FOR THE RECORD

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U.S. Court of Appeal Denies Appeal to Proceed Under Veil of Unexplained Secrecy

On May 27th Chief Judge Frank Easterbrook, in a published one-judge "chambers" opinion, ruled that a document under seal in the record of appellant's appeal could not proceed under a veil of unexplained secrecy. (*Milam v. Dominick's Finer Foods, Inc.*; No. 09-1686) In doing so, Chief Judge Frank Easterbrook affirmed the Court's long-standing reluctance to permit matters, under seal in a district court, to proceed on appeal under seal.

In early May 2009, Chief Judge Frank Easterbrook invited the appellees, through another chambers opinion, to tell him whether they plan to defend their judgment on the ground that the district judge should not have revived the case by granting the plaintiff's motion under Fed. R. Civ. P. 60(b)(1). A "chambers," or "in-chambers," opinion is written by an individual judge, in this case, regarding the appellee's motion to maintain an affidavit under seal.

In his original chambers opinion issued in Nos. 09-1248 (*United States v. Foster*) & 09-1686 (*Milam v. Dominick's Finer Foods, Inc.*), Chief Judge Easterbrook stated that "[i]nformation that affects the disposition of litigation belongs in the public record unless a statute or privilege justifies nondisclosure." He went on to cite *Baxter International, Inc. v. Abbott Laboratories*, 297 F.3d 544, 545–46 (7th Cir. 2002) (internal citations omitted) for the proposition that "[s]ecrecy is fine at the discovery stage, before the material enters the judicial record. But those documents, usually a small subset of all discovery, that influence or underpin the judicial decision are open to public inspection unless they meet the definition of trade secrets or other categories of bona fide long-term confidentiality. Information transmitted to the court of appeals is presumptively public because the appellate record normally is vital to the case's outcome. Agreements that were appropriate at the discovery stage are no longer appropriate for the few documents that determine the resolution of an appeal, so any claim of secrecy must be reviewed independently in this court." Motions under Operating Procedure 10 that propose sealing documents in the appellate record are presented to the motions judge.

U.S. Court of Appeal for the Seventh Circuit Permits Municipalities in Illinois to Ban Possession of Handguns

On June 2nd, Chief Judge Frank Easterbrook writing on behalf of a unanimous three-judge panel of the U.S. Court of Appeals for the Seventh Circuit (*Nat'l Rifle Assoc. of America, Inc. v. City of Chicago, Illinois and Village of Oak Park, Illinois*; Nos. 08-4241, 08-4243, & 08-4244) ruled, one week after hearing arguments, that a Chicago ordinance banning handguns and automatic weapons within city limits was legal. The decision upheld lower court decisions last year to throw out suits against Chicago and its suburb of Oak Park, Illinois.

The Court ruled that a U.S. Supreme Court decision last year (*Dist. of Columbia v. Heller*, 128 S. Ct. 22783 (2008)), which recognized an individual right to bear arms under the U.S. Constitution's Second Amendment, didn't apply to states and municipalities. Judge Easterbrook writing for the panel stated that "[t]he Supreme Court has rebuffed requests to apply the second amendment to the states." (citing *United States v. Cruikshank*, 92 U.S. 542 (1876); *Pressor v. Illinois*, 116 U.S. 252 (1886); and *Miller v. Texas*, 153 U.S. 535 (1894)).

The Court stated that "*Heller* dealt with a law enacted under the authority of the national government, while Chicago and Oak Park are subordinate bodies of a state." Since the opinion was issued the National Rifle Association filed its petition for writ of certiorari. ■