



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

May 2, 2019

Hon. W. Michel Pierson  
Chief Administrative Judge  
Circuit Court for Baltimore City  
111 North Calvert Street  
Baltimore, MD 21202

Dear Judge Pierson,

We represent Open Justice Baltimore (OJB) and the Baltimore Action Legal Team (BALT), two local organizations that support community-centered efforts to fix the criminal-justice system. Among their other shared goals, both organizations hope to improve the transparency of Baltimore’s criminal legal process and help the public better understand how that process works.

To further these goals, OJB and BALT have obtained audio recordings of certain Baltimore City Circuit Court proceedings from the Court Reporter’s office. The organizations intend to publish some of these recordings on their websites, play them at meetings and community events (such as know-your-rights trainings), share them on social media, and potentially include them in podcasts. Both organizations understand, however, that these actions may, in the Court’s view, run afoul of § 1-201 of the Maryland Code of Criminal Procedure, which prohibits “broadcast[ing] any criminal matter, including a trial, hearing, motion, or argument, that is held in trial court.”

We believe that it would be unlawful to enforce § 1-201 against OJB or BALT for using audio recordings of prior court proceedings in their efforts to educate the public about Baltimore’s criminal legal system. The recordings accurately depict what occurred during public court proceedings, and the organizations obtained them lawfully under Rule 16-504(h)(1) of the Maryland Rules. Accordingly, “state officials may not constitutionally punish publication of [the recordings] absent a need to further a state interest of the highest order.” *Florida Star v. B.J.F.*, 491 U.S. 524, 533 (1989) (citation omitted); *see also Bartnicki v. Vopper*, 532 U.S. 514, 527-28 (2001) (“As a general matter, ‘state action to punish the publication of truthful information seldom can satisfy constitutional standards.’” (citation omitted)).

We do not believe that the Court can identify a “state interest of the highest order” to justify § 1-201’s blanket ban on “broadcast[ing]” all lawfully obtained audio recordings of public court proceedings. For that reason, we believe that OJB and BALT enjoy a First Amendment right to use such recordings in their public-education efforts. Still, as a matter of courtesy, and out of respect for this Court, OJB and BALT wish to give the Court an opportunity to identify any “state interest[s] of the highest order” that might justify restrictions on the organizations’ public-education efforts. If you believe that the organizations’ proposed use of recordings obtained under Rule 16-504(h)(1) would cause any concrete harm to the Court or anyone else, please identify those harms and the reasons why you believe that those harms would result. OJB and BALT will consider any information you provide in response to this letter in deciding whether and how to use any particular recording. If it would aid your assessment, the organizations are willing to identify specific recordings that they intend to use in the near future.

Finally, OJB and BALT seek clarification on the scope of § 1-201’s prohibition on “broadcast[ing] any criminal matter.” Specifically, they seek to know whether the provision would cover (1) posting a Circuit Court recording on a public website; (2) copying a Circuit Court recording onto a duplicate compact disc; (3) playing a Circuit Court recording at a public event, such as a know-your-rights training or community meeting; (4) playing a Circuit Court recording at a private meeting; or (5) sharing a Circuit Court recording over social media. To the extent the Court construes § 1-201 to cover any of these activities, OJB and BALT invite the Court to explain how § 1-201’s blanket prohibition on those activities comports with the First Amendment.

Thank you very much for your attention to this matter. Please respond to this letter within two weeks so that we can advise our clients accordingly. And do not hesitate to contact us if you would like to discuss anything in the meantime.

Sincerely,



Nicolas Riley & Daniel Rice

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CC: Marilyn Bentley, Clerk of Court  
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