

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>RONALD T. WHITAKER, SR.,</b>	:	<b>No. 1:08-CV-0627</b>
	:	
<b>Plaintiff,</b>	:	
<b>vs.</b>	:	<b>(Judge Conner)</b>
	:	
<b>SPRINGETTSBURY TOWNSHIP, et al.,</b>	:	<b>(Magistrate Judge Carlson)</b>
	:	
<b>Defendants.</b>	:	

**ORDER**

This is a civil rights case arising out of a fatal shooting incident. This matter is now before the court on a summary judgment motion filed by the defendants. In connection with this summary judgement motion, the parties have submitted a police videotape of this incident for the Court's review.

On December 4, 2009, the York Daily Record, a York County media outlet, requested access to this videotape. (Doc. 77). On the same day, December 4, 2009, the defendants filed a motion for protective order which sought to seal this evidence. (Doc. 79.)

We recognize that there are strong public policies favoring openness in court proceedings. As the United States Court of Appeals for the Third Circuit has aptly observed:

[The courts have long recognized] the public's common law right of access to judicial proceedings and records. The existence of such a right "is beyond dispute." Publiker Industries, Inc. v. Cohen, 733 F.2d 1059, 1066 (3d Cir. 1984); see also Nixon v. Warner Communications, Inc., 435 U.S. 589, 597, 55 L. Ed. 2d 570, 98 S. Ct. 1306 (1978). Access means more than the ability to attend open court proceedings; it also encompasses the right of the public to inspect and to copy judicial records. United States v. Criden, 648 F.2d 814, 819 (3d Cir. 1981) (Criden I). The right, which antedates the Constitution, id. at 819, is based upon both "historical experience and societal utility," United States v. Smith, 776 F.2d 1104, 1114 (3d Cir. 1985) (Smith I). The public's exercise of its common law access right in civil cases promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court. See 6 J. Wigmore, Evidence § 1834 (J. Chadbourne rev. 1976). As with other branches of government, the bright light cast upon the judicial process by public observation diminishes possibilities for injustice, incompetence, perjury, and fraud. Furthermore, the very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness. See, e.g., Bank of America Nat. Trust v. Hotel Rittenhouse, 800 F.2d 339, 345 (3d Cir. 1986) (Bank of America).

Littlejohn v. BIC Corp., 851 F.2d 673, 678 (3d Cir. Pa. 1988) (footnotes omitted); See Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994).

This right to public access to records is embodied in the practices of this Court, in particular the practices and procedures relating to electronic case filing, adopted in Standing Order 05-06.

However, as noted by the defendants there are also significant fair trial rights which may be at stake in this case, which involves a fatal shooting incident.

Moreover, there are also privacy interests for the family of the decedent which may be implicated by the release of a video depicting this incident.

When presented with sealing requests of this type, we are called upon to balance these various and competing interests. See Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994). In order to conduct this balance in a fully informed fashion, we will direct the parties to submit memoranda of law relating to the release of this information.

AND NOW this 7<sup>th</sup> day of December, 2009, upon consideration of the motions for access to (Doc. 77), and sealing of (Doc. 79), these videotapes, it is hereby **ORDERED** that the parties shall submit memoranda of law in support these respective motions, on or before **December 21, 2009**. The parties shall then file briefs in opposition to the competing motions no later than **January 4, 2010**. Any final reply briefs shall then be submitted on or before **January 14, 2010**.

*S/Martin C. Carlson*  
Martin C. Carlson  
United States Magistrate Judge

Dated: December 7, 2009