IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN L. PADGETT, Plaintiff, v. GEORGIA REPUBLICAN PARTY, INC., Defendants.	CIVIL ACTION FILE NO. 2021CV354612

RESPONSE TO GAGOP'S MOTION TO FILE UNDER SEAL

Comes Now, John Padgett, Defendant in Counterclaim in the above styled case, and hereby Responds to the GAGOP's Motion to Seal and the Motion of Amici Curiae as follows:.

1. Padgett has no objection to the Court's consideration of Motion and Proposed Brief of CMD / Georgia Record.

While Padgett has taken no action to publicize this case Padgett acknowledges the arguments regarding potential standing of the non-parties for access to court records as any member of the media and public, and believes that the Court's resolution of the GAGOP motion would be best served by the Court's consideration of all relevant case law and arguments presented on the issues in question.

2. The GAGOP's motion does not appear to satisfy the high burden for sealing court records set forth by the Georgia Supreme Court in various decisions.

In Atlanta Journal v. Long, 258 Ga. 410 (1988) (copy attached for the Court's convenience) the Georgia Supreme Court reversed a trial court order which denied a media motion for access to certain litigation records, finding that the privacy interests of the movant party had not overcome the interest of the public in access to Court records. Similarly in Undisclosed LLC v. State,, 302 Ga 418, (2017) (also attached) the Georgia Supreme Court also noted that not only were are court records subject to inspection by the general public, but such right includes the right to copy such records.

In this case, it is not clear precisely what records the GAGOP proposes to be sealed – is it only the Settlement Agreement in the Keith case (Ex. A) and the attached summary of legal costs claimed as damages against Mr. Padgett (Ex. B) or the underlying documents and invoices summarized by that document presented as to the Motion to File under seal?

Without disclosing the details of the settlement agreement (which was negotiated without the involvement or knowledge of John Padgett who had ended his service as Chairman of the GAGOP before the settlement was negotiated), the Court should note and consider that the confidentiality provision of the agreement is one way against the Plaintiff Ms. Keith – see Sec. Six. That agreement specifically noted and retained the GAGOP's right and or potential obligation to disclose information related to the agreement.

Therefore, it would not appear that the GAGOP has or can present a sufficient argument to justify sealing of this document, given that the GAGOP presumably intends to use this document (and related legal invoices) as evidence for its damages claims against Mr. Padgett.

No one is forcing the GAGOP to file unredacted documents. But if the GAGOP choses to use such documents as affirmative evidence to prove its damages claim, that is a voluntary act by the GAGOP and it would appear to be contrary to the clear instruction of the Georgia Supreme Court in Atlanta Journal and Undisclosed, that such records, if filed in the case to be submitted into evidence are subject to public inspection.

The Court should also be aware and consider that the Savannah College of Art & Design decision the GAGOP cite was not a unified statement of the Supreme Court, with three justices (Justices Fletcher, Sears and Hines) dissenting from the majority opinion. That case appears clearly distinguishable on the facts, and Padgett respectfully submits it does not support the broad relief sought by the GAGOP here.

As noted above, Padgett does not seek the public release of the documents in question, but they are not subject to an agreed upon confidentiality or protective order in this case, and even if they were the law may still require that they be subject to public inspection as court records if and when they are tendered as evidence at a future proceeding in support of the GAGOP's claim for damages.

Respectfully submitted this 19th day of August, 2024.

COHEN COOPER ESTEP & ALLEN, LLC

/s/s ***Jefferson M. Allen***

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN L. PADGETT, Plaintiff, v. GEORGIA REPUBLICAN PARTY, INC., Defendants.	CIVIL ACTION FILE NO. 2021CV354612

CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the within and foregoing **Response to Motion to Seal** upon all parties to this matter electronically via E-Filing system and/or via electronic mail, thereon to all counsel of record as follows:

Alex B. Kaufman, Esq.
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Respectfully submitted this the 19th Day of August 2024

COHEN COOPER ESTEP & ALLEN, LLC

/s/s ***Jefferson M. Allen***

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Atlanta Journal v. Long

Supreme Court of Georgia

July 13, 1988, Decided

No. 45291

Reporter
258 Ga. 410 *; 369 S.E.2d 755 **; 1988 Ga. LEXIS 328 ***; 15 Media L. Rep. 1821

ATLANTA JOURNAL & ATLANTA CONSTITUTION v. LONG et al.

Prior History: [*1]** Order limiting access. Fulton Superior Court. Before Judge Eldridge.

Disposition: *Judgment reversed.*

Core Terms

records, pre-judgment, trial court, documents, sealing, public interest, public hearing, public access, court record, duration, parties, outweighs, hearings, privacy, holds, superior court, settle, press, access rights, settlement, pre-trial

Case Summary

Procedural Posture
Appellant newspapers sought review of an order entered in the Fulton Superior Court (Georgia), which denied their motion for access to certain pre-judgment records in appellee litigants' lawsuit.

Overview

One of the litigants filed an ex parte motion to seal all the records in the lawsuit, which was granted. The newspapers, which were not parties to the action, subsequently filed a motion for access to the records. The lower court denied the motion pursuant to Ga. *Unif. Super. Ct. R. 21*, and prohibited public access to several categories of pre-judgment documents. On appeal, the court reversed, ruling that the lower court's failure to expressly state the duration of the limitation to the public's access to the records was erroneous but not reversible error because the order implicitly stated the duration of the limitation on access, that the party who moved to seal court records had the burden of overcoming the presumption of public access to all court records, and that the lower court erred by concluding that the litigants' privacy interest in avoiding embarrassment overcame the presumption of public access. The court held that the litigants' privacy interests in the pre-judgment records in the lawsuit did not clearly outweigh the public interest in open access to the records.

Outcome
The court reversed the order which denied the newspapers' motion for access to certain pre-judgment records in the litigants' lawsuit.

LexisNexis® Headnotes

Constitutional Law > ... > Freedom of Speech > Free Press > Public Access

Governments > Courts > Court Records

HN1[] **Free Press, Public Access**

Superior courts may exercise their right to shield court records only if they comply with the requirements of Ga. *Unif. Super. Ct. R. 21*, which are as follows: All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below. 21.1 Motions and Orders. Upon motion by any party to any civil action, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation. 21.2 Finding of Harm. An order limiting

access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

Governments > Courts > Court Records

HN2[] **Courts, Court Records**

Ga. *Unif. Super. Ct. R. 21* requires trial courts to keep all judicial records open for public inspection, unless the law limits access, or unless the courts limit public access through the procedure that Ga. *Unif. Super. Ct. R. 21* establishes. If a court limits public access, Ga. *Unif. Super. Ct. R. 21* requires the court to specify the files to which access is limited; the duration of the limitation; and the justification for the limitation. To justify a limitation, the court must find that the harm to the movant's privacy from disclosure clearly outweighs the public interest in disclosure.

Constitutional Law > Substantive Due Process > Privacy > General Overview

Governments > Courts > Court Records

HN3[] **Substantive Due Process, Privacy**

The presumptive right of access to court records includes pre-judgment records in civil cases, and begins when a judicial document is filed. A party who moves to seal court records has the burden of overcoming this presumption, by demonstrating that the harm otherwise resulting to his privacy clearly outweighs the public interest. Ga. *Unif. Super. Ct. R. 21.2*. The trial court has the corresponding duty to weigh the harm to the privacy interest of that party from not sealing the pre-judgment documents against the harm to the public interest from sealing the documents. Before sealing the documents, the court must conclude that the former clearly outweighs the latter.

Counsel: *Dow, Lohnes & Albertson, Terrence B. Adamson, Anthony E. DiResta, Peter C. Canfield, Robyn S. Degnan*, for appellant.

Smith, Gambrell & Russell, William A. Brown, Meals, Kirwan, Goger, Winter & Parks, P. Bruce Kirwan, Joseph P. Brennan, for appellees.

Judges: Bell, Justice. All the Justices concur, except Marshall, C. J., and Smith, J., who dissent.

Opinion by: BELL

Opinion

[756] [*410]** In this appeal the issue is whether the trial court correctly applied Uniform Superior Court Rule (USCR) 21. *253 Ga. 801, 832* (eff. July 1, 1985). *USCR 21* provides that "[a]ll court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth [in *USCR 21*]." Relying on *Rule 21*, the trial court prohibited public access to certain prejudgment records. We conclude that the superior court did not correctly apply *Rule 21*, and we therefore reverse.

This case began when one of the appellees, Vicki Long, filed suit against the other appellees, who are the Catholic Diocese of Savannah and another defendant. Long filed an ex-parte motion to seal **[***2]** all the records in the case, and the court granted her motion. See *USCR 21.3*. [1] The Atlanta Journal and the Atlanta Constitution (the Atlanta Papers), which are not parties to **[**757]** the suit, subsequently moved for access to the records. The superior court conducted a hearing on the motion, at which Long and the Catholic Diocese of Savannah opposed the motion. [2] The trial court subsequently denied the motion. In its **[*411]** order denying the motion, the court prohibited public access to several categories of pre-judgment documents, but allowed the public to attend the trial and any pre-trial hearings.

The Atlanta Papers appealed, asserting **[***3]** that the court erred in sealing the pre-judgment records. Their enumerations include contentions that the public and the press have constitutional and common-law rights of access to documents generated by civil litigation. We do not address those arguments. Instead, we choose to premise our decision solely upon the narrower issue of

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[1] *Rule 21.3* says that: "Under compelling circumstances, a motion for temporary limitation of access, not to exceed 30 days, may be granted, ex parte, upon motion accompanied by supporting affidavit."

[2] The remaining defendant did not participate in the hearing. However, that defendant has joined Long and the Catholic Diocese of Savannah in opposing the appeal of the Atlanta Papers.

the trial court's application of Rule 21. We conclude that the trial court did not satisfy certain requirements of USCR 21, in that it did not enter adequate findings and conclusions. However, we find that this omission does not require reversal. We further conclude that the appellees did not satisfy other requirements of Rule 21, and that the trial court therefore erred by limiting public access to the pre-judgment records. We reverse because of this error.

1. In the State of Georgia, the public and the press have traditionally enjoyed a right of access to court records. Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their **[***4]** purpose.

A purpose of Rule 21 is to preserve the traditional right of access. Cf. USCR 1. 256 Ga. 865 (eff. Sept. 19, 1986). [3] The rule also preserves another traditional right -- the right of superior courts in exceptional cases to shield court records from public view. However, HN1[↑] superior courts may exercise their right to shield court records only if they comply with the following requirements of Rule 21:

> All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.
>
> 21.1 *Motions and Orders.* Upon motion by any party to any civil action, after hearing, the court may limit access to court **[***5]** files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation.
>
> **[*412]** 21.2 *Finding of Harm.* An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

HN2[↑] Rule 21 requires trial courts to keep all judicial records open for public inspection, unless the law limits access (in this case, it does not), or unless the courts limit public access through the procedure that Rule 21 establishes. If a court limits public access, Rule 21 requires the court to specify the files to which access is limited; the duration of the limitation; and the justification for the limitation. To justify a limitation, the court must find that the harm to the movant's privacy from disclosure clearly outweighs the public interest in disclosure.

2. Accordingly, Rule 21.1 required the superior court to specify the duration of the limitation it imposed on access to the records in this case. After reviewing the order of the superior court, we find that **[***6]** the court did not fulfill this requirement.

The language of the court's order addressing the nature and duration of the restriction of access is as follows:

> **[**758]** The Court . . . order[s] that:
> a. The complaint and any amendments thereto;
> b. The answers and any amendments [thereto];
> c. The portion of any pretrial order and the amendments thereto which outlin[e] the theories of liability or defense or stat[e] the contentions of the parties;
> d. Any discovery filed by the parties which directly pertain[s] to such issues or to prior or to subsequent related conduct of the parties;
> e. Any motions for adjudication on the merits and briefs shall be filed with the Clerk in a sealed envelope indicating on the outside that such filing comes within the scope of this order and should be dealt with accordingly by the Clerk;
> All other pleadings, briefs, discovery filed with the Clerk, orders and judgments shall be open to the 'right of access' by the public and press; any hearings whether motion, pretrial or evidentiary, and the trial itself shall be open to the 'right of access' by the public or press.

