PUBLICATION DATE: ***December 2005***

Supreme Court could get two cases about 'openness'

Juvenile procedures, incident reports involved

Courts have been slow to encourage access in juvenile matters, despite the change in the law several years ago.

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Recently, a juvenile court judge closed a hearing where the defendant was a juvenile charged with a crime that would be a class A felony if committed by an adult. The St. Louis Post-Dispatch felt that closing the hearing was wrong, and recently argued the matter before the Missouri Supreme Court. This prepared the way for a decision that should clarify the state laws regarding access to juvenile proceedings.

The juvenile was charged with first-degree murder for strangling his sister in an argument. The juvenile's counsel sought to close the proceedings in that court from the media. The Post-Dispatch objected, but the trial judge granted the motion to close the proceedings. The judge noted that the victim's mother was also the mother of the defendant, and cited that as a reason to not apply the state law.

On appeal, the Court of Appeals ruled that the "adjudicatory hearing" would be open to the public, but no other juvenile hearings or proceedings would be open. That ruling resulted in the appeal to the Supreme Court.

Oddly enough, after the appeal was filed, the appellate court issued a revised opinion that changed only slightly from its earlier order, holding that the statute did not provide the general public with the right to attend "all proceedings" of the juvenile court, but only to "the hearing." The Court of Appeals then interpreted that language to be the hearing "where the child is accused of conduct which, if committed by an adult, would be considered to be a class A or B felony." In short, it limited the proceedings that would be open to the public.

After several procedural maneuvers by the Post-Dispatch required by this second opinion, the state Supreme Court granted the application to transfer.

The Post-Dispatch argued on Oct. 18 that the statute in question (Section 211.171) must be interpreted to open to the public all juvenile proceedings where a juvenile has been charged with a class A or B felony.

The state has argued that the use of the word "hearing" in the statute implies a single hearing, and not the entire proceedings, therefore limiting the meaning of that statute to the adjudicatory hearing.

The paper's attorneys pointed out that the statute in question talks about "any hearing" and about "all proceedings" and therefore it is wrong to imply that a single hearing is meant in this statute.

Another interesting fact in connection with this appeal is that the attorneys at Lewis, Rice & Fingersh, representing the Post-Dispatch, in coping with the lack of legislative history in this state, used the headnotes on the bills that were passed to create this revised statute in an effort to show legislative intent. Their brief notes that the bill summary on both the house and senate bills clearly included language that appeared to point to multiple hearings, not just openness in a single hearing.

Observers hope that when the court rules, it will clarify issues about openness of hearings in juvenile court. Courts have been slow to encourage access in juvenile matters, despite the change in the law several years ago. Perhaps one of the greatest benefits that might come from this decision will be some clear language about openness in juvenile proceedings, with the result that more courts take this privilege seriously.

The case, for those seeking further information, is State of Missouri ex rel St. Louis Post-Dispatch, LLC v. The Hon. John F. Garvey, St. Louis City, SC 86952. Briefs of all parties are available on the Missouri Supreme Court's website.

Supporters of the state Sunshine Law took a hit in the Eastern District Court of Appeals last month. The court

held that incident reports of law enforcement can be limited to the elements set out in the statute, namely date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report...”

If a law enforcement agency happens to collect more information than those items in its incident report, it has the right to redact any additional information it may have and limit access to only those elements.

This seems to fly in the face of clear statutory instruction in the Sunshine Law that the law is to be read liberally with narrow exceptions. Many of the members of the media have had difficulties for some time in accessing information in incident reports, and this decision can only make things worse.

The plaintiff in this case is a private citizen, and it could reach the state Supreme Court. (Your press association did file an amicus brief in the Court of Appeals supporting access to all elements of an incident report.)

So within the next few months, we should have some very interesting media decisions coming from Missouri’s highest judges.

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