Subtle lesson from Sept. 11 vid-

Restricting press access deprives society of valuable information, archives

We have passed the six-month memorial of the events of Sept. 11. All of you are well aware of the strong effort being made around the country, including in Missouri, to shut down access to many public records in the name of protection and safety.

As I recently watched the moving video shot by the French film producers inside the devastation at the World Trade Center, I was struck by how important that video is to all of us. And I thought to myself how fortunate we are that they were on the scene, with their cameras rolling, to preserve this for the world to see in the future.

Jean Maneke
MPA
Legal Hotline Counselor

(816) 753-9000
Fax (816) 753-9009

But what do you think the response would have been if a broadcaster or photographer had arrived at the scene that morning with camera in hand, asking for permission to go inside the roped-off police area and to document the disaster? What are the odds that any member of the media would have been permitted into that scene?

I think all of us know the answer to that question. Indeed, the more important question is how do we convince authorities that public access in times like this is good?

We need to engage our law enforcement officials in our communities in this discussion when we are presented opportunities like this to convince them to rethink their normal mindset when presented with these situations.

The fabric of the lives of each of us is enriched when we are allowed to more fully understand the scope of events in our world, and it is the job of the media writers, photographers and broadcasters to bring those details to us in an up close and personal way.

Speaking of access issues, a group comprised of the Conference of Chief Justices and the Conference of State Court Administrators has released a draft model policy on public access to court records that will shock the news media around the country.

The model policy begins by stating that open court records "allow the public to monitor the performance of the judiciary and, thereby, hold it accountable."

But from that solid beginning, the report goes downhill. It finds that some circumstances dictate that unrestricted access by the public to court records "is not in the public interest." And, it follows by setting out a test that weighs the individual's right to privacy against this public right.

This test, it says, should include whether the release of information "is highly offensive to a reasonable person," and whether the release "would serve no legitimate public interest." If those two tests are met, then the information ought not to be publicly accessible, the report states.

What a shock! How many persons involved in litigation would argue that release of any information in the file is not offensive to them? And how many of these same parties would argue that there is "no legitimate public interest" in the subject of their suit?

Nearly every litigant, I would guess. If a test like this is held to be the standard, then it won't be long before closed court information is the standard and public trials fall by the wayside.

I heard a local American Civil Liberties Union attorney speak last month. He discussed concerns over the backlash coming as a result of a government overreaction to the issue of public access.

I suspect most of those in his audience, at least those "of a certain age" (and I'm rapidly falling into that category, I guess) probably discounted what he said. But I fear that his concerns are valid and that our children will eventually have to take up the battle to reopen for public scrutiny many governmental records that have been closed as a result of what happened on Sept. 11, which, you will be reminded, was in no way the result of any person who acted based upon information obtained from public records.❑