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Recent Developments: Baltimore Sun Co. v. State: Juvenile Court Order Placed Unconstitutional Limits on the Press and Was Vacated as an Abuse of Judicial Power

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*Baltimore Sun
Co. v. State:*

**JUVENILE COURT
ORDER PLACED
UNCONSTITUTIONAL
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PRESS AND WAS
VACATED AS AN
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JUDICIAL POWER.**

The Court of Appeals of Maryland recently defined the scope within which a juvenile court can limit media access to confidential proceedings in *Baltimore Sun Co. v. State*, 340 Md. 437, 667 A.2d 166 (1995). The court vacated a juvenile court order, finding it unconstitutional and an abuse of power. Although it recognized a court's right to place reasonable conditions on media access to juvenile proceedings in the interest of protecting the children involved, the court of appeals held that infringements upon the First Amendment right to free press must be both justified and rational.

The Baltimore Sun ("The Sun") sought access to juvenile proceedings involving the civil contempt imprisonment of Jacqueline Bouknight. Prior to 1995, the proceedings were closed to protect Bouknight's son, "Maurice M.," who disappeared after the Department of Social Services filed a protective order based on alleged child abuse. Bouknight refused to disclose her son's whereabouts and was jailed for contempt.

On January 17, 1995, the Circuit Court for Baltimore City, Division for Juvenile Causes, entered an order granting access to the media with the condition that any reference to the child would not be by his legal name, but as "Maurice" or "Maurice M." On January 26, 1995, The Sun published a computer-enhanced photograph of the child obtained from the Bal-

timore City Police Department. The photo caption read "Maurice Bouknight," which is not Maurice M.'s legal name. In response, the court proposed an amended order prohibiting the use of any photographs of Maurice M., contingent upon The Sun's publication of the proposed court order in full in all of its January 27, 1995 editions. When The Sun refused to comply, the court, on February 6, 1995, entered a final order, granting access to future proceedings to all media organizations except The Sun.

The Sun appealed the final order to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland issued a writ of certiorari and heard the case directly to determine whether the juvenile court's discretion was properly exercised.

The court began by noting that under Maryland law, courts have limited discretion to close juvenile proceedings. *Baltimore Sun*, 340 Md. at 447, 667 A.2d at 171. Exclusion of the press must further the purposes for which a closure order is issued, and must fall within constitutional limitations. *Id.* After analyzing the relevant state law, the court of appeals focused its attention on constitutional issues.

First, the court examined the constitutional constraints imposed upon a court that seeks to restrict the First Amendment right to freedom of press. Although the Supreme Court has not addressed the

scope of permissible conditions on media access to juvenile proceedings, the court noted that an order prohibiting publication of particular information constitutes a prior restraint, and is presumed unconstitutional. *Id.* at 448-49, 667 A.2d at 171-72 (citing *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971)). In order for a prior restraint to stand, a court must find that the "magnitude of the danger the restraint seeks to prevent, 'discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.'" *Id.* at 448, 667 A.2d at 171 (quoting *United States v. Dennis*, 183 F.2d 201, 212 (2d Cir. 1950)).

Furthermore, the court recognized that a general consensus has emerged among the states. *Id.* at 449, 667 A.2d at 172. Courts have upheld orders placing conditions on how the media can use confidential information obtained during juvenile proceedings. *Id.* For example, by characterizing an order as a grant of limited access to an otherwise closed proceeding, a Minnesota court held that the order did not constitute a prior restraint. *Id.* (citing *Austin Daily Herald v. Mork*, 507 N.W.2d 854 (Minn. App. 1993)). The court of appeals, however, noted that courts that have upheld conditions on media access have also distinguished situations where information was obtained through non-judicial sources. *Id.* at 450, 667 A.2d at 172 (citing *In re*

Minor, 595 N.E.2d 1052 (Ill. 1992)). State courts have struck down orders as unconstitutional when they prohibit the media from publishing information obtained through otherwise lawful investigation. *Id.* at 450, 667 A.2d at 172-73. Consequently, the court of appeals concluded that material lawfully obtained from non-judicial sources falls outside the scope of the court's power to condition media access to juvenile proceedings. *Id.* at 453, 667 A.2d at 174.

The court of appeals next applied the constitutional and case law principles to the three orders issued or proposed in this dispute. Although the February 6 order had effectively superseded the January 17 order and the proposed January 26 order, the court considered the January orders to determine whether the exclusion of The Sun in February was justified. *Id.* at 454, 667 A.2d at 175.

