

## Lawyers argue before Supreme Judicial Court in O'Connell records case

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The Patriot Ledger

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QUINCY — Lawyers for the Norfolk County district attorney's office, Quincy developer William O'Connell and The Patriot Ledger argued before the state Supreme Judicial Court over whether a public-records restriction applies to a search warrant central to the underage-sex and drug trafficking case against O'Connell.

Justice Barbara Lenk heard arguments for about 90 minutes Thursday and took the matter under advisement.

The Patriot Ledger is seeking to unseal search warrant materials related to the March 31 police raid of O'Connell's Marina Bay condominium. O'Connell and a 20-year-old woman were indicted last month on aggravated statutory rape and other charges. The alleged sex acts involved a then-14-year-old girl and are said to have taken place over the past two years.

Two weeks before O'Connell's indictment, Quincy District Court Judge Robert Ziemian ordered the search warrant records made public with the name of the victim removed. The Patriot Ledger had gone to court seeking public release of the records that had been impounded at the request of Norfolk County District Attorney Michael Morrissey. Ziemian ruled that there is not sufficient cause to keep the records sealed.

O'Connell's attorney and a special prosecutor appointed in the case by Morrissey appealed the decision to the Supreme Judicial Court. Both argued Thursday that the search records, which include an affidavit on the sex allegations, are not public records under a state law that restricts from public view any reports of sexual assault made to police.

Another provision of state law requires search warrant returns and affidavits to be filed in court shortly after the warrant is executed, and to be open to the public.

Peter Carr, an attorney for O'Connell, told Lenk that reports of sexual assault never become public record, even if filed in court. Only elements of the report that are discussed in open court are public information, he argued.

Carr also argued that O'Connell's fair-trial rights would be infringed if allegations in the documents were publicized, particularly before a trial has begun.

"It's a case of publicity versus fair trial," he said. "No right ranks higher than the right to a fair trial."

Asked by Lenk why an affidavit redacted to protect identities would not preserve O'Connell's rights, Carr responded that "people can read between the lines" and identify the alleged victim from information in the report.

"The further down the road you get (in trial proceedings), the question is: What does this information do that's going to be so prejudicial?" Lenk told Carr. She later said Carr's fair-trial arguments "seem pretty compelling to me."

Patriot Ledger attorney Michael Grygiel argued that there is a distinction between a report of sexual assault made to, and held by, police, and one that is filed in court to support a search warrant.

If the law is interpreted to mean court and judicial records concerning sex crimes are never public record, Grygiel argued, that would essentially mean they are automatically impounded.

"It would create serious common law difficulties," Grygiel told Lenk.

Grygiel also said an overriding public concern is to prevent the perception that O'Connell, a prominent and wealthy developer of wide renown, has received preferential treatment in the court system.

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