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Mass Shooting at Club Q in Colorado Springs Prompts Two Successful Unsealing Battles

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Just before midnight on Saturday, November 20, 2022, a 22-year-old man entered Club Q, previously a safe haven for the LGBTQ community in Colorado Springs, and opened fire, with a semi-automatic assault rifle. Five people (Daniel Aston, Kelly Loving, Ashley Paugh, Derrick Rump, and Raymond Green Vance) were killed, and eighteen individuals were wounded in the melee. The shooter was apprehended at the scene and later charged with 305 felony crimes, including five counts of murder, multiple counts of attempted murder, and bias-motivated bodily injury.

Coming on the eve of the annual Transgender Day of Remembrance and only days before Thanksgiving, the deadly assault on Club Q patrons generated press attention worldwide. Colorado's Governor described the crimes as "horrific, sickening, and devastating."

In the immediate aftermath of the massacre, news reports confirmed that the shooter had been arrested in June 2021 when he'd threatened to blow up his grandparents' home. The felony charges against him at that time were dismissed in July 2021, owing to his family members' unwillingness to cooperate with prosecutors. Under Colorado's Criminal Justice Records Act, all of the filings in that case were sealed. Once sealing is ordered, Colorado's law authorizes the former criminal defendant to deny (in job applications or housing searches) that he was ever arrested, and it commands all law enforcement agencies in possession of sealed records to state, in response to any records request, that no such records exist. When asked about the prior bomb threat incident (which had been [reported at the time](#) in the local press) at the press conference held Sunday morning following the massacre, the District Attorney and Sheriff both stated that by law they could not even confirm that the incident had occurred.

Prior Case File Unsealed

The following Monday morning, November 22, a coalition of ten media companies (ABC News, The Associated Press, Bloomberg LP, Colorado Public Radio, The Colorado Springs Gazette, The Colorado Sun, The Denver Post, New York Times Company, USA Today, and The Washington Post) filed an Application to Unseal the prior bomb threat case file. Colorado's law authorizes "any member of the public [to] petition the court to unseal any court file of a criminal conviction that has previously been sealed upon a showing that circumstances have come into existence since the original sealing and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy." That same day, District Attorney, Michael Allen, and El Paso County Sherriff, Bill Elder, each filed their own motion asking that the file for the 2021 dismissed case be unsealed.

On December 8, District Judge Robin Chittum, who had presided over the earlier criminal case, convened a hearing on the motions to unseal that case file. After hearing the objections of accused shooter's defense counsel and being apprised of the views of the victims (the shooter's family

is so significant, I think I would call it profound,” she said. The [case file](#) was posted, with only a handful of redactions, on the court’s website that evening.

Judge Chittum ruled that in light of recent events the statute clearly required that prior criminal case file be unsealed.

The breathtaking facts contained in the unsealed file – that the shooter had assembled a massive stockpile of firearms, explosives, and tactical body armor, and had declared his intention to become “the next mass killer” – generated widespread press coverage and prompted still-ongoing public debate about why Colorado’s red-flag law (allowing law enforcement to obtain a court order prohibiting an individual from obtaining guns) had not been utilized, as well as calls to amend Colorado’s Criminal Justice Records Act concerning the sealing of such files. *See, e.g.*, <https://coloradosun.com/2022/12/08/anderson-aldrich-unseal-arrest-records/> and <https://khn.org/news/article/colorado-considers-changing-its-red-flag-law-after-mass-shooting-at-nightclub/> and <https://www.youtube.com/watch?v=hNPYV0edk98>

Current Probable Cause Affidavit Unsealed

In a second, short-lived, battle over access to judicial records, on December 5 a much larger coalition (36 media companies) filed a [motion](#) in the current criminal case arising from the Club Q massacre, to unseal the affidavit of probable cause supporting the accused’s arrest. That motion, which argued the county court’s [order](#) sealing the affidavit (entered at 7:12 a.m. the morning after the shooting) did not comply with Colorado Rule of Criminal Procedure 55.1, enacted in 2020, which requires the entry of a written order making findings closely paralleling those required by *Press-Enterprise Company v. Superior Court*, 478 U.S. 1 (1986) to close a courtroom in a pretrial proceeding. At a status conference held the next day, December 6, District Judge Michael McHenry ruled from the bench that the affidavit of probable cause would be unsealed at 5:00 p.m. the following day. The unsealed five-page affidavit is available [here](#).

Subsequently, the judge then entered an [order](#) stating that in light of his decision, apparently *sua sponte*, to unseal the affidavit, the media coalition’s motion to unseal was denied as moot. However, responding to portion of that motion that asked the Court to refrain from sealing any other document filed in the case and until the written finding required by Colo. R. Crim. P. 55.1 were entered, “the court reassures the movant that the court intends to apply the appropriate standard, but as of now such concerns are not ripe.”

America’s Newspapers Open Government Litigation Fund

It is worth noting that the second of the two applications discussed above was underwritten, in part, by a generous (\$2,000) grant from [America’s Newspapers Open Government Litigation Fund](#). Practitioners and media owners should consider seeking such grants to help defray the cost of other such legal battles. Details about the litigation fund guidelines can be found [here](#).

Steve Zansberg, of the Law Office of Steven D. Zansberg, L.L.C., in Denver, Colorado, represented both of the media coalitions who filed motions to unseal. Colorado are represented by Michael Allen, the District Attorney for Colorado’s Fourth Judicial District. The defendant is represented by Joseph Archambault and Michael Bowman of the Colorado State Public Defender’s office.