[*413] In the foregoing provisions of the order, the court ruled **[***7]** that certain pre-judgment records would be confidential, but that all pre-trial hearings and the trial itself would be open to the public and the press. These rulings state the nature of the limitation, but do not mention the duration of the limitation, that is, the order does not expressly specify when, if ever, the court will unseal the pre-judgment documents. The court's failure to expressly state the duration of the limitation was erroneous. USCR 21.1. However, it is not a reversible error, because this court is able to infer the period of the limitation from the court's order. Cf.

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[3] Rule 1 provides, in part, that: "It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution or substantive law, either per se or in individual actions and these rules shall be so construed and in case of conflict shall yield to substantive law."

USCR 21.5. [4] We draw this inference by interpreting the nature of the limitation on access to the records in context with the ruling that the trial and all pre-trial hearings will be open.

[*8]** The net effect of sealing the pre-judgment documents and conducting public hearings is to encourage the appellees to settle their litigation in its early stages, before the court holds hearings. [5] In the event the appellees do not reach a settlement before the court holds public hearings, the public will inevitably learn the gist of the information in the sealed documents by attending the hearings. The result would be to delay, but not prevent, the disclosure of the embarrassing information in the pre-judgment records. [6] In the event the parties do reach a settlement before the court holds public hearings, the public will not discover the information in the sealed documents.

Thus, we conclude the order implicitly states the duration of the limitation on access to the pre-judgment records: The limitation will be permanent if the appellees settle their dispute before public hearings, and will, in effect, end if the court holds **[***9]** public hearings. The remaining issue for our consideration is whether the harm that would result to the appellees if the trial court does not impose this limitation clearly outweighs the public interest.

3. In designing USCR 21, this court and the council of superior court judges, see 1983 Ga. Const., Art. VI, Sec. IX, Par. I, [7] incorporated the presumption that the public will have access to all court records. The aim of this presumption is to ensure that the public will continue to enjoy its traditional right of access to judicial records, except in cases of clear necessity. To this end, HN3[↑] the presumptive right of access includes pre-judgment records in civil cases, and begins when a **[*414]** judicial document is filed.

[759]** A party who moves to seal court records has the burden of overcoming this presumption, by demonstrating that **[***10]** "the harm otherwise resulting to [his privacy] clearly outweighs the public interest," USCR 21.2. The trial court has the corresponding duty to weigh the harm to the privacy interest of that party from not sealing the pre-judgment documents against the harm to the public interest from sealing the documents. Before sealing the documents, the court must conclude that the former clearly outweighs the latter.

If the appellees do not settle this suit before the trial court holds public hearings, then the public will learn the information in the documents. The effect will be to delay the public's discovery of that information, and thus to deny their presumptive right of immediate access. If the appellees settle their case before the court holds public hearings, then the public will never learn the contents of the pre-judgment records. After reviewing the record and the superior court's order, we hold that the court erred by concluding that the appellees had justified this restriction. The court concluded that:

> In the exercise of the sound discretion of the Court, the Court finds that the privacy interests of all the parties and [the] compelling governmental interest in preserving **[***11]** the judicial system as the proper forum for dispute resolution of last resort outweigh the "access rights" of the public and press[.] Further, such allegations could be misused to promote private spite or promote public scandal through the publication of the details of the allegations and serve as a reservoir for libelous statements.

In the preceding conclusion, the trial court speaks of the privacy interests of the appellees. However, the court's findings and conclusions do not explain how the embarrassment [8] the appellees may suffer differs in degree or kind from that of parties in other civil suits. Embarrassment has always been a problem in civil suits, yet traditionally it has not prompted trial courts to routinely seal pre-judgment records. The presumption of open access that is built into Rule 21 implicitly takes this factor into account.

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[4] Rule 21.5 authorizes this court to amend orders limiting access. The rule provides:

"Upon notice to all parties of record and after hearing, an order limiting access may be reviewed and amended by the court entering such order or by the Supreme Court at any time on its own motion or upon the motion of any person for good cause."

[5] Appellees agree with this conclusion.

[6] Appellees also agree with this conclusion.

[7] 1983 Ga. Const. Art. VI, Sec. IX, Par. I, authorized this court to adopt uniform rules for trial courts with the advice and consent of the councils of the affected classes of courts.

[8] The trial court's order does not expressly identify what privacy interests it finds the appellees have, but portions of the order other than those we have quoted in this opinion imply that the court meant the appellees' interest in avoiding embarrassment. We assume this is the court's meaning.

[*12]** Similarly, *Rule 21* takes into account the other factors that the trial court balances against the public interest in access: the governmental interest in preserving the judicial system as the forum for **[*415]** resolving disputes, and the possibility that pre-judgment documents could be misused.

We therefore hold that the trial court's findings and conclusions are not sufficient to support the limitation of access that the court imposed.

4. In the previous division of this opinion, we have addressed the trial court's express findings and conclusions in support of the limitation it imposed. On appeal, appellees urge an additional ground in support of the limitation. Appellees' argument relies on the net effect of the implicit duration of the limitation, which, as we have found in the previous division of this opinion, is to encourage the appellees to settle their litigation before the court holds hearings. Appellees contend that the public has an interest in promoting private settlements of suits before public proceedings, and attempt to justify the limitation in this case on the ground that it serves this public interest.

We disagree with their argument. We acknowledge that **[***13]** promoting private settlements of litigation is in the public interest. However, the fact that the limitation in this case has the effect of encouraging the appellees to settle out of court does not distinguish this case from other civil suits for the purpose of *Rule 21*. Encouraging private settlement of disputes by coupling closure of pre-judgment documents with public hearings would generally serve the public interest, just as disclosing pre-judgment judicial records will generally embarrass at least one of the parties to the suit. Nevertheless, **[**760]** as with the factors that the trial court expressly weighed against the public interest in open access, *Rule 21* implicitly takes into account the appellees' argument.

5. In summary, we hold that the privacy interests of the appellees in the pre-judgment records of this civil suit do not clearly outweigh the public interest in open access to those records. We therefore reverse the order sealing the pre-judgment records.

Judgment reversed.

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1. *Atlanta Journal v. Long, 258 Ga. 410*
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Undisclosed LLC v. State

Supreme Court of Georgia

October 30, 2017, Decided

S17A1061.

Reporter
302 Ga. 418 *; 807 S.E.2d 393 **; 2017 Ga. LEXIS 934 ***; 2017 WL 4870978

UNDISCLOSED LLC v. THE STATE.

Prior History: Access to court records. Floyd Superior Court. Before Judge Sparks.

Watkins v. State, 276 Ga. 578, 581 S.E.2d 23, 2003 Ga. LEXIS 486 (May 19, 2003)

Disposition: Judgment affirmed.

Core Terms

court record, common law, proceedings, tapes, records, access rights, includes, audio recording, part of the record, right to inspect, common law right, judicial record, court reporter, documents, copies, comments, parties, courts, cases, bill of exceptions, judicial document, public inspection, public record, trial court, open court, inspection, newspaper, pleadings, matters, remarks

Case Summary

Overview

HOLDINGS: [1]-Ga. Unif. Super. Ct. R. 21 was held to include a right to copy court records; [2]-Given the Appellate Practice Act's, 1965 Ga. Laws 18, directives about what is to appear in a trial court's record, the Court concludes that the right of access under *Ga. Unif. Super. Ct. R. 21* applies only to those materials that are filed with the court; [3]-Audio recordings are not court records under the definitions established as they are not filed with the court and, indeed, they rarely are; court reporters use the recordings, which they are not legally required to create in the first place, to prepare the transcript. It is the transcript itself, not any recordings or notes made by the court reporter, that becomes part of the court record that is reported.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Governments > Courts > Authority to Adjudicate

Governments > Courts > Rule Application & Interpretation

Governments > Legislation > Interpretation

HN1[] **Courts, Authority to Adjudicate**

Georgia Constitution does confer on the Supreme Court of Georgia some carefully defined room for the exercise of will: it vests in the Court the power to approve rules for each class of court in the State. That is a policy making power. The Court can approve or disapprove a proposed rule based on whether it thinks it is a good idea. But once the Court has approved a rule, its policy making role is at an end. When the Court interprets the Georgia Constitution or a state statute; the Court simply determines what the text of the rule meant at the time it was adopted, and apply it accordingly, without considering whether it likes the policy implications that meaning may have.

Governments > Courts > Court Records

HN2[] **Courts, Court Records**

Ga. Unif. Super. Ct. R. 21 does include a right to copy court records.

Governments > Courts > Court Records

HN3[] **Courts, Court Records**

Ga. Unif. Super. Ct. R. 21 provides that all court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth in the rule. The Supreme Court of Georgia's opinion should not be read as requiring the filing of a Rule 21 motion in order to obtain access to court records, because nothing precludes a trial court clerk from making them available upon request. The necessity of a motion arises, however, when a judge is inclined to seal a record or otherwise prohibit its release or in cases like this one where there is a dispute about whether something qualifies as a court record.

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Public Inspection

Governments > Courts > Court Records

HN4[] **Methods of Disclosure, Public Inspection**

Ga. Unif. Super. Ct. R. 21 expressly states that court records are available for public inspection, but does not specifically address the ability to copy records.

Governments > Legislation > Interpretation

HN5[] **Legislation, Interpretation**

The basic rule used by courts across the country is to apply a word's ordinary, everyday meaning. The fundamental rules of statutory construction require a court to construe a statute according to its terms and to give words their plain and ordinary meaning.

Governments > Legislation > Interpretation

Governments > Courts > Rule Application & Interpretation

HN6[] **Legislation, Interpretation**

A court does not look at the statutory text in isolation. Rather, to determine its meaning, the court also considers its context. In construing statutes, however, the court does not read words in isolation, but rather in context. That context includes the immediate context of other provisions of a rule and the other rules. It also includes the broader legal context in which the rule has been drafted, including other law that forms the legal background of the rule. Context is a primary determinant of meaning. For context, the court may look to other provisions of the same statute, the structure and history of the whole statute, and the other law constitutional, statutory, and common law alike that forms the legal background of the statutory provision in question.

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Public Inspection

Governments > Courts > Court Records

HN7[] **Methods of Disclosure, Public Inspection**

The common law is not only part of the relevant legal background regarding the right of access, it is the mold in which Ga. Unif. Super. Ct. R. 21 Rule 21 is cast. It is well-settled that the right of access under Rule 21 is coextensive with the common law right of access to court proceedings. Through Rule 21, the common law remains in effect, and although the common law may be amended, such changes must be clear. The common-law rules are still of force and effect in the State, except where they have been changed by express statutory enactment or by necessary implication. The better view is that statutes will not be interpreted as changing the common law unless they effect the change with clarity.

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Public Inspection

Governments > Courts > Court Records

HN8[] **Methods of Disclosure, Public Inspection**

There is no indication that Ga. Unif. Super. Ct. R. 21 has changed the common law in any way. Indeed, the preamble to the Uniform Superior Court Rules provides that: It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution or

substantive law, either per se or in individual actions and these rules shall be so construed and in case of conflict shall yield to substantive law. The common law right of access was the substantive law when *Rule 21* was adopted. Consequently, the Georgia Supreme Court construes *Rule 21* consistent with the common law.

Governments > Legislation > Interpretation

HN9[] **Legislation, Interpretation**

When there is limitation by a statute which is capable of more than one construction, the statute must be given that construction which is consistent with the common law.

Administrative Law > Governmental Information > Public Information

Governments > Courts > Court Records

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

HN10[] **Governmental Information, Public Information**

Under the common law, the right of access to public records was generally restricted to those persons with a sufficient interest in them, such as those needing the records to prosecute or defend a legal action. Most founding-era English cases provided that only those persons who had a personal interest in non-judicial records were permitted to access them. The right of access to court records, however, did not require a special interest. Instead, the common law provided that the right of access to court records was a right belonging to every individual.

Administrative Law > Governmental Information > Freedom of Information > Methods of Disclosure

Governments > Courts > Court Records

HN11[] **Freedom of Information, Methods of Disclosure**

The rights of access to public records and court records are historically distinct and separate. Accordingly, the Open Records Act, which regards the right of access to public records) is not relevant to the meaning of the right of access to court records under *Ga. Unif. Super. Ct. R. 21*.

