

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

THE BALTIMORE SUN COMPANY,  
et al.,

vs.

Case No. WDQ 04-CV3822

ROBERT L. EHRLICH, JR.,  
et al.

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**SUPPLEMENTAL DECLARATION OF DAVID NITKIN**

I, David Nitkin, do hereby declare and say as follows:

1. I am over the age of eighteen years and competent to testify. I submit this declaration to supplement the declaration I signed on December 7, 2004 and that was filed with the Court on December 29, 2004 as part of the Motion for Preliminary Injunction brought on behalf of me, Michael Olesker, and *The Sun*.

2. In connection with my coverage of the special session of the Maryland General Assembly that began December 28, 2004, I learned from another *Sun* reporter that Governor Robert Ehrlich was holding a press briefing for print reporters at about 2 p.m. on December 30 in the conference room adjacent to his office at the State House.

3. Upon information and belief, prior to the Governor's print media briefing on December 30, 2004, no invitations were issued to specific journalists and no written communication was made about the gathering.

4. Like a number of other newspapers and television stations, the *Sun* had multiple reporters on hand at the State House on December 30, 2004 to cover different aspects of the special session.

5. The calling of a special session is a rare event, and this was the first time since 1992 that a Maryland governor has convened a special session. Governor Ehrlich convened this special session to have legislators consider medical malpractice reform legislation. Malpractice reform was a top legislative priority for the Governor's office. The special session therefore was highly newsworthy.

6. I had hoped to attend the press conference, held the day the special session had recessed, so that, for the aspects of the special session I was covering, I could report directly on what the Governor had to say about the session.

7. When the doors opened, all of the approximately half-dozen State House print reporters who were waiting for the conference to begin were permitted to enter the room, except me. As with all other press conferences held by the Governor, the reporters' names were not checked against a list and no other unusual monitoring of attendees took place.

8. When I attempted to enter the Governor's conference room, the Governor's Press Secretary Gregory Massoni would not permit me to enter. When I informed Mr. Massoni that I thought the gathering was a press conference, and that I therefore was permitted to attend, he responded that "this is not a public event." Mr. Massoni indicated that the event was not a "press conference," but, instead, was a "briefing in the Governor's conference room." Mr. Massoni then advised me to talk with my attorneys because of this litigation.

9. At least four other print journalists already had entered the room when Mr. Massoni blocked me from entering. They included: a reporter for the Associated Press, a

reporter for the Gazette, and a reporter from the Daily Record. Two reporters for the Washington Post entered later. Also allowed to attend were a Sun photographer and Stephanie Desmon, a Sun reporter.

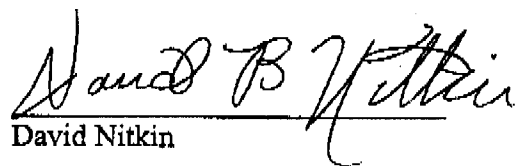
10. To the best of my knowledge, I was the only journalist who tried to attend the December 30, 2004 press conference but was excluded by the Governor's Office.

11. On January 4 2004, Shareese DeLeaver called individual reporters, including Andrew Green of The Sun, to personally invite them to an "invitation-only" press gathering with the Governor regarding the latest developments on the medical malpractice issue. Ms. DeLeaver indicated to Mr. Green that his presence was specifically requested. I did not receive an "invitation" to attend.

12. Upon information and belief, all other full-time State House reporters and all other reporters in the State House covering the medical malpractice special session that day received invitations to attend the briefing.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11 day of January, 2004

  
David Nitkin