

LAW WEEK COLORADO

Lawyers Of The Year 2011

Constitutional Crusaders

PURSUING THE CONTENTS of an arrest affidavit, a straightforward and frequent process, doesn't typically take seven and half months of work. That's why it was surprising when the arrest affidavit in the sexual assault case against former Denver Bronco's Perrish Cox was unsealed almost eight months after he was arrested.

It was the work of Steve Zansberg and Michael Beylkin of Levine Sullivan Koch & Schulz on behalf of their clients, The Denver Post and the Associated Press, which ultimately led to the release of the information.

"These guys fight the good fight," said Jim Clarke, the Associated Press bureau chief for Colorado. "Access to elected officials and jurists and transparency with law and courtroom issues are dear to the AP's heart."

When Cox was arrested in December 2010, news outlets throughout the country worked to get the inside story. During an initial hearing, reporters passed handwritten notes to Douglas County Judge Susanna Meissner-Cutler asking to unseal the arrest affidavit. She denied the requests citing an ongoing investigation, which led the AP to call The Denver Post about taking next steps.

"We agreed quickly that [this] would likely be a slam dunk," Clarke said.

Attorneys from AP headquarters agreed. Clarke then sought help from Zansberg, who focuses on First Amendment issues and had worked on similar cases in the past. Also on the task was associate Beylkin, who was relatively new to First Amendment issues.

They submitted a motion to the court asking to unseal the affidavit. Meissner-Cutler denied it, but did unseal the few portions of the document stating the alleged statutory violations. That wasn't enough for the lawyers or their clients, who believe that the press plays a vital role by acting as



Steve Zansberg, right, and Michael Beylkin of Levine Sullivan Koch & Schulz. | LAW WEEK PHOTO GABRIEL CHRISTUS

a check on government institutions.

"The reason we have an open judicial system, guaranteeing the public's right to attend judicial proceedings and review court records, is so that the People can monitor the conduct of judicial officers," Zansberg said. "Here, it was the conduct of a judicial officer who authorized the arrest of a citizen and put him in jail until he could post bond and to charge him with two felony crimes. That is a very serious act by our government. It goes to the very core of why we have these constitutional rights."

Zansberg made additional appearances in front of Meissner-Cutler, including one to argue for an open preliminary hearing.

But he had to re-submit the motion to unseal the affidavit when the case was sent to Douglas County District Court in early 2011. The motion included exhibits of newspaper articles, Westlaw search results and other examples of high profile cases "to show the court that but for the fact that this is a high profile, celebrity defendant, this affidavit would have been unsealed automatically upon the arrest of the defendant," Zansberg said.

An answer wasn't confirmed until July 22, when the Colorado Supreme Court upheld Judge Paul King's release of the affidavit with the victim's information redacted to protect her identity.

"This case shouldn't have been difficult,"

Zansberg said, "given that every day of the week this type of information is released upon arrest and because of the extremely high bar on why a judicial proceeding or court file should be closed. It should have been open and shut."

Beylkin admits the case expanded his understanding of these issues. "When I started, I had a lay person's view of these types of requests," he said. "I saw them as a way to slow down, to hinder the process, but this case almost immediately changed my view. I realized the First Amendment is virtually the only check the public has on what their government officials are doing." •

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