Governments > Courts > Court Records

HN12[] **Courts, Court Records**

In addition to establishing that every citizen has a right to inspect judicial records, Ex Parte Drawbaugh also demonstrates the parallel right to copy those records. Ex Parte Drawbaugh is not alone in observing that the common law right of access includes the right to copy court records. It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. Beyond establishing a general presumption that criminal and civil actions should be conducted publicly, the common-law right of access includes the right to inspect and copy public records and documents. A common law right exists to inspect and copy judicial records. The right to inspect and copy, sometimes termed the right to access, antedates the Constitution. A custodian of judicial records is bound to furnish copies of judicial records upon payment of any fees, whereas an individual requesting access to other public records must show an interest in the document and that the request is for a legitimate purpose.

Governments > Courts > Court Records

HN13[] **Courts, Court Records**

The line of authority uniformly accepting that the common law right of access to judicial records encompasses a right to copy provides important context for the scope of the right *Ga. Unif. Super. Ct. R. 21* preserved. Consistent with the common law, the Georgia Supreme Court concludes that Ga. Unif. Super. Ct. R. 21's right to inspect includes the right to copy.

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

HN14[] **Appellate Review, Standards of Review**

The appellate court may affirm the trial court's judgment if it is right for any reason.

Civil Procedure > Judicial Officers > Court Reporters

Governments > Courts > Court Records

Evidence > Types of Evidence > Documentary Evidence > Transcripts & Translations

HN15[] **Judicial Officers, Court Reporters**

Although a body of case law has developed around *Ga. Unif. Super. Ct. R. 21*, only a handful of decisions have focused on whether an item constitutes a court record under the meaning of *Rule 21*. In none of these cases have we expressly defined what constitutes a court record. *Rule 21* became effective July 1, 1985. In one of the Georgia Supreme Court's first decisions applying it, it explains that the public's presumptive right of access to all court records includes pre-judgment records in civil cases, and begins when a judicial document is filed. *O.C.G.A. § 5-6-41(e)* provides that upon filing by the reporter, the transcript shall become a part of the record in the case. Upon filing, the transcript becomes a public document that is equally available to all parties.

Governments > Courts > Court Records

HN16[] **Courts, Court Records**

In Williams v. Norris, the Supreme Court of the United States noted that although a judge's opinion, depositions, and evidence are not generally considered court records, they may be included in the court record if specifically provided. Specifically, the Supreme Court stated: Depositions, and exhibits of every description, are papers in the cause, and, in one sense of the word, form a part of the record. In some States they are recorded by direction of law. But, in a jury cause, they constitute no part of the record on which the judgment of an appellate Court is to be exercised, unless made a part of it by bill of exceptions, or in some other manner recognised by law.

Governments > Courts > Court Records

HN17[] **Courts, Court Records**

The Georgia Supreme Court's own precedent reflects the common law principle that many documents and other papers filed with or considered by the court are not automatically part of the court record, but that statutes could provide a method for making them so. Smith implicitly recognizes the common law rule that evidence does not form part of the court record, which was limited to the pleadings, verdicts, and judgments under the common law. Smith also reflects an understanding that our laws can amend the definition of a court record to include materials in addition to those provided by the common law.

Governments > Courts > Court Records

Governments > Courts > Rule Application & Interpretation

Governments > Legislation > Interpretation

HN18[] **Courts, Court Records**

Ga. Unif. Super. Ct. R. 21 formalizes the common law right of access to court records, and the Georgia Supreme Court interprets the rule in the light of that context. The common law is not the only context the Court considers, however. The meaning of a provision is often based on context, which includes the constitutional, statutory, and common law framework. The Court interprets court rules in the same manner we interpret other written instruments, which mean now what they meant when they were enacted. When considering the text and relevant context of the statute, a statute is to be construed as understood at the time of its enactment. The Constitution, like every other instrument made by men, is to be construed in the sense in which it was understood by the makers of it at the time when they made It. To deny this is to insist that a fraud shall be perpetrated upon those makers or upon some of them.

Governments > Courts > Court Records

HN19[] **Courts, Court Records**

By the time *Ga. Unif. Super. Ct. R. 21* has been adopted in 1985, the Georgia General Assembly had statutorily mandates the contents of the formal record of the court. In 1965, the General Assembly enacted the Appellate Practice Act, 1965 Ga. Laws 18. The Act prescribed the

matters that are to appear in a court's record and abolished the process noted in Smith that parties had to create a bill of exceptions in order to make certain materials part of the court record. Although the Act, as its full name suggests, generally governs the appellate process, it does provide guidance on the scope of the record in the trial court, and distinguishes between that record and the record on appeal. O.C.G.A. § 5-6-41(d) defines a trial court record.

Civil Procedure > Appeals > Notice of Appeal

Governments > Courts > Court Records

Civil Procedure > Appeals > Record on Appeal

HN20[] Appeals, Notice of Appeal

O.C.G.A. § 5-6-37 provides: The notice of appeal shall set forth a designation of those portions of the record to be omitted from the record on appeal. O.C.G.A. § 5-6-38(a) provides: The notice of cross appeal shall set forth a designation of any portions of the record or transcript designated for omission by the appellant and which the appellee desires included. In all cases where the notice of appeal did not specify that a transcript of evidence and proceedings was to be transmitted as part of the record on appeal, the notice of cross appeal shall state whether such transcript is to be filed for inclusion in the record on appeal. O.C.G.A. § 5-6-41(f) provides a process by which the parties may seek to correct the record to conform to the truth and stating that if anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court may direct that the omission or misstatement shall be corrected and, if necessary, that a supplemental record be transmitted by the clerk of the trial court.

Governments > Courts > Court Records

HN21[] Courts, Court Records

The Appellate Practice Act, 1965 Ga. Laws 18, also provides that the transcript becomes part of the record in the case upon filing by the court reporter, and outlined a procedure for the parties to correct any alleged misstatements or omissions in the transcript or record or to create a stipulated statement of facts in lieu of a transcript. With the passage of the Act in 1965, the Georgia General Assembly thus provides that all motions, colloquies, objections, rulings, and evidence are to be reported and are to appear in a court's record, and that a transcript filed by the court reporter is also included in the court record. It being the intention of this act that all these matters appear in the record. Categorizing this list of items, the Georgia Supreme Court can see the materials required to be made part of the record by the Act are those items that reflect requests for the court to take action, motions and objections, or are central to or reflect any adjudicative action, evidence, filed transcripts, colloquies, and rulings. Notably, by their very nature, all of these items become court records only upon filing with the court.

Civil Procedure > Appeals > Record on Appeal

Governments > Courts > Court Records

HN22[] Appeals, Record on Appeal

The Georgia Supreme Court construes Ga. Unif. Super. Ct. R. 21's use of the phrase court record consistent with the meaning of court record supplied by the Appellate Practice Act, 1965 Ga. Laws 18.

Governments > Legislation > Interpretation

HN23[] Legislation, Interpretation

Statutes relating to the same subject matter must be construed together.

Civil Procedure > Appeals > Record on Appeal

Governments > Courts > Court Records

HN24[] Appeals, Record on Appeal

Construing the term court record as used in Ga. Unif. Super. Ct. R. 21 to be consistent with the Appellate Practice Act's, 1965 Ga. Laws 18, definition of a court's record does not alter the fundamental meaning of the common law definition of a court record. Rather, it only supplements the common law. The common law definition of a court record is that which provided a history of the court's actions and proceedings. The Act merely requires a more expansive and detailed account

of the court's actions, but it results in a history of the court's actions just the same. More significant for these purposes, both the common law and the Act reflect the same basic principle: for something to be a court record, it must be filed with the court.

Governments > Courts > Court Records

HN25[] **Courts, Court Records**

A court record for *Ga. Unif. Super. Ct. R. 21* purposes includes those materials that set forth the cause of action, pleadings, reflect requests for the court to take action, motions and objections, are an adjudicative action, rulings, judgment, orders, or are central to such rulings, evidence, filed transcripts, and colloquies. All of these items must be on file with the court before becoming a court record. *O.C.G.A. § 5-6-41* provides: only upon filing does the transcript become part of the record. This is in accord with what the Court has said in Long that the right of access begins when a judicial document is filed.

Governments > Courts > Court Records

HN26[] **Courts, Court Records**

Defining the scope of a court record to require filing with the court is also consistent with conclusions drawn by other jurisdictions that have considered the right of access derived from the common law. Materials admitted into evidence, that call for court action, or play a central role in the adjudicative process are part of the judicial record, so long such materials are on file with the court. The item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document. A judicial document is any document filed that a court reasonably may rely on in support of its adjudicatory function. Documents that are filed with the court and, in particular, those that are used by the judge in rendering a decision are clearly considered public judicial documents.

Civil Procedure > Appeals > Record on Appeal

Governments > Courts > Court Records

HN27[] **Appeals, Record on Appeal**

Given the Appellate Practice Act's, 1965 Ga. Laws 18, directives about what is to appear in a trial court's record and the cited authority defining court records for which the common law right of access applies, the Georgia Supreme Court concludes that the right of access under *Ga. Unif. Super. Ct. R. 21* applies only to those materials that are filed with the court.

Civil Procedure > Judicial Officers > Court Reporters

Governments > Courts > Court Records

Evidence > Types of Evidence > Documentary Evidence > Transcripts & Translations

HN28[] **Judicial Officers, Court Reporters**

Audio recordings are not court records under the definitions established as they are not filed with the court. And, indeed, they rarely are; court reporters use the recordings, which they are not legally required to create in the first place, to prepare the transcript. It is the transcript itself, not any recordings or notes made by the court reporter, that becomes part of the court record that is reported. *O.C.G.A. § 5-6-41(e)* provides: Upon filing by the reporter, the transcript shall become a part of the record in the case and need not be approved by the trial judge. Upon filing, the transcript becomes a public document that is equally available to all parties.

Governments > Courts > Court Records

HN29[] **Courts, Court Records**

Of course, at common law, court records are only those documents filed with the court. But Georgia law presumes that a transcript of each case's proceedings in open court will be created and filed, and upon filing become the publicly available record of those proceedings.

Headnotes/Summary

Headnotes

Georgia Advance Headnotes

GA(1)[↓] (1)

Governments. > Courts. > Authority to Adjudicate.

Georgia Constitution does confer on the Supreme Court of Georgia some carefully defined room for the exercise of will: it vests in the Court the power to approve rules for each class of court in the State. That is a policy making power.

GA(2)[↓] (2)

Governments. > Courts. > Court Records.

Ga. Unif. Super. Ct. R. 21 was held to include a right to copy court records.

GA(3)[↓] (3)

Governments. > Courts. > Court Records.

Court record for Ga. Unif. Super. Ct. R. 21 purposes includes those materials that set forth the cause of action, pleadings, reflect requests for the court to take action, motions and objections, are an adjudicative action, rulings, judgment, orders, or are central to such rulings, evidence, filed transcripts, and colloquies; all of these items must be on file with the court before becoming a court record.

GA(4)[↓] (4)

Governments. > Courts. > Court Records.

Given the Appellate Practice Act's directives about what is to appear in a trial court's record, the Supreme Court of Georgia concludes that the right of access under Ga. Unif. Super. Ct. R. 21 applies only to those materials that are filed with the court.

GA(5)[↓] (5)

Governments. > Courts. > Court Records.

Audio recordings are not court records under the definitions established as they are not filed with the court and, indeed, they rarely are; court reporters use the recordings, which they are not legally required to create in the first place, to prepare the transcript, and it is the transcript itself, not any recordings or notes made by the court reporter, that becomes part of the court record that is reported.

Counsel: *Caplan Cobb, Michael A. Caplan, James W. Cobb, Sarah Brewerton-Palmer*, for appellant.

Leigh E. Patterson, District Attorney, John F. McClellan, Jr., Assistant District Attorney; Clare M. Gilbert, for appellee.

Stuckey & Manheimer, Hollie G. Manheimer, amicus curiae.

Judges: **[***1]** PETERSON, Justice. All the Justices concur, except Melton, P. J., who concurs specially, and Grant, J. who concurs in judgment only as to division 4(b).

Opinion by: PETERSON

Opinion

[*418] [395]** PETERSON, Justice.

