



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

April 9, 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 Amelia McDonell-Parry, a local journalist who covers criminal-justice issues. Ms. McDonell-Parry has nearly twenty years of experience as a writer, reporter, and editor, most recently at *Rolling Stone*. In 2017, she co-hosted a series for the investigative-reporting podcast, *Undisclosed*, which examined the death of Freddie Gray. She is currently developing another podcast series for *Undisclosed* about Keith Davis, Jr., who has been imprisoned on attempted-robbery and murder charges since 2015, and whose prosecution has generated considerable public interest.

In the course of her research on the *Davis* case, Ms. McDonell-Parry obtained from the Court Reporter's office audio recordings of several Circuit Court proceedings—all of which were open to the public. She intends to use certain excerpts of these recordings on her upcoming podcast series. She understands, however, that her use of these recordings 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 Ms. McDonell-Parry or *Undisclosed* for including audio recordings of prior court proceedings on their podcast. The recordings accurately depict what occurred during public court proceedings, and Ms. McDonell-Parry 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)).

For these reasons, Ms. McDonell-Parry and *Undisclosed* enjoy a First Amendment right to use these lawfully acquired recordings on their upcoming podcast. Still, as a matter of courtesy, and out of respect for this Court, they are willing to identify the specific audio recordings Ms. McDonell-Parry intends to use so that the Court has an opportunity to identify any “state interest[s] of the highest order” that might justify the suppression of her reporting. To that end, we have attached an Addendum identifying the specific recordings Ms. McDonell-Parry intends to use on the upcoming podcast series.<sup>1</sup> If you believe that her use of any of these recordings would cause some concrete harm to the Court or anyone else, please identify the specific recordings of concern, the specific harms that you believe would result, and the reasons for your belief that those harms would result. Ms. McDonell-Parry will consider any information you provide in response to this letter in deciding whether or not to include any particular excerpt on the podcast.

Finally, we understand that the Court has never previously imposed contempt sanctions on any person for violating § 1-201, even though the Court has publicly considered doing so on multiple occasions. If the Court intends to depart from its past practice, we ask that you identify whether any sanctions the Court would pursue would be civil or criminal in nature.

Thank you very much for your attention to this matter. Please do not hesitate to contact us if you would like to discuss anything.

Sincerely,

Nicolas Riley & Daniel Rice

INSTITUTE FOR CONSTITUTIONAL ADVOCACY & PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER  
600 New Jersey Ave. NW  
Washington, DC 20001  
reachICAP@georgetown.edu  
202-662-9042

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<sup>1</sup> Although Ms. McDonell-Parry has not yet determined whether she will use every recording listed in the attached Addendum, she will not use any recordings from past proceedings that do not appear on this list.

CC: Marilyn Bentley, Clerk of Court  
Trish Trikeriotis, Court Reporter