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O'Connell case stays under wraps

By Jack Encarnacao
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QUINCY — One lawyer wants to put William O'Connell in jail. The other wants to keep him out. Yet there they were, arguing on the same side, in favor of shielding from public view search warrant materials related to the underage sex and drug trafficking case against the prominent Quincy developer.

At first glance, it might seem an awkward posture for competing lawyers – a defense lawyer and a prosecutor – to take. But it's a situation local law professors and career prosecutors say is common when both sides feel the materials could threaten a defendant's right to a fair trial.

"They're both interested in an outcome that will stand up," said David Seigel, a criminal law professor at the New England School of Law. "Prosecutors actually have ethical obligations to avoid certain kinds of pretrial publicity that would or could negatively taint a jury pool."

In the O'Connell case, prosecutor Andrew Berman and defense lawyer Stephen Delinsky failed to convince Quincy District Court Judge Robert Ziemian that search warrant records still need to be impounded three months after O'Connell was charged.

Last week, Ziemian ordered the search records made public and released to The Patriot Ledger, which challenged the impoundment in court. The ruling was appealed to the state Supreme Judicial Court, delaying the release of the documents.

The records establish the grounds on which O'Connell was charged with aggravated rape of a child under 16, paying a fee for sex and cocaine trafficking. He was charged in Quincy District Court and is expected to be indicted this month, moving the case to Superior Court, and then be put on trial.

Michael Chinman, an 18-year Middlesex County prosecutor and Milton resident, said he almost always joined defense counsel in requesting impoundment. He knew not to expect that impoundment would last very long.

"I don't think there really is a legitimate interest in getting information out there in advance of trial. At the same time, I don't think prosecutors can prevent that from happening very easily for long," he said.

Lawyers are bound by rules of professional conduct that could, if not adhered to, result in sanctions, up to suspension of their licenses to practice or even disbarment.

One rule includes a provision that says prosecutors must, "except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused."

The codes have been tightened over the years, and have led to a change in the typical pretrial strategy, said John Birtwell, a former chief prosecutor for the Norfolk County district attorney's office.

There was a time, Birtwell said, when prosecutors would be more likely to remain neutral in disputes over whether records that incriminate a defendant became public, or would consider any allegations contained in them to be fair game for public consumption.

"Twenty-five years ago, I used to watch prosecutors routinely swing from the heels, going right at defendants in terms of how they will characterize the evidence," Birtwell said. "I think now, the model for most prosecutors, they're extremely buttoned-down in terms of what they're able to disclose or what they feel bound by."

Contributing to this, Birtwell said, is a series of state Supreme Judicial Court decisions over the past two decades that he said weigh very heavily to a defendant's fair-trial rights.

Sometimes, prosecutors move too quickly to impound records without necessarily weighing the public's right to evaluate the integrity of the judicial process, said Chris Dearborn, a professor at Suffolk Law School and a 10-year criminal defense lawyer.

"I've seen that form motion filed, where it was clear not a lot of thought had gone into the process," he said. "I think there are certainly policy directives from higher up to be overly cautious on certain kinds of cases."

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Jack Encarnacao may be reached at ***jencarnacao@ledger.com***.

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