The court rejected the State's argument that The Sun had violated the January 17 order when it published the photograph of "Maurice Bouknight," because the actual language of the order made no reference to photographs or other likenesses. *Id.* at 455, 667 A.2d at 175. Additionally, The Sun did not violate the provision barring reference to Maurice M.'s legal name, because "Maurice Bouknight" was not the child's legal name. *Id.* Technically, The Sun only violated the provision requiring any reference of the child to

be as "Maurice" or "Maurice M." The court, however, found this provision was unconstitutional, because "the press cannot be required to publish specific material." *Id.* (citing *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974)).

Next, the court applied a balancing test to determine whether the juvenile court properly used its power when it conditioned its proposed January 26 order upon full publication of the order by The Sun. Balancing the state's interest in protecting Maurice M.'s anonymity against The Sun's First Amendment rights, the court held that the proposed order was unconstitutional. *Id.* at 456-57, 667 A.2d at 175-76. Finding no connection between publication of the order and protection of Maurice M., the court stated that such an order may have been constitutional if The Sun's publication of the "Maurice Bouknight" image had been a violation of the January 17 order, but only to the extent that publication of the proposed order could cure the damage caused by such a violation. *Id.*

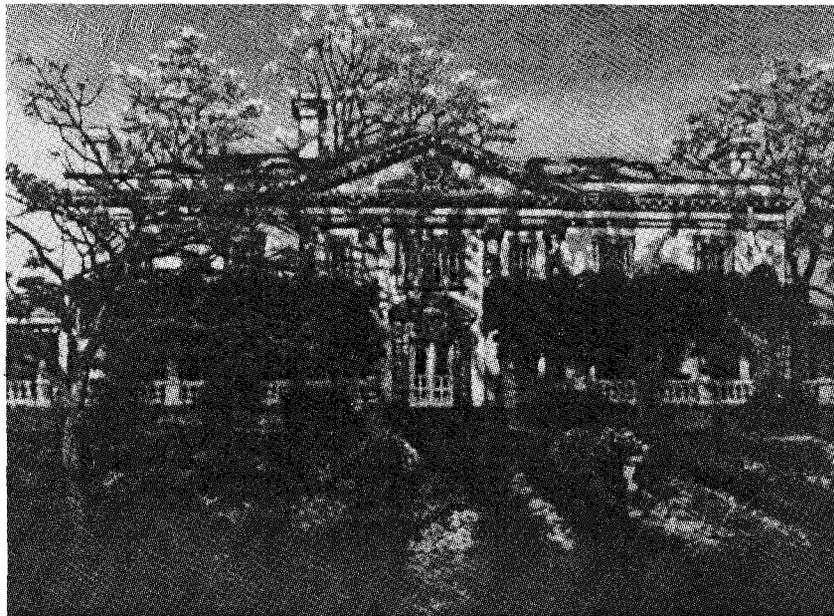
The court of appeals concluded its analysis by vacating the February 6 order. Although The Sun committed a "technical violation" when it referred to "Maurice M." as "Maurice Bouknight," the court found this "relatively insignificant" and not a sufficient ground for excluding The Sun from access which was afforded other media. *Id.* at 458-59, 667

A.2d at 176-77. The court held that the juvenile court abused its power in denying access to The Sun based upon its reference to "Maurice Bouknight," a reference that was within The Sun's First Amendment rights. *Id.* at 460, 667 A.2d at 177. Additionally, the court held that because The Sun obtained the photograph of Maurice M. from an outside source, the juvenile court had no power to place a condition on the release of the picture. *Id.* at 458, 667 A.2d at 176. Courts, when placing restrictions upon the media, "should only impose conditions related to the use of information obtained in those proceedings." *Id.* at 460, 667 A.2d at 177.

Baltimore Sun demonstrates an on-going tension between the right to free press and the right to privacy. The Court of Appeals of Maryland defined the parameters placed upon juvenile courts and the media in their interactions with each other. While courts retain some control over media access, the media now has an established right to publish information lawfully obtained outside the courtroom. This freedom may impact both the press and the courts. Members of the press may be required to restrain themselves when writing about sensitive issues, while courts may be encouraged to provide access to proceedings in order to minimize the media's need

to attain information from third parties who may not consider the privacy interests of children. More importantly, *Baltimore Sun* emphasizes the need for courts and the media to consider all interests involved when juvenile proceedings attract public interest and, hence, media coverage.

- *Andrea Galante*



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This Palladian mansion stands in Heavenly Waters Park in Bel Air, Maryland. Designed by architect J.B. Noel Wyatt, it was built by Dr. Howard A. Kelly, noted physician of the then new Johns Hopkins Hospital, as a "small house" in the country for his Prussian bride Laetitia Bredow.