Alexander Hamilton famously observed in Federalist 78 that courts "have neither FORCE nor WILL, but merely judgment." Notwithstanding this general principle, GA(1)[↑] (1) the HN1[↑] Georgia Constitution does confer on us some carefully defined room for the exercise of will: it vests in this Court the power to approve rules for each class of court in this State. That is a policymaking power. We can approve or disapprove a proposed rule based on whether we think it's a good idea. But once we've approved a rule, our policymaking role is at an end and Hamilton's observation applies with full force. And so, when a case (like this one) calls us to decide what a rule means, our role is no different than when we interpret the Georgia Constitution or a state statute; we simply determine what the text of the rule meant at the time it was adopted, and apply it accordingly, without considering whether we like the policy implications that meaning may have.

More than a decade ago, Joseph Watkins was convicted of felony murder and other crimes **[***2]** following a jury trial, and we affirmed **[*419]** Watkins's convictions on appeal. Watkins v. State, 276 Ga. 578 (581 SE2d 23) (2003). In late 2015, Undisclosed LLC, a producer of a legal documentary podcast, began investigating Watkins's case and, as part of that

investigation, sought access to audio recordings of several hearings and the trial. Undisclosed filed a motion in Watkins's case under Uniform Superior Court Rule 21 ("Rule 21") to obtain copies of the audio recordings, arguing that our decision in Green v. Drinnon, Inc., 262 Ga. 264 (417 SE2d 11) (1992) held that a court reporter's audio recordings are "court records" under Rule 21 and the rule provided the right to copy court records. The State did not oppose the motion; the trial court denied it to the extent Undisclosed wanted to make copies of the audio recordings, holding Rule 21 did not confer the right to copy. We granted Undisclosed's application for discretionary appeal. Interpreting Rule 21 in the light of the common law right that it preserved, we conclude that the trial court erred: GA(2)[↑] (2) HN2[↑] Rule 21 does include a right to copy court records. We nevertheless affirm the trial court's order because *Green*'s limited holding does not apply here, and a review of the common law shows that "court records" within the historic right include only those materials filed with the court, which the recording in **[***3]** question was not.

1. *Rule 21 provides the process for non-parties to seek access to court records.*

HN3[↑] Rule 21 provides that "[a]ll court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth [in the rule]." The State argues that a Rule 21 motion is not the proper vehicle for a non-party to access court records, and that Undisclosed should have instead sought mandamus. Undisclosed argues that its Rule 21 motion was the proper vehicle. Undisclosed is right.[1] See Merchant Law Firm v. Emerson, 301 Ga. 609, 610 (1) (800 SE2d 557) (2017).

2. *Rule 21's right of public inspection includes the right to copy.*

Undisclosed argues that a Rule 21 analysis generally requires a threshold determination **[**396]** of whether the requested material is a court record, a determination Undisclosed contends has been resolved in its favor by our opinion in *Green*. Undisclosed argues that we need only address whether Rule 21 includes the right to copy, arguing that Rule 21's right of access to court records includes the right to copy them, and so the court erred in concluding that Undisclosed did not have the **[*420]** right to make copies of the court reporter's audio recordings. We first review the trial court's ruling that Rule 21 does not include a right to copy **[***4]** court records, and then consider the import of *Green*'s statement that a court reporter's audio recordings are court records.

(a) *Because Rule 21 is derived from the common law, we construe its text in the light of the common law.*

Whether Rule 21's right of access to court records includes the right to copy is a matter of first impression. HN4[↑] Rule 21 expressly states that court records are available for "public inspection," but does not specifically address the ability to copy records. The State asks us to construe the term "inspection" according to its plain and ordinary meaning, as we ordinarily do when construing statutes and court rules. See, e.g., Couch v. Red Roof Inns, Inc., 291 Ga. 359, 364 (1) (729 SE2d 378) (2012) HN5[↑] ("[T]he basic rule used by courts across the country is to apply [a] word's ordinary, everyday meaning."); Beneke v. Parker, 285 Ga. 733, 734 (684 SE2d 243) (2009) ("The fundamental rules of statutory construction require us to construe a statute according to its terms [and] to give words their plain and ordinary meaning[.]" (citation and punctuation omitted)); Cuzzort v. State, 271 Ga. 464, 464 (519 SE2d 687) (1999) (evaluating plain meaning of a Uniform Superior Court Rule). The State contends that such consideration will show that the definition of "inspection" — "critical examination" or "official examination or review" — does not include "copy," "duplicate," or "reproduce." **[***5]** See Webster's New World Dictionary 729 (2d College ed. 1980).[2]

But the State's argument ignores that in interpreting the plain meaning of Rule 21, HN6[↑] we do not look at the text in isolation. See May v. State, 295 Ga. 388, 391 (761 SE2d 38) (2014). Rather, to determine its meaning, we also consider its context. Smith v. Ellis, 291 Ga. 566, 573 (3) (a) (731 SE2d 731) (2012) ("In construing statutes, however, we do not read words in isolation, but rather in context."). This context includes the immediate context of other provisions of Rule 21 and the other

[1] This opinion should not be read as requiring the filing of a Rule 21 motion in order to obtain access to court records, because nothing precludes a trial court clerk from making them available upon request. The necessity of a motion arises, however, when a judge is inclined to seal a record or otherwise prohibit its release or in cases like this one where there is a dispute about whether something qualifies as a court record.

[2] The State also points us to numerous statutory examples where the legislature has made a distinction between "inspect" and "copy."

rules. It also includes the broader legal context in which Rule 21 was drafted, including other law that forms the legal background of Rule 21. May, 295 Ga. at 391-392 ("[C]ontext is a primary determinant of meaning. For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law — constitutional, statutory, and common law alike — that forms the legal background of the statutory provision in question." (citations and punctuation omitted)).

[*421] Here, HN7[↑] the common law is not only part of the relevant legal background regarding the right of access, it is the mold in which Rule 21 was cast. "It is well settled that the right of access under Rule 21 is coextensive with the common law right of access to court proceedings." Merchant, 301 Ga. at 613 (1) (b) (citing cases). Through Rule 21, the common law **[***6]** remains in effect, and although the common law may be amended, such changes must be clear. See Fortner v. Town of Register, 278 Ga. 625, 626 (1) (604 SE2d 175) (2004) ("The common-law rules are still of force and effect in this State, except where they have been changed by express statutory enactment or by necessary implication." (citation and punctuation omitted)); see also Scalia & Garner, Reading Law: The Interpretation of Legal Texts 318 (2012) ("The better view is that statutes will not be interpreted as changing the common law unless they effect the change with clarity.").

HN8[↑] There is no indication that Rule 21 changed the common law in any way at issue **[**397]** here. Indeed, the preamble to the Uniform Superior Court Rules provides:

> It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution or substantive law, either per se or in individual actions and these rules shall be so construed and in case of conflict shall yield to substantive law.

256 Ga. at 865.[3] The common law right of access was the substantive law when Rule 21 was adopted. Consequently, we construe Rule 21 consistent with the common law. See May, 295 Ga. at 397 HN9[↑] ("Where there is limitation by a statute which is capable of more than one construction, the statute must be given that construction which is consistent with the common law." (citation and punctuation omitted)). **[***7]** With that in mind, we turn to a review of the common law.

(b) *The common law right of access includes the right to inspect and copy.*

The right of access to court records that we consider here is based on the common law and predates the Constitution. See Belo Broadcasting Corp. v. Clark, 654 F2d 423, 429 (5th Cir. 1981). HN10[↑] Under the **[*422]** common law, the right of access to *public* records was generally restricted to those persons with a sufficient interest in them, such as those needing the records to prosecute or defend a legal action. See Colscott v. King, 154 Ind. 621, 57 NE 535, 537 (Ind. 1900); Ferry v. Williams, 41 NJL 332, 334 (1879); 20 Am. & Eng. Enc. of Law 521-523 (1892); see also Deal v. Coleman, 294 Ga. 170, 183 (2) (b) (751 SE2d 337) (2013) ("[M]ost founding-era English cases provided that only those persons who had a personal interest in non-judicial records were permitted to access them.") (citing McBurney v. Young, 569 U. S. 221, 233 (133 SCt 1709, 185 LE2d 758) (2013)). The right of access to *court* records, however, did not require a special interest.[4] Instead, the common law provided that the right of access to court records was a right belonging to every individual:

> It has been admitted, from a very early period, that the inspection and exemplification of the records of the King's courts is the common right of the subject. This right was extended by an ancient statute to cases where the subject was concerned against the King. The exercise of the right does not appear to have been restrained **[***8]** until the reign of Charles II, when, in consequence of the frequency of actions for malicious prosecution, which could not be supported without a copy of the

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[3] We note that the preamble became part of the Uniform Superior Court Rules after Rule 21 and other rules were initially adopted. See 256 Ga. at 865 (providing that preamble is adopted effective September 19, 1986); 253 Ga. at 800, 832 (adopting rules). Although the preamble was approved subsequent to the rules, it shows that the rules were not intended to alter substantive law, such as the common law, and therefore provides guidance on the interpretation of Rule 21. Prior to passage of the preamble, we had not interpreted the scope of Rule 21, much less provided an interpretation in conflict with the common law. Even if we had, the preamble would have functioned as an amendment to the rules that returned the scope of Rule 21 to conform to the common law.

[4] HN11[↑] The rights of access to public records and court records were historically distinct and separate. Accordingly, the Open Records Act (which regards the right of access to *public* records) is not relevant to the meaning of the right of access to *court* records under Rule 21.

> record, the judges made an order for the regulation of the sessions of the Old Bailey, prohibiting the granting of any copy of an indictment for felony without a special order, upon motion in open court, at the general jail delivery. This order, it is to be observed, relates only to indictments for felony. In cases of misdemeanor, the right to a copy has never been questioned. But in the United States, no regulation of this kind is known to have been expressly made; and any limitation of the right to a copy of a judicial record or paper, when applied for by any person having an interest in it, would probably be deemed repugnant to the genius of American institutions.

Ex Parte Drawbaugh, 2 App. D.C. 404, 406-407 (D.C. Cir. 1894) (quoting Simon Greenleaf, Treatise on the Law of Evidence, Vol. 1 § 471) (citation and emphasis omitted).[5]

[*423] [398]** *HN12*[↑] In addition to establishing that every citizen has a right to inspect judicial records, *Ex Parte Drawbaugh* also demonstrates the parallel right to copy those records.[6] *Ex Parte Drawbaugh* is not alone in observing that the common law right of access includes the right to copy court records. **[***9]** See *Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (98 SCt 1306, 55 LE2d 570) (1978)* ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." (footnotes omitted)); *Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F3d 1304, 1311 (11th Cir. 2001)* ("Beyond establishing a general presumption that criminal and civil actions should be conducted publicly, the common-law right of access includes the right to inspect and copy public records and documents."); *United States v. Hickey, 767 F2d 705, 708 (10th Cir. 1985)* ("We begin by acknowledging the axiom that a common law right exists to inspect and copy judicial records."); *United States v. Criden, 648 F2d 814, 819 (3d Cir. 1981)* ("The right to inspect and copy, sometimes termed the right to access, antedates the Constitution."); *Brewer v. Watson, 71 Ala. 299, 304 (1882)* (a custodian of judicial records is "bound to furnish copies" of judicial records upon payment of any fees, whereas an individual requesting access to other public records must show an interest in the document and that the request is for a legitimate purpose); cf. *Clay v. Ballard, 87 Va. 787, 13 SE 262, 263 (Va. 1891)* ("The authorities on the subject are very numerous, and they uniformly hold that such a right [to inspect] includes the right, when necessary to the attainment of justice, to take copies."). The State has not identified — nor have we found — any contrary authority.

The right of access to court records serves vital **[***10]** purposes:

> As James Madison warned, "A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy: or perhaps both... . A people who mean to be their own Governors, must arm themselves with the power which knowledge gives." ... [T]he right of inspection serves to produce an informed and enlightened public opinion. Like the public trial guarantee of the *Sixth Amendment*, the right serves to safeguard against any **[*424]** attempt to employ our courts as instruments of persecution, to promote the search for truth, and to assure confidence in judicial remedies.

