

# You'll have to answer questions about ethics

## On legal issues, I can provide guidance

**J**ust recently, it happened again. One of you called me to talk about running a photo. It was a photo showing a very emotional scene – a murder scene. Sometimes it is an accident scene. Usually it doesn't include a body, although sometimes in an accident scene, it will show a covered body lying beside the road.

"May I run it?" you ask. "Should I run it?" sometimes you ask. "Will I get sued?" usually follows. Those are, of course, three different questions. But they raise important issues.

Obviously, the answer to the first question is simple. It's your paper. You can run whatever you want in it, thanks to the First Amendment. But we'll come back to that issue. In fact, what you are asking me of course is really the third question – will you be sued if you run the photo.

If the photograph was shot on the public street, you should have no legal qualms about publishing it. It was taken in open view in a public place. No one has a right or expectation of privacy when they are photographed in a public place.

**Y**ou cannot libel a dead person. A dead person also has no expectation of privacy. And, in Missouri, while there are some "creative" causes of action, courts generally have been reluctant to find a valid claim for infliction of emotional distress for publication of a photo taken in a public place.

Of course, as I often tell all of you, I cannot guarantee you that you won't be sued. There are lots of lawyers looking for clients and looking for creative ways to make money. You can be sued for

nearly everything you do in life, and the issue for me, instead, is can I get you out of the lawsuit fairly quickly, thus keeping your legal fees fairly minimal.

So, the reality is that the true question in this set of facts is the second one. "Should I run it?" And that question is not mine to answer. It's not a legal question. The question is an ethical one, and I usually suggest that you are better able to answer it than I am.

**B**ut it raises an interesting question. To what extent do ethics conflict with editorial issues? Do newspaper publishers struggle with decisions that raise ethical problems?

Another paper recently called debating how to handle a demand letter it had received. A columnist had several months ago published in her column a written piece that she had found. She didn't claim ownership, but she reproduced the entire piece and said it was by an unknown author. Of course, the author happened upon the publication and now the paper is faced with a letter demanding the payment of a substantial sum of money for this unauthorized use.



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The lawyer, of course, talks about "fair use" defenses and whether the author has any substantial loss from this use. But at the same time, the publisher is reminded that employees need constant reminders about what is ethical when quoting from another's work.

And do you remember earlier this year the story about the business that held videotapes of many Wal-Mart officials answering tough questions and that decided since it owned those videotapes, it could use them in whatever fashion it wanted, even though Wal-Mart had assumed the videotapes actually belonged to it. Because the parties worked under a handshake agreement, legally Wal-Mart may not have had a solid right of ownership of those tapes. So, when you are dealing with a little David and a large Goliath, who's right and who's wrong?

And another newspaper called to report that it continued to have a problem with a local lawyer who had a pattern of not paying for probate notice legal ads. The paper had decided to put that lawyer on cash-up-front terms. The lawyer was unhappy and continued to bluster that the newspaper was wrong. The lawyer argued that legally the newspaper could not do this. But the reality is that the newspaper could do whatever it wanted in terms of accepting its advertising, and the issue was more a decision about who was ethical and who was not reliably ethical.

Some of my clients remind me that they've always done business on a handshake. I certainly understand that position. Meanwhile, I will continue to urge you to call me if you have a question about something you are about to do, and we'll talk about the legal issues that might arise. Then when we get to the ethical issues, I'll let you decide what's best.

## Photo Hall of Fame induction Oct. 16

**S**ix people will be inducted Oct. 16 into the Missouri Photojournalism Hall of Fame in Washington.

The event is free and open to the public. Everyone wanting to attend should register by contacting Missouri Press Association at (573) 449-4167 or [dcrews@socket.net](mailto:dcrews@socket.net).

The 2008 inductees are: Townsend

Godsey, photographer of the Ozarks; Bill Hankins, *The Platte County Landmark* in Platte City; Tim Janicke, *The Kansas City Star*; the late Belle Johnson, Monroe City, noted for group portraits and photographs of animals; Fred Waters, a war correspondent for the Associated Press; and the late Curtis Winchester, *Neosho Daily News* and the *Tulsa Tribune*.