

The permanency of a newspapers' electronic archives

There's a billboard on Highway 54 as you travel south toward Lake of the Ozarks that promotes the ability of a mid-Missouri law firm to expunge your record if you have a prior conviction. What kind of record are they seeking to expunge? The answer is as broad as can be – since the 1990s, even back into the 1980s and possibly earlier, Missouri statutes have allowed expungement of certain criminal records under certain circumstances. It's just proliferated since some changes implemented in January, 2018.

Before records became widely computerized, indiscretions in your youth tended not to follow you, especially if you moved to another place from where you grew up. Court records were on paper only and newspapers were print only. But today, court records are computerized and newspapers are available electronically. Any employer doing "due diligence" is going to search the Internet and find information about any potential employee, ranging from a "mugshot," if there's an arrest, to stories about childhood incidents better forgotten.

And so, lawyers around the country are busy cleaning up clients' criminal histories. But it's important that you, as newspaper people, don't get confused about what this means. A court order expunging a conviction applies only to official court records of the event. While the defendant now

no longer has to admit to a prior conviction and while a court cannot use that prior conviction to persuade a judge to assess a longer sentence, that doesn't mean it didn't happen as a historical event.

Not long ago, a New York lawyer sent a letter to the Stillwater (Okla.) *News Press* demanding it remove a 2015

original story about a young man's arrest for public intoxication. His record had been expunged and the paper had even added that notation to the online story after receiving a copy of the court order expunging it. The lawyer tried to claim that every day the story continued to be available online, it continued to harm his reputation and to violate the court's order.

Of course, that is not legally true; litigation in a number of courts around the country has reinforced that principle. One Connecticut court noted that expungement "does not, and could not, purport to wipe from the public record the fact that certain historical events have taken place."

Nationwide, newspapers are getting such demands on a more frequent basis. It raises a multitude

of issues, such as whether a technically true statement can be defamatory, or whether failing to add the additional information about the exoneration makes the original report libelous. The good news is most states haven't gone there.

Back in December, 2017, this col-

umn warned that publishers need to consider their position on this issue. It noted that some papers have adopted a policy of leaving the story accessible in their archives but breaking the link that allowed search engines to bring it up in a general online search (sometimes called "deindexing the story.")

Well, one publisher has now seriously considered this issue and reached a solution. I don't want to steal Jon Rust's thunder and I welcome him to further discuss this issue at some point in my column, if he wants. But in the last couple of months, Jon has decided that the functional period for the Southeast Missourian will be six years. After that time period, the "daily crime report" will automatically be, he says, "delisted" from search engine accessibility. Stories about misdemeanor convictions, not-guilty decisions or charges being dropped in court will be delisted after specific request. As Jon said in announcing the change in the policy, "The new policy seeks to strike a balance between the Southeast Missourian keeping the public informed and recognizing, sympathetically, that in today's world of instant digital search, long-past minor indiscretions can play a disproportionate role in a person's online identity."

(In order to keep Jon's in-box under control, if you want to read what he wrote, email me and I'll send you the links to his stories.)

Our industry is facing a lot of changes due to computerization. Add this to your list of things to mull over your morning coffee. We are the "first draft of history," for sure. It's the red pencil that is causing the problems. Somewhere we have to find a comfortable place to stand as we watch the changes happen around us.

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