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Privilege: Reports Tracking County's Compliance With Settlement Terms Are Not "Settlement Documents" and Must Be Publically Disclosed

United States of America v. Erie County, No. 13-3653-cv (2d Cir. Aug. 18, 2014).

Where parties had settled a case alleging violation of inmates' constitutional rights at a county correctional facilities, subsequent compliance reports could not be properly characterized as "settlement" documents and protected against public disclosure.

In 2009 the United States filed suit against Erie County, New York alleging the conditions at the County's two corrections facilities violated the inmates' Fourteenth and Eighth Amendment rights by failing to "(a) to protect them from harm, (b) to provide adequate mental health care or medical care, and (c) to engage in adequate suicide prevention." By 2011 the District Court had agreed to a settlement between the parties on all issues and required the hiring of independent monitors to provide compliance reports every six months to the Court and the parties. The reports were to document the conditions and would state whether there was improvement, no improvement, or a worsening of the conditions. The parties and the Court *sua sponte* all have the ability to reopen the case based on the reports if non-compliance is discovered.

Once the first compliance report was produced, the County requested it be filed under seal. The United States did not object and the District Court granted the motion. Learning that the reports were sealed, the New York Civil Liberties Union (NYCLU) moved to intervene to unseal them. The court granted the motion to intervene, but denied the motion to unseal. The court found that although the reports qualified as "judicial documents" neither the common law presumption of public access nor the First Amendment required unsealing, because the compliance reports were akin to settlement documents, and the presumption of public access was overcome by the importance of the need for frank settlement discussions by the parties. NYCLU appealed.

HELD: The Second Circuit overturned the District Court, holding the First Amendment requires the public be granted access to the documents.

DISCUSSION: The Second Circuit agreed with the District Court that the reports at issue were judicial documents, given that judicial documents are defined as those "relevant to the performance of the judicial function and useful in the judicial process" and the reports themselves were to be used by the District Court to reinitiate civil proceedings *sua sponte*.

Having found that the reports were judicial documents the Circuit Court next had to determine whether the First Amendment right to public access attached to the documents by considering "(a) whether the documents have historically been open to the press and general public (experience) and (b) whether public access plays a significant positive role in the functioning of the particular process in question (logic)." Looking first at historical experience, the Court pointed out that the United States has a long and strong history of enforcing the "general right to inspect and copy public records and documents, including judicial records and documents," in part so the public can ensure the integrity of the system. It also found the NYCLU's cases helpful, wherein reports like the ones at issue have been made accessible.

It also found that logic supported not sealing the compliance reports since the issues involved were "manifestly" of public concern. It noted such access enables the public to monitor and respond to the change in conditions at a public institution (the correctional facilities), in a case filed by a public agency (the Department of Justice), wherein a public government (Erie County) allegedly failed to meet constitutional minimums in carrying out its duties in a case being overseen by another public institution (the court system). The First Amendment right to public access thus attached to these documents.

The Court of Appeals then evaluated the other prong of the First Amendment analysis – whether the right was overcome by "specific, on-the-record findings that higher values necessitate a narrowly tailored sealing." In assessing the County's argument that there was a need for frank and confidential discussions between the parties on the issues and the compliance reports, the court rejected the idea that settlement-type conversations were ongoing. In reality, the "settlement" had concluded years earlier; the reports were not in preparation of settlement or anything like it, but were rather the result of settlement and to be used to reinitiate the civil proceedings by the court or the parties if necessary.

http://www.ca2.uscourts.gov/decisions/isysquery/c43c994a-faa1-45ba-8e97-9ba863715e91/16/doc/13-3653_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/c43c994a-faa1-45ba-8e97-9ba863715e91/16/hilite/ (last accessed August 28, 2014).