



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 Brandon Soderberg and Baynard Woods, two local journalists who cover criminal-justice issues in Baltimore. Among their other projects, Mr. Soderberg and Mr. Woods are currently working together on a book and a documentary film about the Baltimore Police Department's Gun Trace Task Force (GTTF).

In the course of their GTTF research, Mr. Soderberg and Mr. Woods have obtained audio and video recordings of certain Baltimore City Circuit Court proceedings from the Court Reporter's office. They intend to use some of these recordings in their documentary film and may seek to use the recordings in their other work, including, potentially, on websites or podcasts. Mr. Soderberg and Mr. Woods 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 Mr. Soderberg or Mr. Woods for their use of court recordings in their documentary filmmaking or other reporting efforts. The recordings accurately depict what occurred during public court proceedings, and Mr. Soderberg and Mr. Woods 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 recordings of public court proceedings. For that reason, we believe that Mr. Soderberg and Mr. Woods enjoy a First Amendment right to use such recordings in their filmmaking and reporting efforts. Still, as a matter of courtesy, and out of respect for this Court, Mr. Soderberg and Mr. Woods wish to give the Court an opportunity to identify any “state interest[s] of the highest order” that might justify restrictions on their reporting efforts. If you believe that their proposed use of any 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. Mr. Soderberg and Mr. Woods 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, Mr. Soderberg and Mr. Woods are willing to identify specific recordings that they intend to use in the near future.

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,

A handwritten signature in blue ink, appearing to read "Nicolas Riley & Daniel Rice".

Nicolas Riley & Daniel Rice

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