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# Recent Developments: Baltimore Sun Co. v. Mayor and City Council of Baltimore: It Is a Violation of the Common Law Principle of Openness When Public Access to Court Proceedings and Records Are Restricted

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***Baltimore Sun Co. v. Mayor and City Council of Baltimore:***  
**It Is a Violation of the Common Law Principle of Openness When Public Access**  
**to Court Proceedings and Records Are Restricted**

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By Christopher Sandman

The Court of Appeals of Maryland held that the common law principle granting public access to court proceedings, records, and documents, is fully applicable in Maryland unless that rule has been modified by legislative enactments or decisions by the court of appeals. *Baltimore Sun Co. v. Mayor and City Council of Baltimore*, 359 Md. 653, 755 A.2d 1130 (2000). The court further ruled that where an important privacy issue is involved, the Maryland General Assembly has created exceptions to the common law presumption of openness.

In August 1997, police were called to a scene where James Quarles, III (“Quarles”) was allegedly wielding a knife. The police drew their guns, and Officer Smothers shot Quarles after he thought Quarles had advanced on him with the knife. Quarles’ family subsequently sued Officer Smothers and his employers for wrongful death. During voir dire, the parties informed the trial judge that they had reached a “confidential” settlement agreement. In accordance with court policy, the judge ordered the parties to place the terms of the settlement on the record. The parties then jointly requested that the courtroom be closed while the terms were read aloud and that the court record be

sealed. The judge agreed, and issued an order to seal the record.

The day after the record was sealed, the Baltimore Sun Company (“The Sun”), a newspaper, requested leave to intervene, in order to object to the courtroom closure and sealing of the terms of the settlement agreement. The Sun also wrote a letter to the City Solicitor requesting the details of the settlement based upon Maryland’s Public Information Act. Before the City responded, the Circuit Court for Baltimore City denied The Sun’s motion to intervene. The City then denied The Sun’s Public Information Act request, citing §§ 10-615 and 10-617(f) of the Act. The Sun brought suit against the Mayor and City Council of Baltimore to enforce The Sun’s Public Information Act request. The Sun also appealed the denial of its motion to intervene, arguing that the court violated its First Amendment rights. The circuit court dismissed the complaint and The Sun appealed to the court of special appeals; however, prior to consideration by the intermediate appellate court, the court of appeals issued a writ of certiorari.

The court of appeals began its analysis by stating that although constitutional interests may be applicable in criminal trials, the

court adheres to “the established principle that a court will not decide a constitutional issue when a case can be disposed of on a non-constitutional ground.” *Id.* at 659, 755 A.2d 1133-34. The court further found that the trial judge in the *Quarles* case violated the common law rule of openness in court proceedings. *Id.* at 659, 755 A.2d 1134.

The court continued by examining the common law principle applicable to both criminal and civil court proceedings, that “historically both criminal and civil trials have been presumptively open” to the public. *Id.* The court discussed early English law, mentioning Sir John Hawles’ comment that open proceedings were necessary for the discovery of truth, emphasizing that the principle of openness applies not only to the trial, but to all court proceedings and documents. *Id.* at 661, 755 A.2d at 1134. Recognizing this common law right to “inspect and copy judicial records and documents,” the court noted the lack of any record of secret proceedings in all of English history. *Id.* (citing *Baltimore Sun v. Colbert*, 323 Md. 290, 593 A.2d 224 (1991)).

The court next explained how the Maryland General

Assembly adopted the common law of England when it approved the Act for the Liberties of the People in 1639. *Id.* at 661, 755 A.2d at 1135. These rights are now encompassed in Article 5 of the Maryland Declaration of Rights, which states, “the inhabitants of Maryland are entitled to the Common Law of England.” *Id.* at 662, 755 A.2d at 1135. However, this law is subject to change by legislative acts or decisions of this Court. *Id.* (citing *Pope v. State*, 284 Md. 309, 396 A.2d 1054 (1979)). Relying on this historical precedent, the court stated that the trial judge in *Quarles* could have properly closed the courtroom and sealed the record, only if authorized by statutes, or decisions of the court of appeals modifying the common law. *Id.* Furthermore, the court explained that where an important privacy issue is at stake, the Maryland General Assembly has indeed created exceptions to the common law principle of openness. *Id.*

The court reiterated the common law view that whatever happens in the courtroom is public property. *Id.* at 663, 755 A.2d at 1136. The judiciary has no authorization to suppress, edit, or censor events that transpire in court proceedings. *Id.* Additionally, because there is no statute, rule, or common law principle authorizing a balancing test between the governmental interest in encouraging settlements, and the privacy interest of the parties, the circuit court erred by closing the courtroom and sealing the record. *Id.*

Finally, the court addressed the City’s argument that the case had already terminated, thus rendering the motion to intervene moot. *Id.* The court of appeals disagreed with the City because final judgment was not entered until five months after The Sun filed its motion. *Id.* The court went on to state that even if final judgment had been entered before The Sun’s filing, the trial court judge did not allow enough time for potential objections from members of the general public or media by sealing the court record within 24 hours. *Id.* at 665, 755 A.2d at 1136. “A court’s case by case determination concerning whether conditions are present which permit courtroom closure requires that representatives of the press and the general public be given an opportunity to be heard on the question of exclusion.” *Id.* at 665, 755 A.2d at 1137 (citing *Gannett Co. v. DePasquale*, 443 U.S. 368 at 401 (1979)). The reason for requiring the courts to publicly disclose a motion for closure is because without it the public would not know to assert its right of having open access to court proceedings. *Id.* Furthermore, when a court will not allow members of the general public access to court proceedings, Maryland law authorizes a newspaper to intervene in order to challenge the restrictions as long as they file a motion with reasonable promptness. *Id.*

In *Baltimore Sun Co. v. Mayor and City Council of Baltimore*, the Court of Appeals of Maryland held that what happens in the courtroom is public property. By doing so, the court preserved the

common law right of Maryland citizens to freely access any court proceedings or judicial documents. The court concluded that the interests of the public as a whole in addressing the need for openness in the courtroom overrides any confidentiality interest of the parties involved. With this ruling, the court virtually wipes out any issues of privacy concerning the parties inside a courtroom.

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