

Coroner's inquests, online decency and Twitter: Key issues from 2021

This is the time of year when the “old year stuff” is put aside and we turn our focus to what lies ahead. For MPA members, that means turning our focus to the Missouri Legislature, which goes into session within a few days. We hope Santa has brought us folks who will wisely weigh the measures that come before them, acknowledging the important role that journalists play in helping the public understand the difficult issues with which those elected officials wrestle on a daily basis. We are not the enemy.

(Seriously! Pointing out a governmental agency shortcoming is a part of our role as watchdog. It is not a personal attack, especially when the agency is advised in advance — it is done to benefit all of us.)

But before we start worrying about what lies ahead, let's look back at one decision from this fall that deserves a bit more attention because it takes one set of public records and more forcefully parses when those records are open versus closed.

For years, case law has held that autopsy records were closed records because they constituted an “investigative report” of a law enforcement agency, the medical examiner. That is a question that has been considered well-settled law in the Western District of Missouri, if not statewide, because most autopsy reports came from medical examiners, an entity created by statute. The primary case on this subject, from 1998, was *News-Press And Gazette Co. v. Cathcart*, arising out of an inquiry from the *St. Joseph News-Press and Gazette*.

No doubt there have been many autopsy reports prepared since that date. Two come to mind that were in high-profile cases. One was the official autopsy report prepared in 2014 by St. Louis county medical examiners after the death of Michael Brown in Ferguson and which was not released officially until the investigation was

over (ie: “inactive”). Another was the Morgan County coroner's inquest held after the death of Brandon Ellington, the young man who was arrested, handcuffed and taken away by a water patrol officer in 2014, only to be bounced out of the boat by a wake and who drowned as a result. That inquest was undertaken by a coroner's jury who held a public hearing, and who issued public findings and a verdict in the matter.

This fall, the Western District Court of Appeals issued an opinion in the case of *Glasgow School District v Howard County Coroner* which addressed the *Cathcart* decision in its holding. In this case, the Howard County Coroner's office held an inquest on the death of a student, believed to be suicide, in 2017 in an open hearing before the public. However, the resulting report was not publicly released and after some research, the coroner's office asserted it was an investigative record and therefore closed. (At the same time, the coroner spoke to a television station freely about the report, confusing the entire matter.)

The appellate court determined that the coroner's office was a public body under Missouri statutes and the transcript of a public inquest is not an “investigative report,” but is a public record, because it was in essence a public trial before a jury. This clarification of the issue about the law on such matters is important for journalists in this state to recognize.

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And as a final note regarding issues still on the table as we say goodbye to 2021, we need to watch the debate

on Section 230 (42 U.S.C. 230, part of the well-known “Communication Decency Act.”). That is an important federal law because it says if you operate an interactive computer service, you are not the “publisher” or “speaker” of content on your website.

Most of the publicity relates to applying that Section to

Facebook and other website content. But that law is what protects you, the publisher, from liability for content in comments on your newspaper's website!

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And, further, watch the debate about Twitter banning the posting of photographs of “private individuals” or “minors” on its platform. It claims such content can violate a person's right to privacy. This could impact those of you with active Twitter accounts. While Twitter says it will weigh in if the content is being covered by traditional media, we need to remember that there is, in fact, NO right to privacy that attaches to any person, minor or adult, who is photographed in a public place.

‘Nuff said.

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Jean Maneke, is MPA's Legal Hotline attorney. Contact her at (816) 753-9000; jmaneke@manekelaw.com.