

# Where do you draw the line on speech?

Truth and reality are tough words to define. They are tough concepts to understand.

I always stand on the side with all of you reporters in this state. I understand your struggles and I support your right to transparency both in the court system and in your local and state government. I want you to get the records you ask for and I want you to be able to attend court hearings and get copies of decisions by judges. That is my job.

There are times, I confess, that I have a hard time understanding what is going on in a particular situation. A journalist complains to me about being charged a sum of less than \$10 for copies of public documents, and then I realize some journalists are working for papers where funds are tight. The reporter may be using their personal lunch money to get the story.

That's when I understand the need for public records to be priced so any member of the public may access them.

I am similarly torn at times about access to court records. I know that the judges who control our state court system generally have the right attitude about the need for courts to function open and transparent to the public. The foundation of our judicial system rests on transparency and the belief that all who come before the courts will have equal access to justice.

Our Missouri Constitution, in Article I, Section 14, guarantees "That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."

I truly believe our highest judges in the state believe in that truth and work every day to make the courts in this state "open to every person." But I know at the same time that instances such as recently happened, where a judge in Maryland was fatally shot in his driveway after ruling in a custody dispute in favor of the shooter's wife, and the situation in New Jersey where a judge's son was fatally shot, and her

husband severely wounded have struck fear in all judges wherever they live.

Information on where they reside and with whom now is stricken from almost all records in states. Our courthouses are secured and the public is highly screened before allowed to enter. "Open to every person" is now interpreted to mean "after they pass through security."

And, all of us realize those officers doing the screening may be the only thing standing between us as journalists observing and reporting on the trial and being involved as a victim in the next top news story about a shooting at the courthouse.

I work to ensure your access to court docket entries so you can do your jobs. But I struggle when you complain about finding access to information on Case.net no longer available to you. I know there are two sides to this argument – I hear them. I know what side I am here to support. But that's not the issue.

My point here is not who is right or wrong. Or what courts should do or not do. My point is about to head in a slightly different direction.

The recent news about the federal judge in New York who issued a gag order on Donald Trump in regard to his election subversion criminal case has created a mental struggle for First Amendment attorneys, I suspect. It has for me.

We all believe very strongly in the First Amendment. We also believe that the solution to bad speech is more speech, not a gag order on the speaker. In this case, the speaker is obviously running for President and candidates should be allowed to freely express

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their thoughts about the state of this country and about what they believe should happen in political matters. In the case of former President Trump, his legal problems are entangled directly in his campaign and his beliefs about the state of affairs in the United States.

Does a court have a right to gag a defendant? Why

should he be prohibited from speaking about the potential witnesses, about the prosecutor's team and about the court personnel? Are there some kinds of speech that can rightfully be prohibited? Does the U.S. Constitution allow the government to create a law prohibiting certain kinds of speech?

Recently an interview of Justice Samuel Alito in the Wall Street Journal quoted him in terms of his position rejecting speech restrictions. He is noted as having a habit of posing scenarios that demonstrate clearly that such restrictions are not tenable. Freedom regarding core political speech, the article concludes, is strongly supported by Justice Alito.

Should we allow former President Trump the right to say whatever he wants? Where in this age of the Internet and competing speech from all directions is it appropriate to draw the line in the sand and say that stepping over that line is the "shouting fire in the crowded theater" scenario? Or does that line no longer exist?



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