

Story first posted on the Cheyenne Herald website ...

I'd like to expand a bit on the story below.

On Friday, December 1, I posted not only that story but two legal documents on the Cheyenne Herald website. Because the heading on the settlement agreement included the word "Confidential," I took special precautions. And I also held back a little information.

I did not suggest that I had come into possession of the documents in an illegal or improper manner but I didn't spell out exactly how I had gained access to them. And, while I do sort of get information "over the transom" in the great tradition of Alan Simpson, these came to be known to me in a more simple way.

They were in the District Court files.

I acquired copies of the Settlement Agreement and the second document by asking for them and paying for them. It was that simple.

The reason I didn't share how I had gotten them was that I'm tired of providing the other Cheyenne media with a road map to stories.

And as expected, it took the daily newspaper until the following Wednesday to run a story about the \$225,000 settlement which I had disclosed several days earlier. They had read my website but couldn't figure out how I had gotten those

documents. Finally, it was delivered to them and they followed my lead.

My disclosures did not betray confidences nor inform readers of the Cheyenne Herald website of anything they couldn't have accessed themselves in the District Court offices.

All I did was publish public documents before anyone else knew they existed.

In the story below, I went overboard to inform readers that I did not get the documents from the Sells family attorneys. I did that because the Outlaw Saloon and its owners' attorney has accused them, in legal documents, of "feeding" me information and using the Cheyenne Herald as their press agent.

I could not honor John Vincent's request to not print the documents because the Confidential Settlement Agreement was readily accessible in the District Court files. I knew that, given enough time, even the WT-E would find out about them and publish. Previously, I did not use my website to disclose information I had about that Green Power, Inc. character the City signed a contract with to convert trash to diesel and it appeared that the WT-E beat me to the facts of his past. They didn't. I had the story first and shared it with a confidant, but the WT-E beat me to publication. I wasn't going to let them do it on this story.

I did not publish secret documents. Had they been under seal, I would not have published. Judges don't like that much.

Settlement in the Dwayne Sells case

Note: On Tuesday, December 5, I pulled down this story and the two legal documents from the Cheyenne Herald website. My decision. The documents are not there now and will not be in the future. No request. No pressure. I just chose to pull 'em.

November 30, 2006

by DaveFEATHERLY

This introduction to the two sets of legal documents simultaneously being posted on the Cheyenne Herald website is necessary to explain the how and why of making these documents public.

My decision to do this did not come lightly or easily. I will explain why I have done this but first it is important to provide a quick review of the Dwayne Sells story and my involvement in it ...

My introduction to the Dwayne Sells matter came in early June of last year (2005). I had read the brief coverage of his tragic death which resulted from a bar altercation in the other paper but was not familiar with details of the incident.

One of his friends called and asked if I'd be willing to sit down and listen to "their side" of who Dwayne Sells was and how upset they were over the poor and slanted coverage in the other paper.

We met at the Peppercorn downtown and over soft drinks, I listened as three devoted female friends of Dwayne Sells told me about the kind of person he was - to them. They were offended that he was being portrayed in the other paper as a "biker who worked at the Eagle's Nest." The impression that paper wanted to leave in the minds of its readers was that Dwayne was a bad guy - a biker who went into a strange bar at 1:00 in the morning and picked a fight, the result of which left him dead.

My first story about Dwayne Sells appeared in the June 13, 2005 issue and has been the most read of any story posted on the Cheyenne Herald website. That story continues to be regularly viewed. I have written over two dozen times about his death and the legal case that evolved from his death.

I have received much praise and many thanks from those who knew him, not only those as close as the three women who described Dwayne as a loving father and caring friend and one who was not just "a biker" - he was an involved biker. He was president of the local ABATE group and had made a trip to Washington D.C. shortly before his death to represent biker's interests and causes.

One of the first calls I received after the June 13th issue came out was from his full-time employer, Quark Manufacturing. Dwayne was described to me as a well-liked guy who was always raising money for something or other. I was told that the woman calling had heard that I had done a better story reflecting the Dwayne Sells they knew and cared for and asked if the company could get 50 copies of that issue of the paper for distribution to employees.

