



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

Senator James Carew Rosapepe
101 James Senate Office Building
11 Bladen St.
Annapolis, MD 21401
jim.rosapepe@senate.state.md.us

Delegate David Moon
101 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401
david.moon@house.state.md.gov

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Dear Senator Rosapepe, Delegate Moon, and Members of the General Assembly,

We are writing to urge you to support legislation that will be introduced this session in the Maryland General Assembly to expand public access to proceedings in state court.

We are attorneys with the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center. ICAP is a non-partisan institute that uses novel litigation tools, strategic policy development, and constitutional scholarship to vindicate individuals' constitutional rights, protect democratic processes, and defend the rule of law.

As part of its work, ICAP has successfully advanced the cause of criminal legal system reform, including by representing individuals who have been subjected to unfair fines and fees, harmed by cash bail systems, caught up in unconstitutional pretrial detention schemes, and victims of excessive force by law enforcement. It is our strong belief that public access to court proceedings is an indispensable component of ensuring that our criminal justice system adheres to our laws and Constitution.

Recently, ICAP represented journalists and community organizations in a successful lawsuit challenging Maryland's "Broadcast Ban," which prohibited members of the public from broadcasting official recordings of criminal proceedings that are made available to the public.¹ Just last month, a federal judge ruled in the plaintiffs' favor in *Soderberg v. Carrion*, and wrote that Maryland cannot punish

¹ Mem. Op., *Soderberg v. Carrion*, No. RDB-19-1559, 2022 U.S. Dist. LEXIS 222645 (D. Md. Dec. 9, 2022), available at <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/12/Soderberg-SJ-Opinion.pdf>.

the press for broadcasting “lawfully obtained, truthful information” that has already been disclosed to the public.²

In response to that ruling, which vindicated foundational First Amendment principles and ensured that criminal justice in Maryland would not be kept out of view of the broader public, the state judiciary attempted to reinstate the “Broadcast Ban” by rushing through a rule that would drastically cut off access to court recordings.³ Public outcry over this proposal led the judiciary to delay its decision on the rule,⁴ but it is clear that this temporary reprieve will not be enough to safeguard transparency in Maryland state courts.

Given this, we strongly urge the General Assembly to pass legislation to ensure widespread access to court proceedings. Public access to court proceedings is a critical bulwark against abusive and unconstitutional practices. Justice Felix Frankfurter wrote that “[o]ne of the demands of a democratic society is that the public should know what goes on in courts by being told by the press what happens there, to the end that the public may judge whether our system of criminal justice is fair and right.”⁵ Nearly 75 years later, Justice Frankfurter’s words could not be more salient. Our litigation to reform the criminal legal system relies on the efforts of those who are devoted to vigilant monitoring of what goes on in our nation’s courtrooms – including those in Maryland.

ICAP is currently co-counsel with the Civil Rights Corps in ongoing litigation, *Frazier v. Prince George’s County*, which alleges a harmful and unconstitutional pretrial detention system in Prince George’s County.⁶ The facts contained in the complaint would not have been revealed to the public had there not been virtual access to Zoom proceedings during the COVID-19 pandemic.⁷ Our work has been invaluable aided by organizations like Courtwatch PG, whose volunteers “observe bail hearings” to “document our county’s policies in action and to hold judicial actors accountable for injustice in the court system.”⁸

The fact that many court proceedings were first made available virtually during the pandemic does not negate the transformative, democratizing importance of allowing the public into the halls of justice. In fact, the pandemic has ushered in a new era of public access to courts. For example, the Judicial Conference of the United States recently agreed to expand its audio streaming project to include 35 federal courts that will post audio records of its proceedings online.⁹

² *Id.* at p. 1, citing *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 101 (1979).

³ *Transparency Advocates Decry Proposed Md. Rule on Court Audio Recordings*, Washington Post (Jan. 5, 2023), available at <https://www.washingtonpost.com/dc-md-va/2023/01/05/court-audio-recordings-maryland/>.

⁴ *Maryland Supreme Court Postpones Decision on Proposed Rule to Curtail Public Access to Criminal Case Recordings*, Baltimore Sun (Jan. 6, 2023), available at <https://www.baltimoresun.com/news/crime/bs-md-cr-proposed-court-audio-recording-restriction-meeting-20230106-k3vk6x3tarhhdhfhhecno3l264-story.html>.

⁵ *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 920 (1950).

⁶ Complaint, *Frazier v. Prince George’s County*, No. 22-cv-0178 (D. Md. July 19, 2019), available at https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/07/2022.07.19-Complaint_Redacted.pdf

⁷ See, e.g. Mae C. Quinn and Asha Burwell, *Justice System “More Accessible, Visible and Accountable” Because of Technology Used During COVID*, Baltimore Sun (May 28, 2021), available at <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0530-video-court-20210528-ioofd7bkfdlxmjs2v7xczyc4-story.html>.

⁸ *About Us*, Courtwatch PG, available at <https://courtwatchpg.com> (accessed Jan. 18, 2023).

⁹ *Judicial Conference Adopts Transparency Measures*, United States Courts, March 15, 2022, available at <https://www.uscourts.gov/news/2022/03/15/judicial-conference-adopts-transparency-measures>.

Marylanders deserve a criminal justice system that is transparent and open to scrutiny from the communities it is meant to serve. For these reasons, we ask the General Assembly to swiftly take up legislation that will allow remote access to proceedings in Maryland's courts.

Thank you for your consideration.

Sincerely,

Mary B. McCord
Executive Director
Institute for Constitutional Advocacy &
Protection
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
mbm7@georgetown.edu

Seth Wayne
Senior Counsel
Institute for Constitutional Advocacy &
Protection
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
sw1098@georgetown.edu