United States v. Mitchell, 551 F2d 1252, 1258, 179 U.S. App. D.C. 293 (D.C. Cir. 1976) (punctuation and footnotes omitted) (quoting Letter from James Madison to W. T. Barry, August 4, 1822, in 9 The Writings of James Madison 103 (Hunt ed. 1910)), reversed on other grounds by *Nixon, 435 U.S. 589*. A right to read but not copy court records would be of limited use to this purpose. Indeed, the right of access is not complete unless it includes the right to copy. See *Whorton v. Gaspard, 239 Ark. 715, 393 SW2d 773, 774 (Ark. 1965)* ("The right to inspect ... carries with it the right to make copies, without which the right to inspect would be practically valueless."); *Fuller v. State, 154 Fla. 368, 17 So2d 607, 607 (Fla. 1994)* ("[T]he right to inspect would in many cases be valueless without the right to make copies."); 37 Cent. L. Journal 399 (1893) ("[T]he right of examination **[***11]** must necessarily carry with it the right to make whatever copies or other memoranda are necessary to effectuate the purpose for which the examination is sought, or else the grant of the mere

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[5] *Ex Parte Drawbaugh* noted English case law questioning the dubious validity of the "special order" restriction imposed by judges on the grounds that judges lacked the power to alter the law. *2 App. D.C. at 407*. But even if the restriction was valid, subjects still could obtain copies of judicial records in felony cases by making a motion. Id.

[6] The court's reference to "exemplification" meant copying. See Noah Webster, A Dictionary of the English Language 153 (1878) (defining "exemplify" as "(1) To show by example; (2) To make an attested copy of; (3) To prove or show by an attested copy").

right of inspection is nugatory.").

HN13[↑] This line of authority uniformly accepting that the common law right of access to judicial records encompasses a right to copy provides important context for the scope of the right Rule 21 preserved. Consistent with the common law, we conclude that Rule 21's right to "inspect" includes the right to copy, and the trial court erred in ruling otherwise.

[399]** But our inquiry does not end here, as HN14[↑] we may affirm the trial court's judgment if it is right for any reason. See Reed v. Reed, 295 Ga. 574, 578 (761 SE2d 326) (2014). Our review of the common law reveals some tension between it and our statement in *Green* that a court reporter's audio recordings are court records for purposes of Rule 21. We now take the opportunity to revisit the issue.

3. *"Court records" under Rule 21 include only records filed with the court.*

HN15[↑] Although "[a] body of case law has developed around [Rule] 21, ... only a handful of decisions [have] focused on whether an item constitutes a 'court record'" under the meaning of Rule 21. In re Gwinnett County Grand Jury, 284 Ga. 510, 511 (668 SE2d 682) (2008) (citation omitted). In none of these cases have we expressly **[***12]** defined what constitutes a court record. Rule 21 became effective July 1, 1985. See 253 Ga. 800, 832. In one of our first decisions applying it, we explained that the public's "presumptive right of access" to all court records "includes pre-judgment records in civil cases, and begins when a judicial document is filed." Atlanta Journal & Constitution v. [*425] Long, 258 Ga. 410, 413-414 (3) (369 SE2d 755) (1988). Our statement in *Long* appears inconsistent with our statement in *Green* that "[a]n official court reporter's tape of a judge's remarks in open court is a court record." 262 Ga. at 265 (1). The parties disagree about much, but one thing they seem to agree on is that court reporters rarely, if ever, file their audio recordings with the court. It is the transcript of the court proceedings that is the public record of the proceedings once it is filed. See OCGA § 5-6-41 (e) ("Upon filing by the reporter, the transcript shall become a part of the record in the case[.]"); Kent v. Kent, 289 Ga. 821, 823 (2) (a) (716 SE2d 212) (2011) ("Upon filing, the transcript becomes a public document that is equally available to all parties."). So our statement in *Green* that a court reporter's audio recording, which is not usually filed with the court, appears at odds with our statement in *Long* that the right of access enshrined in Rule 21 "begins when a judicial document is filed." 258 Ga. at 413-414 (3). To resolve **[***13]** this confusion, we consider what a "court record" was at common law. But the definition of a "court record" at the time Rule 21 was adopted requires us to look beyond the common law, as subsequent statutes may also be relevant.

(a) *The common law understanding of court records was limited to matters enrolled in parchment that provided a history of the case.*

Case law and leading common law authorities have defined a court record as a history of the proceedings and actions of the court from the commencement of the suit to its termination. Sir Edward Coke, "one of the greatest of English jurists,"[7] defined court records as

> "memorials or remembrances, in rolls of parchment, of the proceedings and acts of a court of justice, which hath power to hold plea according to the course of the common law;" and are of "such ... credit and verity as that they admit no averment, plea or proof to the contrary; and if such record be alleged, and it be pleaded that there is no such record, it shall be tried only by itself."

Davidson v. Murphy, 13 Conn. 213, 218 (1839) (quoting *Coke on Littleton*); see also Noble v. Shearer, 6 Ohio 426, 427 (1834) ("A record is the history of the cause from its commencement, the issuing of the writ, until final judgment is rendered."). Similarly, Sir William **[***14]** Blackstone, the leading authority on the common law,[8] in comparing **[*426]** courts of record (the king's courts) and "others not of record,"[9] stated:

> **[**400]** A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called *the records of the court*, and are of such

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[7] Davison v. Raynolds, 150 Ga. 182, 183 (103 SE 248) (1920).

[8] Bloom v. Illinois, 391 U. S. 194, 198 n. 2 (88 SCt 1477, 20 LE2d 522) (1968) (accepting Blackstone's Commentaries as the most satisfactory exposition of common law); see also Grange Mut. Cas. Co. v. Woodard, 300 Ga. 848, 853 (2) (a) (797 SE2d 814) (2017); Tucker v. Howard L. Carmichael & Sons, Inc., 208 Ga. 201, 203 (1) (65 SE2d 909) (1951).

[9] Only the king's courts had the authority to fine or imprison, while a "court not of record is the court of a private man; whom the law will not [e]ntrust with any discretionary power over the fortune or liberty of his fellow-subjects." 3 William Blackstone, Commentaries on the Laws of England 24-25 (Robert Bell ed., 1772).

> high and supereminent authority, that their truth is not to be called in question.

(Emphasis supplied.) 3 William Blackstone, Commentaries on the Laws of England 24 (Robert Bell ed., 1772); see also DeKalb County v. Deason, 221 Ga. 237, 238 (144 SE2d 446) (1965) (citing Blackstone and providing full definition of a "court of record").

As to what was "enrolled in parchment" at common law, the record generally contained at least the following: the most material pleadings, including the original complaint (or writ), answers or responses, and continuances; the verdict if there was a jury trial; and the court's judgment. 3 Blackstone, Commentaries, p. 317 ("The record is a history of the most material proceedings in the cause ... in which must be stated the original writ and summons, all the pleadings, the declaration, view or oyer prayed, the imparlances, plea, replication, rejoinder, continuances, and whatever further proceedings have **[***15]** been had; all entered verbatim on the roll, and also the issue or demurrer, and joinder therein."); id. at 378 ("When the jury have delivered in their verdict, and it is recorded in court, they are then discharged."); id. at 395 ("If judgment is not by some of these means arrested within the first four days of the next term after the trial, it is then to be entered on the roll or record."); see also White v. Newton Mfg. Co., 38 Ga. 587, 593 (3) (1869) ("The proceedings which the Clerk should record, and which make up the record, are, the declaration, process, return of service by the sheriff, and other official entries, the plea, verdict, judgment, and all interlocutory orders passed by the Court during the pendency of the case; and in case of a motion for a new trial after verdict, the order nisi, together with any order passed by the Court, setting it down for a hearing in vacation, or adjourning the hearing from time to time; and in case the new trial is granted, all subsequent orders passed by the Court, including the **[*427]** final judgment."). Thus, materials that were filed and enrolled in parchment became the court record at common law.

The filing of a document, while necessary, was not a sufficient condition to make the matter part of the court record **[***16]** at common law. Depositions, exhibits, and other documentary evidence filed in the case, as well as the court's opinions, were not typically considered part of the court record. See Puckett v. Graves, 14 Miss. 384, 391 (1846) ("Every motion made in a cause constitutes part of its history, and is as much a part of the record as the declaration, plea, or judgment. The evidence offered is no part of the record, unless made so by bill of exceptions."); Lenox v. Pike, 2 Ark. 14, 20 (1839) ("Whatever else that is not necessarily enrolled, such, for example, as oral and written testimony, and exceptions taken to the opinion and judgment of the court, constitutes no part of the record, unless they are expressly made so by order of the court, by the agreement of the parties, by demurrer to evidence, by oyer, by bill of exceptions, or by special verdict. These are the usual and only legitimate modes by which matters of fact may be spread upon the record."); Coolidge v. Inglee, 13 Mass. 26, 50 (1816) ("Neither the report of the judge of the proceedings at the trial, nor the reasons given for the opinion of the Court, nor the papers and documents filed in the case, are a part of the record.").

HN16[↑] In Williams v. Norris, 25 U.S. 117 (6 LE 571) (1827), the Supreme Court of the United States noted that although a judge's opinion, depositions, and evidence are not generally **[***17]** considered court records, they may be included in the court record if specifically provided. Specifically, the Supreme Court stated:

> Depositions, and exhibits of every description, are papers in the cause, and, in one sense of the word, form a part of the record. In some States they are recorded by direction of law. But, in a jury cause, they constitute no part of the record on which the judgment of an appellate Court is to be exercised, unless made a part of it by bill of exceptions, or in some other manner recognised by law.

Id. at 119.

HN17[↑] Our own precedent reflects the common law principle that many documents and other **[**401]** papers filed with or considered by the court are not automatically part of the court record, but that statutes could provide a method for making them so. In Smith v. Burn, 2 Ga. 262, 263 (1847), we examined a statute that required for written evidence to be included in the bill of exceptions in order for the material to be part of the court record, and concluded that certain testimony was not **[*428]** made part of the record because the party did not meet the statutory requirements for creating a bill of exceptions. Although *Smith* did not expressly discuss the common law, *Smith* implicitly recognized the common law rule that **[***18]** evidence does not form part of the court record, which was limited to the pleadings, verdicts, and judgments under the common law. *Smith* also reflects an understanding that our laws can amend the definition of a "court record" to include materials in addition to those provided by the common

law. Consequently, with the common law as the backdrop, we must evaluate what materials were considered to be part of the court record at the time Rule 21 was adopted.

(b) *"Court record" at the time Rule 21 was adopted meant materials filed with the court.*

As we have already explained, HN18[↑] Rule 21 formalized the common law right of access to court records, and we interpret the rule in the light of that context. The common law is not the only context we consider, however. See Chan v. Ellis, 296 Ga. 838, 839 (1) (770 SE2d 851) (2015) (the meaning of a provision is often based on context, which includes the constitutional, statutory, and common law framework). We interpret court rules in the same manner we interpret other written instruments, which mean now what they meant when they were enacted. See Warren v. State, 294 Ga. 589, 590 (755 SE2d 171) (2014) (when considering the text and relevant context of the statute, a statute is to be construed as understood at the time of its enactment); Padelford, Fay & Co. v. Mayor and Aldermen of City of Savannah, 14 Ga. 438, 454 (1854) ("[T]he Constitution, like every other instrument made **[***19]** by men, is to be construed *in the sense in which it was understood by the makers of it at the time when they made it.* To deny this is to insist that a fraud shall be perpetrated upon those makers or upon some of them." (emphasis in original)).

