

Sex, lies, audio tape - and a newspaper war

war

Release of Tracy Baker tape spurs fairness questions

By Peter Jones
Staff Writer

Controversial former Arapahoe County Clerk Tracy Baker has been out of office for a year, but the scandal that removed him lingers on. The latest chapter is a journalistic point of disagreement between *The Denver Post* and the *Rocky Mountain News*.

Last week, almost a year to the day after Baker was recalled by voters, the *Post* released a nearly 40-minute audio tape of county commissioners discussing the clerk's improprieties. It was recorded during a closed-door meeting in 2002, months before the sex and financial allegations against Baker became public.

The newspaper had sued Arapahoe County in 2003 under Colorado's Open Records Act. A judge ruled that commissioners should not have discussed "personnel" issues regarding Baker during a private executive session because he was an elected official.

The Denver Post published

excerpts from the meeting in a Feb. 24 article and put the audio on its Web site. Now, Baker, ever a lightning rod for controversy, has caused yet another dispute of sorts — this time, between Denver's two daily newspapers.

Last Saturday, *Rocky Mountain News* publisher John Temple cried foul in his column, claiming that his competitor's access to the meeting tape had taken precedence over the public's right to know.

"*The Denver Post* cut a deal with a local government to get an advantage and wrote it into a legal agreement that it neglected to tell its readers about when it trumpeted its scoop,"

Temple complained.

The columnist was referring to a signed contract that gave the *Post* a first-day exclusive on the tape's contents. The settlement was designed to end the county's appeals in the case.

"The county agrees," the contract reads, "that, prior to the publication of the news story in *The Denver Post* ... the county will not issue any public statement, press release or any type of press advisory regarding the recording...nor make any copy of the recording or any written transcript thereof available to any mem-

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ber of the press, other than a representative of *The Denver Post*. "That gave the *Post* a scoop at the expense of what the Open Records Act was designed to accomplish, Temple argued.

"If a record is public, it should be available to everyone at exactly the same time, not just journalists," he wrote. "A government agency can't show preference, furthering the private ambitions of an individual or company. Under the law, you have the same right to a public document as this newspaper."

Paul Voakes, dean of the University of Colorado School of Journalism, agrees, but he blames government officials more for signing the agreement than he does *The Denver Post* for seeking it.

"Shame on Arapahoe County," he said. "It flaunts the law and goes against the purpose of the Colorado Open Records Act. I've never seen an arrangement like this. It's like a little kid who goes to the teacher and says, if I wash your car every day, will you give me all A's? How fair is that to the other students?"

In this case, fair enough, according to *The Denver Post*. The newspaper's hard legal

fight and diligent work are what made the first-day story possible, and the efforts will benefit all of Colorado news organizations, journalists on the story said.

"If *The Denver Post* had not fought in court for two years, no newspaper would have the tape any day," reporter George Merritt reasoned. "The judge laid down case law for every newspaper in the state. Next time, it's not going to take a year and a half."

Editor Todd Stone insists that competition with the *Rocky Mountain News* did not enter the editorial equation.

"It never occurred to us," he said. "Our only intent was to shed light on an issue that really dominated Arapahoe County for two years. No one thought about getting an exclusive."

No one thought about including any mention of the legal arrangement in the story, either.

"We had to economize," Stone said. "In hindsight, if we did mention it, it would have been a minor fact to include, not a major point of the story. We don't ignore the *Rocky*, but we're not obsessed over it."

That was not always the case. *The Denver Post* and the

Rocky Mountain News were staunch competitors for decades, rivals in one of the hardest fought newspaper wars in the country. That changed in 2001, when the dailies signed a joint operating agreement that merged their advertising, subscription and promotional functions.

The newspapers continue to have separate and competing news staffs, however, a point not lost on Temple in his Saturday column.

The *Post's* agreement with Arapahoe County, he said, "shows how hotly the fires of competition still burn in Denver, despite what the voices of gloom predicted about the JOA."

According to Temple, the *Rocky Mountain News* made its own competitive efforts to acquire the Baker tape. He said when reporter Jim Tankersley asked for it in 2003, a county attorney agreed to release it to the newspaper as soon as the court ordered it.

If that is the case, *Denver Post* attorney Steven Zansberg wonders why the *Rocky* has waited until now to make this an issue.

"This was agreed upon and discussed at a public meeting Feb. 22, 2005," he said. "It was on the agenda. If the

reporter had been attending, he would have heard the discussion."

As for Arapahoe County, officials simply wanted to expedite a drawn-out process, according to spokeswoman Andrea Rasizer.

"We didn't think much of it at the time," she said. "In hindsight, we wouldn't include the clause. Our goal was to put the Tracy Baker case behind us, not to cause a turf war between the newspapers."

The tape eventually received by the *Denver Post* includes the Arapahoe County Board of Commissioners joking about a sex scandal in Baker's office and weighing the prospects of protecting the county clerk. The meeting had been prompted by an anonymous complaint.

Commissioners also debated whether they should get involved in the office operations of an elected official, eventually deciding to order a financial audit of Baker's office instead.

Before the scandal was over, seven employees had filed lawsuits against the county and more than 600 sexually graphic e-mails between Baker and deputy clerk and recorder Leesale were discovered, as were



Tracy Baker

financial improprieties in Baker's office.

Baker and Sale were also reported to have had sex in the office during work hours.

The embattled county clerk was overwhelmingly recalled from office by voters in February 2004.