



July 31, 2015

VIA ELECTRONIC MAIL

Maryland Open Meetings Compliance Board
c/o Attorney General's Office
200 St. Paul Place
Baltimore, MD 21202
OpenGov@oag.state.md.us.

Dear Members of the Open Meeting Compliance Board:

This is a complaint being filed with the Open Meeting Compliance Board on behalf of the American Civil Liberties Union of Maryland, reporter Stephen Janis, and The Real News Network, a Baltimore-based non-profit news organization, concerning the Town of Pocomoke City's unlawful actions in excluding the media from its July 13, 2015 Town Council meeting.

The facts, as we understand them, are these:

On or about June 29, 2015, the Pocomoke City Mayor and Council voted to fire the Town's first African American Police Chief, Kelvin Sewell.¹ No explanation was given for the Town's action, and many in the community – both black and white – were upset. Concerns were raised that the Chief's termination might relate 1) to complaints of race discrimination that had been made to the Equal Employment Opportunity Commission by Sewell and two other African American Pocomoke police officers, and/or 2) to Sewell's reporting to the U.S. Department of Justice of irregularities in the Town's use of federal grant funding. Rallying in support of Chief Sewell, community members organized a protest movement, began circulating petitions, contacted the media, and came to City Hall by the hundreds for the July 13 Council meeting to demand answers from City officials. Numerous representatives of print and broadcast media from across the state also turned out to attend and report upon the Town Council meeting. Among the reporters present were Stephen Janis² and Taya Graham of The Real News Network.

¹The sole dissenter to Chief Sewell's termination was Councilwoman Diane Downing, currently the only African American member of the Council, who has been outspoken about saying she believes the action was unjustified. *See, e.g.,* Deneen L. Brown, "Justice Department scrutinizes firing of black police chief in Pocomoke City, Md." *Washington Post*, July 25, 2015.

² Mr. Janis is acquainted with Kelvin Sewell because, as you may be aware, the two co-authored a book, "Why Do We Kill? The Pathology of Murder in Baltimore," when Mr. Sewell was a Baltimore homicide detective.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 410
TAKOMA PARK, MD 20912
T/301-270-2258

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
COLEMAN BAZELON
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ANDREW FREEMAN
GENERAL COUNSEL

Given the number of people present for the meeting and the relatively small space available at Pocomoke's Town Hall, many of those who arrived later were not able to fit into the Council Chambers. The Real News team arrived early, however, and so should have been permitted to enter the Chambers and report upon the proceedings directly. However, Janis and Graham, along with numerous other representatives of the media were approached by police, and told that no media were allowed into the meeting, on directions of Mayor Morrison. Members of the press who were already in the room were directed to leave, and those seeking entrance were barred, even as members of the public were entering. Furthermore, police told Mr. Janis, broadcast journalists were not permitted to make audio or visual recordings even outside the Council chambers.

Exclusion of the Press from the June 13 Council Meeting was Unlawful

Meetings of a municipal government's legislative body are required to be open to the public under the Maryland Open Meetings Act (OPA), with limited exceptions, inapplicable here. See §§ 3-101 to 3-501, Gen. Prov. Art., Md. Ann. Code (Oct. 2014). The Pocomoke City Council is undeniably a public body under the OPA, and the Act defines "open session" to mean open to all, meaning both the public and the press. Not only is this true under the Open Meetings Act, it is true under the U.S. Constitution: The First Amendment guarantees that the press and the public enjoy equal access to government information and proceedings, including Town Council meetings, making it unconstitutional for the government to bar reporters from meetings open to the public at large. See, e.g., *WJW-TV, Inc. v. City of Cleveland*, 686 F.Supp. 177 (N.D. Ohio 1988) (City Council violated First Amendment by excluding media from Council meeting), *vacated as moot on appeal*, 878 F.2d 906 (6th Cir. 1989); *Westinghouse Broadcasting Co., Inc. v. Dukakis*, 409 F.Supp. 895 (D. Mass. 1976) (Boston City Council's exclusion from meetings of radio and television stations being operated by management during labor dispute violated the First Amendment).³

Surely, Pocomoke City officials should understand this.

³In considering a slightly different issue, where distinctions have been made among different media outlets, several courts have likewise determined that discriminatory access to public forums or to public information is generally violative of the First Amendment. See, e.g., *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir.1986) (district court could not grant one media entity access to discovery materials while excluding another); *American Broadcasting Companies v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir.1977) (ABC could not be excluded from post-election activities at campaign headquarters where other members of the press were granted access); *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C.Cir.1977) (where White House press facilities had been made publicly available as a source of information for reporters, the White House could not exclude a reporter arbitrarily or for less than compelling reasons); *United Teachers of Dade v. Stierheim*, 213 F.Supp.2d 1368, 1373-74 (S.D.Fl.2002) (teachers' union and editor of union newspaper could not be excluded from the press room reserved for members of the "general-circulation" media and relegated to a "separate but equal" media room); *Westinghouse Broadcasting Co., Inc. v. Dukakis*, 409 F.Supp. 895, 896 (D.Mass.1976) (public officials may not selectively exclude one news organization from public meetings and press conferences absent a compelling government interest); *Borreca v. Fasi*, 369 F.Supp. 906, 909-10 (D.Haw.1974) (enjoining mayor from excluding a certain reporter from general news conferences).

In explaining the need for the Open Meetings Act, the General Assembly stated, in the express language of the statute:

The ability of the public, its representatives, *and the media* to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.

§3-102(b)1) (emphasis added). If it was not clear enough from the language of the statute that Pocomoke City must legally open its Council meetings to the public and media alike, that rule was underscored in a decision issued by this Board more than 15 years ago. That case involved a challenge by the Maryland *Gazette* to an order of the Maryland Citizens Advisory Committee for Corrections Institutions restricting access to one of its meetings to members of the community surrounding a prison where two inmates had escaped, to the exclusion of the press. Comp. Bd. Op. No. 99-11 (Aug. 12, 1999). There, corrections officials reasoned at the time they closed their meeting that due to the “highly charged atmosphere” in the community following the escapes, closing the meeting to the media would help to ensure that both people in the community and corrections officials could “speak freely.” Upon consideration later, however, they recognized that “members of the press should have been admitted” to the meeting and apologized for the violation.

In considering the *Gazette’s* complaint, the OMCB noted that the language of the Act explicitly states that public meetings are to be open both to the public and the media, presupposing that “reporters, like other members of the public, are free to attend open meetings” in furtherance of First Amendment mandates. The Board explained:

This assumption reflects our country’s longstanding recognition that the press plays a vital role in ensuring public awareness of government activities. The First Amendment itself is proof that “the Constitution specifically selected the press . . . to play an important role in the discussion of government affairs.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966). Indeed, the public usually learns about the operations of government not through firsthand observation, but rather “chiefly through the print and electronic media.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980). Reporters have been identified by the Supreme Court as “surrogates for the public” and characterized as “playing a unique role as a check on government abuse.” *Id.* at 573; *Leathers v. Medlock*, 499 U.S. 439, 447 (1991).

Op. 99-11, at 2.

The same principles control here. Pocomoke City officials violated both the First Amendment and the Maryland Open Meetings Act in barring reporters from the July 13 meeting of the Mayor and City Council. We ask the Open Meetings Compliance Board to so rule, and to take action to ensure that in the future, Pocomoke City Council meetings are open to all.

Please let us know if you have any questions about this complaint. We appreciate your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A. Jeon". The signature is fluid and cursive, with a large initial "D" and a stylized "J" at the end.

Deborah A. Jeon
Legal Director

Cc: William Hudson, Esq.

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