HN19[↑] By the time Rule 21 was adopted in 1985, the General Assembly had statutorily mandated the contents of the formal record of the court. In 1965, the General Assembly enacted the Appellate Practice Act ("the Act"). Ga. L. 1965, p. 18. The Act prescribed the matters that are to appear in a court's record and abolished the process noted in Smith that parties had to create a bill of exceptions in order to make certain materials part of the court record. See Bishop v. Lamkin, 221 Ga. 691 (146 SE2d 769) (1966). Although the Act, as its full name suggests, generally governs the appellate process, it does provide guidance on the scope of the record in the trial court, and distinguishes between that record and the record on appeal. See, e.g., OCGA §§ 5-6-41 (d) (defining trial court record); 5-6-37 HN20[↑] ("The notice [of appeal] shall set forth ... a designation of those portions of the record to be omitted from the record on appeal[.]"); 5-6-38 (a) **[*429]** ("The notice of cross appeal shall set forth ... a designation of any portions of the record or transcript designated **[***20]** for omission by the appellant and which the appellee desires included ... . In all cases where the notice of appeal did not specify that a transcript of evidence and proceedings was to be transmitted as part of the record on appeal, the notice of cross appeal shall state whether such transcript is to be filed for inclusion in the record on appeal."); 5-6-41 (f) (providing a process by which the parties may seek to correct the record to "conform to the truth" and stating that "[i]f anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court ... may direct that the omission or misstatement shall be corrected and, if necessary, that a supplemental record" be transmitted by the clerk of the trial court).

Turning to the materials that the Act includes in the court's record, the Act, as it existed at the time of Rule 21's adoption,[10] provided:

> **[**402]** Where a trial in any civil or criminal case is reported by a court reporter, all motions, colloquies, objections, rulings, all evidence — whether admitted or stricken on objection or otherwise — copies **[***21]** or summaries of all documentary evidence, the charge of the court, and all other proceedings which may be called in question on appeal or other post-trial procedure shall be reported, and where the report is transcribed, all such matter shall be included in the written transcript, it being the intention of this act that all these matters appear in the record, rather than in assignments of error on appeal or otherwise, which are abolished by this Act. Where matters occur which were not reported, such as objections to oral argument, misconduct of the jury, or other like instances, the court, upon motion of either party, shall require that a transcript of these matters be made and included as a part of the record. The transcript of proceedings shall not be reduced to narrative form unless by agreement of counsel, but where the trial is not reported or the transcript of the proceedings for any other reason is not available and the evidence is prepared from recollection, it may be prepared in narrative form.

[*430] Ga. L. 1965, pp. 18, 24-25, § 10 (d) (codified at OCGA § 5-6-41 (d)). HN21[↑] The Act also provided that the transcript becomes part of the record in the

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[10] OCGA § 5-6-41 was amended in 1993, after the adoption of Rule 21, with mostly stylistic changes. See Ga. L. 1993, p. 1315, § 1.

case upon filing by the court reporter, and outlined a procedure **[***22]** for the parties to correct any alleged misstatements or omissions in the transcript or record or to create a stipulated statement of facts in lieu of a transcript. Id., pp. 25-26, § 10 (f)-(i). With the passage of the *Act* in 1965, the General Assembly thus provided that all motions, colloquies, objections, rulings, and evidence are to be reported and are to appear in a court's record, and that a transcript filed by the court reporter is also included in the court record. Id., pp. 18, 24-25, § 10 (d) ("it being the intention of this act that all these matters appear in the record"). Categorizing this list of items, we can see the materials required to be made part of the record by the *Act* are those items that reflect requests for the court to take action (motions and objections) or are central to or reflect any adjudicative action (evidence, filed transcripts, colloquies, and rulings). Notably, by their very nature, all of these items become court records only upon filing with the court.

Because the *Act* relates to a subject matter at issue here — what is reported in a court record and, thus, made public — *HN22*[↑] we construe *Rule 21*'s use of the phrase "court record" consistent with the meaning of court record supplied by the *Act*.[11] See *Willis v. City of Atlanta, 285 Ga. 775, 776 (2) (684 SE2d 271) (2009)* *HN23*[↑] (statutes **[***23]** relating to the same subject matter must be construed together).

HN24[↑] Construing the term "court record" as used in *Rule 21* to be consistent with the *Act*'s definition of a court's record does not alter the fundamental meaning of the common law definition of a court record. Rather, it only supplements the common law. The common law definition of a court record was that which provided a history of the court's actions and proceedings. The *Act* merely requires a more expansive and detailed account of the court's actions, but it results in a history of the court's actions just the same. More significant for these purposes, both the common law and the *Act* reflect the same basic principle: for something to be a court record, it must be filed with the court.

In the light of all this context, then, *GA(3)*[↑] (3) *HN25*[↑] a "court record" for *Rule 21* purposes includes those materials that set forth the cause of action **[*431]** (pleadings), reflect requests for the court to take action (motions and objections), are an adjudicative action (rulings, judgment, orders), or are central to such rulings (evidence, filed transcripts, and colloquies). All of **[**403]** these items must be on file with the court before becoming a court record. See, e.g., *OCGA § 5-6-41 (e)* (only upon filing **[***24]** does the transcript become part of the record). This is in accord with what we said in *Long* that the right of access begins when a "judicial document is filed." *Long, 258 Ga. at 413-414 (3)*.

HN26[↑] Defining the scope of a "court record" to require filing with the court is also consistent with conclusions drawn by other jurisdictions that have considered the right of access derived from the common law. Materials admitted into evidence, that call for court action, or play a central role in the adjudicative process are part of the judicial record, so long as such materials are on file with the court. See, e.g., *United States v. Amodeo, 44 F3d 141, 145 (2d Cir. 1995)* ("[T]he item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document."); *Republic of Philippines v. Westinghouse Elec. Corp., 949 F2d 653, 660 (3d Cir. 1991)* (noting decisions that have concluded court records to be transcripts of a civil trial, exhibits admitted at trial, settlement documents filed with the district court, and transcripts of hearings, and ruling that materials filed with summary judgment motion were court records because it was a motion for relief that would have disposed of the case); *In re Alexander Grant & Co. Litigation, 820 F2d 352, 355 (11th Cir. 1987)* (right of access extends to "pleadings, docket entries, orders, affidavits or depositions duly filed" **[***25]** but not to documents collected during discovery (emphasis omitted)); *F.T.C. v. Standard Fin. Mgmt. Corp., 830 F2d 404, 410 (1st Cir. 1987)* (financial statements referred to in a proposed consent decree were public records because they were material filed and considered by court in its approval of decree); *State v. Komisarjevsky, 302 Conn. 162, 25 A3d 613, 622 (Conn. 2011)* ("A judicial document is any document filed that a court reasonably may rely on in support of its adjudicatory function[.]" (citation and punctuation omitted)); *Commonwealth v. Long, 592 Pa. 42, 922 A2d 892, 898 (Pa. 2007)* ("Documents that are filed with the court and, in particular, those that are used by the judge

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[11] We note that in 1978, before enactment of *Rule 21*, the General Assembly provided a different definition of a "court record" as part of the Georgia *Records Act*. See Ga. L. 1978, pp. 1372, 1375, § 4 (codified in *OCGA § 50-18-91 (2)*). That definition is expansive, departs dramatically from the common law and the *Act*'s definitions we have discussed, and may well cover the audio recordings at issue here. The Georgia *Records Act*, however, merely governs state agency record retention and, unlike the *Act*, does not address what is made available for public access and, thus, does not concern the subject matter at issue in this case.

in rendering a decision are clearly considered public judicial documents.").

GA(4)[↑] (4) HN27[↑] Given the Act's directives about what is to appear in a trial court's record and the cited authority defining "court records" for which the common law right of access applies, we conclude that the right of access under Rule 21 applies only to those materials that are filed with the court.

[*432] 4. *The court reporter's audio recordings in this case are not court records.*

(a) *Because the recordings are not filed with the court, they are not court records under Rule 21.*

GA(5)[↑] (5) HN28[↑] The audio recordings at issue here are not court records under the definitions established above because they were not filed with the court. And, indeed, they rarely are; court reporters use the recordings (which **[***26]** they are not legally required to create in the first place) to prepare the transcript. It is the transcript itself, not any recordings or notes made by the court reporter, that becomes part of the court record that is reported. See OCGA § 5-6-41 (e) ("Upon filing by the reporter, the transcript shall become a part of the record in the case and need not be approved by the trial judge."); Kent, 289 Ga. at 823 (2) (a) ("Upon filing, the transcript becomes a public document that is equally available to all parties.").

Our conclusion that a court reporter's recordings not filed with the court are not court records is in accord with other courts that have considered the issue. Federal courts of appeals have denied access to audiotapes, ruling that the recordings should not be deemed judicial records, although they may be made available if "some reason is shown to distrust the accuracy of the stenographic transcript." Smith v. U. S. Dist. Court Officers, 203 F3d 440, 442 (7th Cir. 2000) (backup tapes are not an original record of proceedings, nor are they filed with the court); see also Choy v. Comcast Cable Communications, LLC, 629 Fed. Appx. 362, 366 (3d Cir. 2015); In the Matter of Pratt, 511 F3d 483, 485 (5th Cir. 2007). Under these authorities, a court **[**404]** reporter's audio recordings are not court records.[12]

(b) *Green holds that a court reporter's audio recordings are court records available for public access only under limited circumstances **[***27]** not present here.*

Undisclosed relies on *Green* as authority that the audio recordings are court records that it has the right to access under Rule 21. But Undisclosed confuses a stray sentence of the opinion with our holding in that case. In *Green*, a state court judge "made opening **[*433]** remarks ... after court was called into session but before the call of any case." 262 Ga. at 264. The remarks were recorded by the court reporter, but were not transcribed as part of any case. The local newspaper requested a transcript of the remarks, which the judge denied. The newspaper then sued the judge in superior court, asserting claims to the court reporter's tape under both the Open Records Act and the right of access to court records under Rule 21. The superior court ruled for the newspaper, requiring provision of the tape to the paper. We disapproved the trial court's ruling to the extent that it relied on the Open Records Act, id. at 265 (2), but affirmed on other grounds.

In ruling for the newspaper, we stated initially that "[a]n official court reporter's tape of a judge's remarks in open court is a court record." Green, 262 Ga. at 265 (1). It is this statement that Undisclosed focuses on. But *Green* did not stop there, and its additional explanation of that statement demonstrates that Undisclosed **[***28]** confuses the opinion's broad phrasing with our actual holding. After quoting as the sole support for our holding R. W. Page Corp. v. Kilgore, 257 Ga. 179 (356 SE2d 870) (1987), a case about a transcript (not a tape) of an inquest by a coroner (not a court), we went on to articulate our holding more precisely:

> Judge Green waived any right to claim that the tape of his comments is not a court record when he made public comments from the bench that were recorded while court was in session. No law limits public access to the judge's taped comments nor can access to them be denied under the procedure set out in Rule 21, which he has not invoked. Therefore, the tape *or* its transcript must be made

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[12] Our ruling here does not preclude a party from accessing a court reporter's audio recordings in some situations. The Act provides a party who believes that the transcript "does not truly or fully disclose what transpired in the trial court" with the ability to correct the transcript, and the matter would be set for a hearing. See OCGA § 5-6-41 (f). Nothing in the Act would preclude a party from filing a subpoena to obtain the recordings for the purpose of correcting the transcript. The audio recordings may be relevant and material to the issue of what transpired at court and complying with a subpoena for the recordings would not generally be oppressive. See Price v. State, 269 Ga. 222, 224 (2) (498 SE2d 262) (1998) (trial court erred in quashing subpoena for documents that were relevant to issue because complying with the subpoena was not unreasonable and oppressive).

available for public inspection under Rule 21.

Green, 262 Ga. at 265 (1) (emphasis supplied).

We must consider *Green* in the context of its own unique facts and the facts of the sole authority it relied upon for its holding (*Kilgore*, a case about transcripts), as well as the total absence of any discussion of the meaning of the text of Rule 21. See Johns v. League, Duvall & Powell, 202 Ga. 868, 873 (1) (45 SE2d 211) (1947) ("[A] decision is to be treated as a precedent ... on the facts as the court construed or assumed them to be for the purpose of decision."); see also Cohens v. Virginia, 19 U. S. 264, 399 (6 Wheat. 264, 5 LE 257) (1821) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection **[***29]** with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit **[*434]** when the very point is presented for decision."); Natson v. United States, 494 Fed. Appx. 3, 5 n. 2 (11th Cir. 2012) ("The opinions of the Supreme Court are not the United States Code. Every sentence in a Supreme Court opinion is not law. Only the holdings of Supreme Court decisions are law."). Had we held in *Green* that court reporter tapes *always* are court records under Rule 21, then the newspaper **[**405]** would have been entitled to the tapes. But instead we said that the newspaper was entitled to the tapes *or* a transcript. Considered in that context, it is plain that *Green* did not decide whether court reporter tapes are always court records as that term is used in Rule 21; rather, it simply decided that the only available record of the judge's public comments made "from the bench ... while court was in session" but not in relation to any case was, indeed, open to the public under Rule 21.