"I did not come into possession of copies of these two documents directly or indirectly from [Sells family attorney] John Vincent or anyone involved with the Plaintiffs in this lawsuit. When I called John Vincent earlier today (November 30th) to seek his comment about my plans to publish the two documents, his first words were, 'Please don't print them.'"

Dwayne Sells did work at the Eagle's Nest. He worked part-time and he probably would have been the first to say that he was employed there. I doubt he was ever ashamed or embarrassed to call bikers his friends.

But the other paper never mentioned his full-time job. Why they were more interested in trashing the memory of a decent, hard-working, caring friend and father, escapes me to this day.

But they chose their side early on and so did I.

I have written thousands of words about his death and its aftermath. I don't have the space here to review all that has transpired and that is also not the purpose of this website posting. I have spent dozens of hours in research, review, interviews, reading court filings and staying on top of the case. And continue to do so.

To this day, the only family member I have met is Dwayne's father, Jack Sells. We met for a few minutes after a court hearing in which Judge Kalokathis ruled rapid-fire on about a dozen motions both sides had filed. I have tried to stay emotionally detached. I was determined to cover this story because of its importance and public interest and because it deserved to be covered better, and differently, than I knew the other paper could ever do - or would ever do - not from a feeling of obligation.

I had no idea I would finally gain access to the Settlement Agreement. My coming into possession of those court documents that I've posted on the Cheyenne Herald website brought a new set of considerations.

As you will read, the first word in the title of the Settlement Agreement is "CONFIDENTIAL." In the body of the document, it is written that confidentiality is considered important to the furtherance of the Sells family claims against the bar owners and corporation. My efforts have always been to put a spotlight on this incident in a way that would not further hurt or embarrass the Sells family. I think I've done that. At least reasonably well.

I know that has always been my objective and that remains my objective now.

On the day I met Jack Sells in Judge Kalokathis' courtroom, the Sells family attorney, John Vincent of Riverton, announced that a settlement had been reached with Don Nath, a principal in the altercation(s) which caused Dwayne Sells death. The Sells family attorneys have been very helpful in my coverage of this case. I asked John, and his legal assistant Karen, if I could get a copy of that Settlement Agreement. They refused to provide me such a copy and when I later asked if anything had changed and if I could now get a copy, I was told "no," it was a confidential settlement and they would not breach that agreement.

So, I say here: I did not come into possession of copies of these two documents directly or indirectly from John Vincent or anyone involved with the Plaintiffs in this lawsuit. When I called John Vincent earlier today (November 30th) to seek comment about my plans to publish the two documents, his first words were, "Please don't print them." I explained why I thought it important that I do print them and I told him I would consider withholding the amount of the payment from Don Nath and his insurance company.

I cannot do that. I cannot black out the amount of the Settlement. It would dramatically weaken this disclosure.

The reason I am convinced that this information should be made public is that so many people who have followed this story from the beginning have begun to wonder if there would ever be any sort of justice. The coroner's inquest was a pathetic misuse of the process and the police investigation into the death was flawed from the beginning.

It is important that people believe that the system works. It doesn't work all of the time nor for all of the people, but it works better than any alternative.

I had considered redacting the amount and, in this introduction, informing readers that the settlement was sizable and "in the six figure range." That could be \$100,000-\$999,999. The actual amount adds specificity to this disclosure. I will not prejudge the trial. I will leave that to the other paper and the brain-dead sorts who post anonymously on forums - but it is obvious to me that this Settlement "suggests" that an insurance company (and they are notoriously tight-fisted with money) determined that it was in their best interests to settle on behalf of their client and that an amount of \$225,000 was reasonable in their minds.

I also want readers of our website to see for themselves the words in the "Petition" that say: "Donald Nath has agreed to provide information relative to the operational practices of the bar and other events relevant to Dwayne A. Sells' death which would help bring the remaining Defendants to justice."

You can reach your own conclusions about what the Settlement amount and the Petition words mean. I posted the documents to allow that. Was it the right thing to do? I believe so. I am not bound by the confidentiality agreement and I believe my role is to inform. And that's what I've done.