

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MERRY REED, et al.	:	
<i>Plaintiffs,</i>	:	CIVIL ACTION
	:	
v.	:	
	:	No. 19-3110
ARRAIGNMENT COURT MAGISTRATE	:	
JUDGE FRANCIS BERNARD, et al.,	:	
	:	Hon. Harvey Bartle, III
<i>Defendants</i>	:	

**Reply Brief to Plaintiff’s Brief in Opposition to Defendants  
Arraignment Court Magistrate Judges Francis Bernard, Sheila Bedford,  
Kevin Devlin, James O’Brien, Jane Rice, and Robert Stack  
and President Judge Patrick Dugan’s Motion for Summary Judgment**

Plaintiff’s Brief opposing Judicial Defendants’ summary judgment motion makes a few points that require a response. Plaintiff seeks make this case about anything but the sole issue here: whether the First Amendment requires courts to allow court attendees to make audio recordings. Plaintiff does not address the array of cases that hold there is no such right, but instead attempts to shift the focus to its alleged inability to obtain information about what goes on in arraignment court.<sup>1</sup>

Plaintiff spends pages discussing whether the additional information about bail and arraignments that Judicial Defendants and the state judiciary provide –

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<sup>1</sup> This is also a shift from Plaintiff’s stated purpose regarding the recordings: to “share those recordings with the broader public” including the “tone and tenor” and other “auditory aspects,” as well as to insert audio clips into its online reports. (Complaint ¶¶ 49, 50.)

information that goes above and beyond what the First Amendment requires here – is too difficult to understand or hidden behind a “bureaucratic gauntlet.”<sup>2</sup>

Plaintiff cites cases in its Brief where courts prevented the press from reporting on court proceedings and disseminating information. Yet those cases did not involve the question about whether there is a First Amendment right to make audio recordings. Plaintiff claims that Judicial Defendants urge “blanket restrictions on public access,” when the opposite is true.

Moreover, this is not a case about Plaintiff’s public access to documents: it is about Plaintiff’s right to attend and observe. Plaintiff can attend, has attended, and has reported on the proceedings. The public documents, dockets, and data reports about every arraignment are highlighted to show that Plaintiff can not only attend and report, but also has additional information to inform itself about what occurs in arraignment court. In other words, that the inability to make audio recordings does not “meaningfully interfere” with its ability to inform itself of the proceedings. *See Whiteland Woods, L.P. v. Township of W. Whiteland*, 193 F.3d 177, 183 (3d Cir. 1999).

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<sup>2</sup> Because this is an as-applied case, the question is whether Plaintiff can inform itself of the proceedings. Plaintiff is a sophisticated entity that “collects and analyzes” information, produces reports, communicates with “government actors,” and “educate[s] and engage[s]” with the public and government. (Joint Stipulation ¶¶ 2, 58-60.) Given Plaintiff’s recitation on how to obtain bulk data and its description of the documents in its Brief, it understands how to access and comprehend the available information about bail and arraignments.

The Court's attention should not be diverted by false flags. The simple question is whether Plaintiff has a First Amendment right to make audio recordings of court proceedings. The case law is unyielding: No.

Respectfully Submitted,

**s/Michael Daley**

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Stack and President Judge Patrick  
Dugan***

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Certificate of Service

The undersigned certifies that on *January 13, 2020*, he caused the foregoing *Reply Brief* to be served via CM/ECF to all counsel of record

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