HN29[↑] Of course, at common law, court records are only those documents filed with the court. But our law presumes that a transcript of each case's proceedings in open court will be created and filed, and upon filing become the publicly **[***30]** available record of those proceedings. *Green* confronted the rare occasion on which a judge makes public comments from the bench in open court, but there is no case in which to file a transcript. As a result, a member of the public would have no ability through Rule 21 to request access to a transcript of those statements. *Green*, therefore, is properly understood only as providing a solution to that unique circumstance.

Properly understood, Green does not apply here; there is a filed transcript of the proceedings for which Undisclosed seeks the court reporter's tapes. Accordingly, the tapes Undisclosed seeks are not court records under Rule 21. We affirm the trial court's order.

Judgment affirmed. All the Justices concur, except Melton, P. J., who concurs specially, and Grant, J., who concurs in judgment only as to Division 4 (b).

Concur by: MELTON

Concur

MELTON, Presiding Justice, concurring specially.

While I agree with the end result reached by the majority, I also believe that the majority did not have to go to the lengths that it did to distinguish the instant case from Green v. Drinnon, Inc., 262 Ga. 264 (417 SE2d 11) (1992) in order to reach the proper result. Nor am I convinced by the distinction. In my view, *Green* was simply wrongly decided and should be overruled.

Specifically, **[***31]** pursuant to Uniform Superior Court Rule 21, "[a]ll court *records* are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth [in the rule]." (Emphasis supplied.) The judge's tape-recorded comments **[*435]** in *Green* were made "after court was called into session but *before the call of any case*." (Emphasis supplied) Green, supra, 262 Ga. at 264. The comments were not part of the official court record of any case. Nor were the comments transcribed or the tapes themselves made a part of any official court record. For these reasons, I believe that Rule 21, which is applicable to court "records," simply cannot be read so broadly as to reach tapes such as those of the judge's comments in *Green* that were not transcribed and that were not made a part of the official record of any court case. Accordingly, I believe that the broad statement in *Green* that "[a]n official court reporter's tape of a judge's remarks in open court is a court record" is wrong. Green, supra, 262 Ga. at 265 (1). Under the circumstances presented in *Green*, the tapes were not court records and should not have been subject to public inspection, at least not pursuant to Rule 21.

Because *Green* was wrongly decided, this Court should overrule it rather than go to strained and **[***32]** unnecessary lengths to distinguish it from the instant case.

End of Document

Savannah College of Art & Design v. Sch. of Visual Arts

Supreme Court of Georgia

March 8, 1999, Decided

S98A1486.

Reporter
270 Ga. 791 *; 515 S.E.2d 370 **; 1999 Ga. LEXIS 313 ***; 99 Fulton County D. Rep. 1325; 27 Media L. Rep. 2242

SAVANNAH COLLEGE OF ART & DESIGN, INC. et al. v. SCHOOL OF VISUAL ARTS, INC.

Subsequent History: [*1]** Reconsideration denied April 2, 1999.

Prior History: Equity. Chatham Superior Court. Before Judge Mikell.

This Opinion Substituted for Withdrawn Opinion of March 8, 1999, Previously Reported at: 1999 Ga. LEXIS 260.

Disposition: Judgment reversed.

Core Terms

settlement, confidential, court record, trial court, documents, public access, privacy, settlement agreement, parties, public interest, limited access, seal, privacy interest, superior court, newspaper, arbitration, outweighs, records, schools

Case Summary

Procedural Posture
Plaintiff challenged a decision from the Chatham Superior Court (Georgia) that unsealed confidential settlement documents filed with plaintiff's motion to compel.

Overview
Plaintiff sued defendant for conspiracy. The parties reached a settlement agreement that required the parties to keep the terms of the agreement confidential. Defendant then revealed certain terms of the agreement to a newspaper. Plaintiff moved the court to compel the reporters to reveal their sources and included in their motion copies of the agreement. The court ordered that the documents be sealed pursuant to Ga. Unif. Super. Ct. 21 and the newspaper moved to unseal. The court found the documents should be open for public inspection and unsealed the documents. On appeal, the supreme court reversed the decision unsealing the documents because plaintiff's privacy interest outweighed the public's interest in the documents. The supreme court previously acknowledged the documents were confidential. Plaintiff's request was minimal because it only sought to have the settlement documents sealed and did not move to seal the numerous other court documents regarding the parties' litigation.

Outcome
The supreme court reversed the decision unsealing the confidential settlement documents because plaintiff's privacy interest in the documents outweighed the public's interest in such documents. Plaintiff only sought to limit public access to the settlement documents and did not seek to deny access to all the court records about the litigation.

LexisNexis® Headnotes

Governments > Courts > Court Records

Governments > Courts > Rule Application & Interpretation

HN1[] **Courts, Court Records**

Ga. *Unif. Super. Ct. R. 21* provides that all court records are public and are to be available for public inspection unless public access is limited by law or by the

procedure set forth below. Ga. *Unif. Super. Ct. R. 21.2* authorizes superior courts to limit access to court records if the court finds that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest. Although the rule creates a presumption that all court records are to be open, it also provides for a limitation on that right when the privacy of a party clearly outweighs the public right to know.

Counsel: Jones, Day, Reavis & Pogue, David J. Bailey, Gregory R. Hanthorn, for appellant.

Savage, Herndon & Turner, Robert B. Turner, Robert S. Kraeuter, Hull, Towill, Norman & Barrett, James B. Ellington, Nancy S. Gentry, for appellee.

Dow, Lohnes & Albertson, Peter C. Canfield, Sean R. Smith, Thomas M. Clyde, amicus curiae.

Judges: Hunstein, Justice. All the Justices concur, except Fletcher, P. J., Sears and Hines, JJ., who dissent.

Opinion by: HUNSTEIN

Opinion

[*791] [370] Hunstein,** Justice.

This appeal concerns public access to court records in a civil case. The superior court ordered that confidential settlement documents filed with Savannah College of Art & Design's (SCAD) discovery motion should be open for public inspection because SCAD failed to meet its burden in limiting access. Because we find the trial court abused its discretion in concluding that SCAD's privacy interest in the settlement documents did not clearly outweigh the public interest in access **[***2]** to court records, we reverse.

In 1993, SCAD sued the School of Visual Arts and nine individuals for conspiracy. In 1996 the schools reached a settlement agreement. One condition of the agreement bound the parties to maintain complete confidentiality about the litigation and the terms of the settlement. The trial court entered an order on February 5, 1996 approving the agreement and expressly ordering the parties to keep all settlement documents confidential. The agreement was not filed with the court, and therefore, there was no request to seal the confidential agreement as a court record.

[371]** Four days later, the Visual Arts' president announced to the school's faculty, staff, and students that the school would leave Savannah by June 1999. A news article the following day described the decision to close the school as a term of the agreement settling the lawsuit between SCAD and Visual Arts. Two subsequent articles quote "sources close to Visual Arts" that "Visual Arts agreed to leave town in 1999 and would accept no new students at its Savannah campus as part of its settlement" with SCAD.

In September 1996, Visual Arts filed an arbitration action to enforce the settlement agreement; **[***3]** SCAD filed a counterclaim alleging that Visual Arts had breached the agreement by disclosing its terms to the media. [1] In September 1996, the parties instituted the present civil action for the purpose of enabling discovery in aid of arbitration. Over the next sixteen months, as part of the arbitration proceeding, SCAD deposed various individuals associated with Visual **[*792]** Arts seeking to determine if they were the source mentioned in the newspaper articles. Each person denied being the source "close to SVA" or knowing the source. Both schools then issued subpoenas to the two Savannah Morning News reporters who wrote the articles linking the closing of Visual Arts to the settlement agreement. At the arbitration hearing, SCAD questioned the reporters about their sources. Citing their qualified privilege under the Georgia Shield Law, see O.C.G.A. § 24-9-30, the reporters declined to answer. The arbitrator found that SCAD had met the requirements for the statutory exception to the privilege and overruled the newspaper's objection, but both reporters continued to refuse to answer.

[*4]** SCAD thereafter filed a motion in superior court to compel the reporters to reveal their sources. In the motion, SCAD quoted four paragraphs of its settlement letter with Visual Arts and attached as exhibits the full text of the letter, the mutual release and indemnity agreement, and excerpts from the deposition testimony of Visual Arts' staff and students. In the motion served on the newspaper, however, SCAD redacted any reference to the text of the settlement letter and the deposition testimony and omitted all of the exhibits. On the first page of both copies of the motion, SCAD typed the words "**[FILED UNDER SEAL]**." Because there was no court order limiting access, the documents were maintained by the trial judge's secretary pursuant to an

[1] As part of the 1996 settlement agreement, the parties agreed that arbitration would be the sole remedy regarding any dispute arising out of the settlement agreement.

internal operating procedure until there could be a hearing concerning their status. On February 26, 1998, the trial court issued an order directing the clerk to file the motion to compel and confidential settlement documents under seal and to limit access to these documents.

The newspaper filed a *Uniform Superior Court Rule 21.5* motion to unseal the documents. Following a hearing, the trial court concluded that SCAD failed to meet its **[***5]** burden as the party seeking to limit access to court records. SCAD filed an interlocutory application under *Uniform Superior Court Rule 21.4* and *O.C.G.A. § 5-6-34 (b)*, which Visual Arts supported. SCAD then filed this direct appeal and Visual Arts filed an amicus brief supporting reversal of the trial court's order.

HN1[↑] *Uniform Superior Court Rule 21* provides " all court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below." Rule 21.2 authorizes superior courts to limit access to court records if the court finds that "the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest." Although the rule creates a presumption that all court records are to be open, it also provides for a limitation on that right when the privacy of a party clearly outweighs the public right to know. In interpreting the provisions of the rule, this Court in *Atlanta Journal &c. v. Long, 258 Ga. 410, 413 [*793] (369 S.E.2d 755) (1988)* reversed the trial court's order sealing certain records where the parties sought to shield public access to virtually all of the pre-judgment records. [2] In **[***6]** *Long* **[**372]** we acknowledged that the aim of the *Rule 21* presumption is to ensure that the public will continue to enjoy its traditional right to access to judicial records. We also acknowledged that in cases of clear necessity, identified as instances where privacy rights are in jeopardy, the right of public access should yield.

We find in this case that the presumption in favor of public accessibility to court records is clearly outweighed by SCAD's privacy interest. In contrast to *Long*, the records SCAD sought to protect were minimal and consisted of only twenty-two pages of private settlement documents. SCAD did not otherwise seek to limit public access to the remaining voluminous files in the court records regarding the parties' litigation. [3] Further, these specific documents had previously been acknowledged as confidential by the trial court in a February 1996 order approving **[***7]** the settlement; under the circumstances of this case, this factor was entitled to be accorded great weight under Rule 21.2.

Contrary to the finding of the trial court, we hold the private nature of the settlement agreement was not lost once the document was filed in the trial court. The confidential settlement agreement was attached as an exhibit to the motion to compel as part of an effort to enforce a confidentiality provision. To hold that the private nature of a settlement agreement is lost once the document is filed in the trial court places litigants in the unusual dilemma of having to waive an agreement's confidentiality in order to enforce it. We believe this privacy conundrum is best resolved in favor of a limited access order **[***8]** pursuant to Rule 21.2.

Because of SCAD's strong privacy interest in the confidential documents, we conclude that SCAD met its burden of showing that access by the public to the agreement and related documents should be limited. We accordingly hold that the trial court abused its discretion in refusing to enter such an order.

Judgment reversed. All the Justices concur, except Fletcher, P. J., Sears and Hines, JJ., who dissent.

Dissent by: Fletcher

Dissent

Fletcher, Presiding Justice, dissenting.

The trial court did not abuse its discretion in refusing to allow a **[*794]** private agreement to keep a settlement confidential override the traditional right of public access to judicial records. Even if the private interest in a confidential agreement were equal to the public's right of access, SCAD's privacy interest in this case should not trump the public's right to court records since SCAD failed to follow the proper procedure for limiting access to its confidential agreement. Because the majority opinion allows an undefined privacy interest to

[2] These documents included the complaint, answers, pre-trial order, discovery and motions for adjudication on the merits and briefs.

