Requesting redacted records

Let me introduce myself. I am not Jean Maneke. Jean Maneke continues to be one of the mightiest legal minds to work in Missouri.

I am Dan Curry, Jean's successor as the MPA Hotline Attorney. About 20 years ago I was a reporter for the *Independence Examiner* when I first met Jean. After I graduated law school, she and I began working on projects and legal issues together. Fortunately, Jean remains a friend and a phone call away. I am excited to meet and talk and hopefully help each of you when the time comes.

Down to business. You have probably by this point learned of the lawsuit *Gross v. Parsons*, filed in Cole County Circuit Court on the last day of May. The lawsuit seeks to undo the court-document redaction requirements that have plagued us all since Senate Bill 103 altered the law (Section 509.520.1) and directed the Missouri Supreme Court to issue new rules to require redactions of victims and witnesses (among other things).

After a jammed Missouri Senate dashed legislative efforts supported by the Missouri Press Association to fix the redaction problem, the clock was ticking down on a challenge to the law on procedural grounds. So, a collection of plaintiffs that included some appellate attorneys, journalists and the Missouri Broadcasters Association filed suit.

While the Missouri Press Association is not presently a party to the suit, it did have input. I contributed an argument that these redactions violate the Missouri Constitution's open courts provision, Art. I, Sec. 14. If courts must be open to the public, then the courts' records should also be open. Records are how most people come to know what happens in the courtroom.

A decision from this court would be several months from now at best, and most likely longer. Odds are that an appeal in the Missouri Supreme Court would follow. If the lawsuit serves as the ultimate fix to these redaction woes, newspapers will still need to adapt to the status quo for the next year or so.

"Describe for the court the compelling newsworthy basis for the unredacted record and suggest that there has been no 'compelling proof' offered to close anything to the public eye."

It's a difficult landscape. Lawyers, judges and clerks are struggling to figure out how far the redaction rules really extend. Personally, every judge I have asked about the topic has provided a different answer. Reporters are encountering big variances in the extent of redactions.

While this lawsuit remains pending and legislative fixes are pursued again, I volunteer this modest remedy for those who can spare the time and effort. A reporter encountering an important, but overly redacted, court record, or even an elevated Case.net security setting blocking key documents, could email the judge's chambers and politely request unredacted documents or a lowered Case.net setting. As support for that request, it would be good to reassert the constitutional basis for receiving unredacted records:

The Missouri Supreme Court has recognized that there "is a common law right of public access to court and other public records." In re Transit Cas. Co. ex rel. Pulitzer Publ'g Co. v. Transit Cas. Co. ex rel. Intervening Emps., 43 S.W.3d 293, 300 (Mo. banc 2001). This right creates "a presumption in favor of court records being open to the public because justice is best served when it is done within full view of those to whom all courts are ultimately responsible: the public." Brewer v. Cosgrove, 498 S.W.3d 837 (Mo.App.E.D. 2016) (citing In re Transit Cas. Co. ex rel. Pulitzer Publ'g Co.at 301). See also Section 476.170 ("The sitting of every court shall be public and every person may freely attend the same."); Section 510.200 ("All trials upon the merits shall be conducted in open court and so far as convenient in the regular courtroom.")

This right to open court records is ultimately located in Article I, Section 14 of the Missouri Constitution, which provides that "the courts of justice shall be open to every person." This is the constitutional basis for "the presumption in favor of public court proceedings and records." Brewer at 841.

The Brewer decision noted that this presumption of openness, rooted in the state constitution, required application of a balancing test between "the public's compelling interest in open courts with a party's request to seal materials" and should be limited only to "that material which the litigant has demonstrated through compelling proof should be closed to the public eye." Brewer at 842 (citing In re Transit Cas. Co. ex rel. Pulitzer Publ'g Co.)

Describe for the court the compelling newsworthy basis for the unredacted record and suggest that there has been no "compelling proof" offered to close anything to the public eye.

With the right judge and the right case, it might shake loose a few more facts. At worst, it would help document the range and extent of the access problem created by the redaction rules, and lay groundwork for fixing the law down the road.

Dan Curry,
is MPA's Legal Hotline attorney.
Contact him at (816) 756-5458;
dan@brownandcurry.com