Texas State University program commissioned by the DPS to write an after-action report.

Austin American – Statesman: How a False Tale of Police Heroism in Uvalde Spread and Unraveled

Although the information matches many of the records requested by coalition members, the DPS declined the media's similar requests, citing a directive by District Attorney Mitchell to withhold all information indefinitely.

“DPS has never explained why its officials are able to offer hours of public testimony (and) release information to third parties” like the Texas House and Senate, and ALERRT, the coalition said in its latest court filing. “But DPS is then duty-bound to honor the District Attorney’s requests when it comes to providing information from the same investigation to the public.”

Attorneys representing the DPS did not respond on that point.

The 'law enforcement exemption'

Conflicting accounts surrounding the shooting continued Wednesday, when the Uvalde district attorney’s office and the DPS appeared to disagree on the status of a state investigation into law enforcement’s May 24 response.

Footage of a February Senate committee testimony, played for the court by Prather, showed McCraw stating that the DPS investigation had been “completed and turned over and available to the district attorney” last December.

But in his remarks to the court, counsel representing the district attorney said "she does not have the full investigation,” said Dower.

Austin American – Statesman: ‘Once You Take That Step, There’s No Going Back’: How a Uvalde Mother and Doctor Torn by Tragedy Became Activists

The status of the investigation lies at the core of one of the defense’s main justifications for withholding public records, the “law enforcement exemption,” which prevents public disclosure of information that could interfere with criminal prosecution.

“Disclosure can shape witnesses’ memories, their testimony and their cooperation,” Dower told the court Wednesday. “The disclosure can also compromise the ability to get a fair trial... and re-traumatize victims.”

Mitchell has not yet decided whether to pursue criminal charges, Dower said. But the district attorney claimed in court filings that the families of every Uvalde victim support her decision to withhold records until she reaches a decision. The Statesman has not verified Mitchell’s statement.

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In legal filings, the coalition characterized the argument as “a straw man” and “meritless.”

“We have an investigation that is over. We have suspects that have already been notified. We have witnesses that have already been interviewed. And we have immutable evidence in the form of audio and video,” Prather said.

Austin American – Statesman: Color del Dolor: 21 Uvalde Murals of Robb Elementary Victims Use Paint to Heal Pain

More than two dozen artists from across Texas spent this past summer memorializing the 21 victims of the Robb Elementary School shooting in a series of murals for the Healing Uvalde project.

Each of the 21 murals that dot downtown Uvalde tells a story about that person: the Girl Scout who saved her friends, the child who always was the life of the party, the aspiring lawyer, or the couple who shared a timeless love.

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