[3] The trial court noted in its March 9, 1998 order that the earlier litigation was the largest lawsuit litigated in the circuit and that the pleadings, motions and discovery filed with the clerk of court filled over 130 large cartons, all of which remained available to the public.

overcome the presumption that court records should be open to the public, I dissent. In this state, "the public and the press have traditionally enjoyed **[***9]** a right of access to court records." [4] Public access protects litigants and citizens "because justice faces its gravest threat when courts dispense it secretly." [5] In addition, access to court records in civil litigation strengthens the soundness of the trial judge's decisions, encourages greater integrity from attorneys and their clients, and promotes public health and safety. [6]

[*10]** **[**373]** This common-law right of public access is preserved in the *Uniform Superior Court Rules.* [7] *[***11]* *Rule 21* states: "All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below." [8] Rule 21.2 gives superior courts authority in exceptional cases to limit access based on a party's motion, if the trial court finds that "the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest." [9] The court's order must state "the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation." [10] The party seeking to seal court records has the burden of overcoming the presumption of public access with specific reasons. [11]

[*795] In *Atlanta Journal v. Long*, [12] we evaluated whether the superior court had correctly applied Rule 21 in denying public access to pre-judgment court records. In that case, the superior court had prohibited access based on the parties' privacy interest in avoiding embarrassment, the governmental interest in preserving the courts as the forum for resolving disputes, and the possibility that the pre-judgment documents could be misused. Reviewing the trial court's application of the balancing test, we held that the parties had not met their burden of overcoming the presumption that the public has a right of access. [13] It is not clear from that decision **[***12]** the role of the trial court in weighing the competing interests. Today's decision does little to clarify this issue.

Under Rule 21, the trial court is required to weigh the public's interest in court records against the litigants' interest in privacy. This balancing of competing interests requires the exercise of judicial discretion. [14] **[***13]** I agree with the majority opinion that the trial court's decision granting or limiting access under Rule 21 is reviewed for abuse of discretion. [15] On appeal, however, we do not accord the same deference generally given a trial court's discretionary decisions that

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[4] *Atlanta Journal & Atlanta Const. v. Long*, 258 Ga. 410, 411 (369 S.E.2d 755) (1988); see *Nixon v. Warner Communications*, 435 U.S. 589, 597-599 (98 S. Ct. 1306, 55 L. Ed. 2d 570) (1978) (discussing the right to inspect and copy judicial records); *O.C.G.A. § 50-18-70* (1998) (public records shall be open for public inspection).

[5] *Long I*, 258 Ga. at 411.

[6] See Lloyd Doggett & Michael J. Mucchetti, *Public Access to Public Courts: Discouraging Secrecy in the Public Interest*, 69 TEX. L. REV. 643, 648-653 (1991); see also *Hammock v. Hoffmann-LaRoche*, 142 N.J. 356, 662 A.2d 546, 558 (NJ 1995) (adopting a broad standing rule affording public access to court files in products liability action against drug manufacturer because issues of public health, safety, and consumer fraud involved).

[7] See *Long I*, 258 Ga. at 411; see also *Green v. Drinnon, Inc.*, 262 Ga. 264, 265 (417 S.E.2d 11) (1992) (holding that tape or transcript of a judge's remarks in open court must be made available for public inspection based on Uniform State Court Rule 21); Unif. Prob. Ct. R. 17 (adopting same balancing test before limiting access to court records in probate cases).

[8] See, e.g., ***O.C.G.A. § 15-11-58*** (1994) (with certain exceptions, court order required before files and records in a juvenile proceeding are open to inspection).

[9] Unif. S. Ct. R. 21.2.

[10] Unif. S. Ct. R. 21.1.

[11] *Long I*, 258 Ga. at 414; cf. *Brown v. Minter*, 243 Ga. 397, 398 (254 S.E.2d 326) (1979) (burden is on public agency to explain why identifiable public records should not be furnished citizen requesting them).

[12] 258 Ga. 410, 369 S.E.2d 755.

[13] *Id.* at 414-415.

[14] See *Nixon*, 435 U.S. at 599 (cases recognizing the common-law right of access agree the decision is one best left to the sound discretion of the trial court to be exercised in light of the relevant facts and circumstances of the particular case); cf. *Bowers v. Shelton*, 265 Ga. 247, 249 (453 S.E.2d 741) (1995) (under Open Records Act, superior courts vested with discretion in deciding whether to allow or prohibit inspection of public records).

[15] Cf. *General Tire v. Kepple*, 970 S.W.2d 520, 526 (Tex. 1998) (adopting abuse of discretion standard of review under state rule).

are based on first-hand observations, such as the credibility of witnesses. [16] Instead, we review whether the trial court considered the relevant interests and gave them the appropriate weight in exercising its discretion and granting or limiting access to the court records. [17]

In this case, the trial court listed SCAD's reasons for limiting access as its wish to keep the settlement agreement confidential and **[**374]** the fact that confidentiality was a key to reaching the settlement in 1996. In comparison, the trial court listed the newspaper's reasons for granting access as the presumption that court records should be open, the Savannah arts community's interest in the terms of the settlement, and the changing circumstances since the agreement was **[*796]** made in 1996. It is not clear **[***14]** what weight the trial court gave to the competing interests, except that the evidence did not tilt the balance "clearly" towards privacy, as required by Rule 21.

Although parties in civil litigation may have an interest in keeping confidential a settlement agreement, SCAD has failed to articulate any specific harm that it would suffer from disclosure of its agreement with Visual Arts. [18] **[***15]** First, both SCAD and Visual Arts are corporate entities and therefore cannot identify any personal privacy interest protected under state law. [19] Second, the settlement does not involve any issue that courts generally recognize as exceptions to the common-law right, such as a trade secret, defamatory material, or national security. [20] Third, both schools' interest in confidentiality has diminished over the past three years as they have implemented the substantive provisions of their agreement. [21] In particular, the need for the agreement to remain confidential became less compelling after Visual Arts closed its Savannah campus.

[*16]** Any privacy interest in the settlement dwindled further when SCAD invoked, with Visual Arts' support, the power of the superior court to aid in enforcing their agreement. [22] Although the schools could have filed a voluntary dismissal of their action after settling in 1996, they instead obtained a court order approving the agreement and ordering both parties to comply with its terms and conditions. Among the terms was a requirement that they resolve any further dispute by private arbitration. In spite of this provision, SCAD filed its motion to compel seeking the court's assistance to obtain evidence showing that Visual Arts breached their agreement by disclosing **[*797]** "confidential" information -- the linking of the school's closing to the lawsuit settlement -- that any astute observer of the litigation could have deduced independently.

[*17]** Finally, there is no "privacy conundrum" in this case. On the contrary, it was SCAD's own actions in directly quoting the settlement letter and attaching it as

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[16] See *Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assoc., 800 F.2d 339, 344 (3d Cir. 1986)*.

[17] See *United States v. Criden, 648 F.2d 814, 817-819 (3d Cir. 1981)* (discussing the different types of appellate review of trial court's discretionary decisions); cf. *State ex rel. Bilder v. Township of Delavan, 112 Wis. 2d 539, 334 N.W.2d 252, 261 (Wis. 1983)* (on review appellate court must decide as a matter of law whether reasons for closure are sufficient).

[18] See *Hammock, 662 A.2d at 559* ("Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient.").

[19] See *Board of Regents v. Atlanta Journal & Atlanta Const., 259 Ga. 214, 217 (378 S.E.2d 305) (1989)* (distinguishing between a personal right to privacy and a corporate preference for privacy); cf. *Harris v. Cox Enters., 256 Ga. 299, 301 (348 S.E.2d 448) (1986)* (personal privacy exception to right of public access under Open Records Act determined by examining tort of invasion of privacy). See generally ***RESTATEMENT (SECOND) OF TORTS § 652I cmt. c*** (1977) (a corporation has no right to privacy under tort law aside from the exclusive use of its own name).

[20] See *Nixon, 435 U.S. at 598*; *Mokhiber v. Davis, 537 A.2d 1100, 1115 (D.C. 1988)*.

[21] See *Hardaway Co. v. Rives, 262 Ga. 631, 635 (422 S.E.2d 854) (1992)* (noting that the public interest in exempting DOT's cost estimates from disclosure outweighs the public interest in disclosure until construction projects are completed or abandoned); *Houston v. Rutledge, 237 Ga. 764, 765-766 (229 S.E.2d 624) (1976)* (distinguishing between public records in a current criminal investigation, which should not be open for public inspection, and public records maintained in a concluded criminal investigation, which should be available); see also *Napper v. Georgia Television Co., 257 Ga. 156, 165 (356 S.E.2d 640) (1987)* (investigatory file in criminal case should be made available for public inspection once the trial has been held, conviction affirmed, and petitions for certiorari denied).

[22] See *Mokhiber, 537 A.2d at 1111* ("By submitting pleadings and motions to the court for decision, one enters the public arena of courtroom proceedings and exposes oneself, as well as the opposing party, to the risk, though by no means certainty, of public scrutiny.").

an exhibit, when neither action was necessary to resolve the discovery motion, that instigated this appeal. SCAD had several ways to protect its settlement documents from public scrutiny besides marking them "filed under seal." It could have followed the procedures set out in Rule 21, which directs parties to seek a court order limiting access; it could have filed with the court clerk the same redacted copy of its **[**375]** legal memorandum that it served on the newspaper; it could have filed a brief describing the settlement agreement as confidential without quoting its specific provisions, as shown by its replacement brief; or it could have limited the number of documents and length of time they would be under seal rather than seeking blanket non-disclosure. Instead, SCAD relied on a form of self-help for which there is no basis in the law of this state.

On appeal, SCAD and Visual Arts additionally argue that the public interest in promoting the settlement of lawsuits justifies filing the settlement agreement under seal. Although **[***18]** there is a strong public policy in favor of encouraging settlements in civil cases, the litigants must show more than a general interest in promoting settlements. [23] In *Long I*, we rejected the argument that the public interest in promoting private settlements before trial justifies limiting public access to pre-judgment court records. [24] Moreover, this particular appeal does not support SCAD's contention that the public has an interest in encouraging confidential settlements to save judicial resources. It is the fact that the schools made their agreement "confidential" that they had a basis for claiming in court that the other side breached their agreement.

Competing against the schools' interest in confidentiality is the public's **[***19]** traditional right of access to court records. The primary purpose of this right is to evaluate the court's exercise of its authority to ensure that the judicial system operates fairly. Although the schools describe their dispute as one between private parties, both SCAD and Visual Arts have invited public support and scrutiny through their recruitment, marketing, and programs. [25] The resolution of their **[*798]** litigation, the largest civil lawsuit in the county's history, and the reasons for Visual Arts' departure from downtown Savannah are issues of public interest to the schools' students and the city's citizens and taxpayers.

[*20]** Having reviewed these competing interests, I conclude that the trial court did not abuse its discretion in ruling that the harm to the privacy of SCAD and Visual Arts from disclosure did not outweigh the public interest in access to court records under Rule 21. As a result, I would affirm the order granting the newspaper's motion to unseal the record.

I am authorized to state that Justice Sears and Justice Hines join in this dissent.

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[23] See generally Anne-Therese Bechamps, *Sealed Out-Of-Court Settlements: When Does the Public Have a Right to Know?*, 66 NOTRE DAME L. REV. 117, 128-130 (1990) (discussing policy of encouraging settlement of disputes without litigation).

[24] *Long I*, 258 Ga. at 415.

[25] See, e.g., Jacqueline Buena, *Savannah Art Colleges Square Off In Ugly Feud*, WALL ST. J., Jan. 24, 1996, at S-1 (aggressive marketing made SCAD largest arts school in the country by 1992); see also Tom Barry, *Hutchinson Island Project creating second 'exciting' city in Chatham*, GA. TREND, Apr. 1, 1998, at 52 (describing SCAD as the largest art-and-design college in the world and a growth industry and leader in historic preservation in downtown Savannah and discussing its president's efforts to triple the school's size and raise its profile through sports).