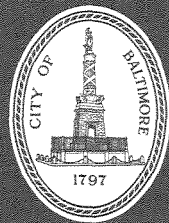


CITY OF BALTIMORE

MARTIN O'MALLEY, Mayor



DEPARTMENT OF LAW

RALPH S. TYLER, City Solicitor
101 City Hall
Baltimore, Maryland 21202

February 27, 2006

VIA E-FILING

Hon. Catherine C. Blake
U.S. District Court for the District of Maryland
101 West Lombard Street
Baltimore, Maryland 21201

Re: *Jones v. Murphy*,
Case No. CCB 05-cv-1287

Dear Judge Blake:

During the hearing on February 16, the Court indicated that it would consider materials from the ongoing state court litigation brought by a class of detainees at Central Booking alleging untimely presentment to a court commissioner. Attached to this letter are several of Judge Glynn's orders in that case: (1) the initial temporary restraining order providing for immediate release of any individual held longer than 24 hours without a showing of good cause by the State (April 25, 2005); (2) an extension of that TRO (May 9, 2005); (3) a further extension of that TRO (November 9, 2005); and (4) the opinion and order holding sub curia the City's motion to intervene in the case (September 29, 2005).

Thank you again for your consideration of this matter.

Respectfully submitted,

Joshua N. Auerbach
Assistant Solicitor
(410) 396-3940
joshua.auerbach@baltimorecity.gov



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CLERK OF COURT

IN THE CIRCUIT COURT FOR BALTIMORE CITY

RICHARD RODNEY, et al.
Petitioners

*

v.

Case No. 24-C-05004405

*

*

SUSAN MURPHY, WARDEN,
BALTIMORE CENTRAL BOOKING
AND INTAKE CENTER,
Respondent

*

*

* * * * *

TEMPORARY RESTRAINING ORDER

Having considered Petitioners' Motion for Temporary Restraining Order, the Respondent's response thereto, and the arguments of counsel, this Court finds that:

1. Members of the class of petitioners have been held in the respondent's custody for more than 24 hours after arrest without being taken before a judicial officer of the District Court as required by Maryland Rule 4-212.

2. The failure to comply with Rule 4-212's prompt presentment requirement has – and if not remedied, will continue to – cause immediate, substantial, and irreparable harm to members of the class of petitioners in that they will continue to be deprived of their liberty past the 24 hour limit imposed by Maryland law without a showing of probable cause or a pretrial release determination.

Accordingly, it is on April 25, 2005, at 6⁰⁰ p.m. (Time) hereby

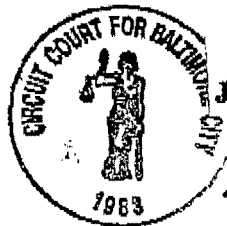
ORDERED that Respondent shall present each individual incarcerated in the Baltimore Central Booking and Intake Center to a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after the individual's arrest; and it is

FURTHER ORDERED that any individual held longer than 24 hours without being taken before a judicial officer of the District Court as required by Rule 4-212 shall be immediately released from BCBIC on any charges for which the individual was denied prompt presentment, unless Respondent files a motion demonstrating good cause for noncompliance with this Order before the 24 hour period elapses if reasonably possible and in no event later than 10:00 a.m. on the next day that this Court is in session; and it is

FURTHER ORDERED that a party or any other person affected by the Order may apply for a modification or dissolution of this Order after two days' notice to counsel for Petitioners; and it is

FURTHER ORDERED that this Temporary Restraining Order shall expire on May 6, 2005, at 6:00 p.m.

JOHN M. GLYNN, JUDGE



Judge's Signature on Original Document only

Circuit Court for Baltimore City

IN THE CIRCUIT COURT FOR BALITMORE CITY

RICHARD RODNEY, et al.
Petitioners

v.

SUSAN MURPHY, WARDEN
BALTIMORE CENTRAL BOOKING
AND INTAKE CENTER
Respondent

Case No. 24-C-05004405

* * * * *

EXTENSION OF TEMPORARY RESTRAINING ORDER AND
POSTPONEMENT OF FURTHER HEARINGS

Whereas the parties in this matter have entered into an agreement for continuation of the Temporary Restraining Order issued by this Honorable Court on April 25, 2005 and a continuation of any hearing on the Writ of Mandamus and/or Prohibition, this Court finds that:

1. Members of the class of petitioners have been held in the respondent's custody for more than 24 hours after arrest without being taken before a judicial officer of the District Court as required by Maryland Rule 4-212.
2. The failure to comply with Rule 4-212's prompt presentment requirement has - and if not permanently remedied, will continue to- cause immediate, substantial, and irreparable harm to members of the class of petitioners in that they will continue to be deprived of their liberty past the 24 hour limit

imposed by Maryland law without a showing of probable cause or a pretrial release determination; and

3. That an extension of this Temporary Restraining Order is necessary for the Respondent to put into place permanent solutions to the issues of the prompt charging of arrestees, the prompt booking and identification of arrestees, as well as the prompt presentment of arrestees to a judicial officer for an initial appearance.

Accordingly, it is on May 9, 2005 at 4 p.m. (Time) hereby

ORDERED that Respondent shall present each individual incarcerated in Baltimore Central Booking and Intake Center (BCBIC) to a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after the individual's arrest; and it is

FURTHER ORDERED that any individual held longer than 24 hours without being taken before a judicial officer of the District Court as required by Rule 4-212 shall be immediately released from BCBIC on any charges for which the individual was denied prompt presentment, unless Respondent files a motion demonstrating good cause for non-compliance with this Order before the 24 hour period elapses if reasonably possible and in no event later than 10:00 a.m. on the next day that this Court is in session; and it is

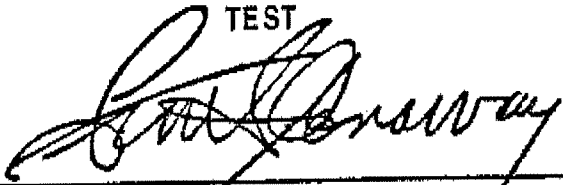
FURTHER ORDERED that a party or any other person affected by the Order may apply for a modification or dissolution of this Order after two days' notice to counsel for Petitioners, and at any time prior to the expiration of this order; and it is

FURTHER ORDERED that this Temporary Restraining Order shall expire November 9, 2005, 4 p.m. (Time); and it is

FURTHER ORDERED that the hearing on Petitioner's Petition for Writ of Mandamus and/or Prohibition is postponed until November 9, 2005.

TRUE COPY

TEST



FRANK M. CONAWAY, CLERK

JOHN M. GLYNN, JUDGE

Judge's Signature on Original Document only

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

RICHARD RODNEY, et al.,

Petitioners

v.

Case No. 24-C-05004405

MITCHELL FRANKS, WARDEN,
BALTIMORE CENTRAL BOOKING
AND INTAKE CENTER,

Respondent

* * * * *

ORDER

Upon the consent of the parties, it is this 9th day of November, 2005, hereby

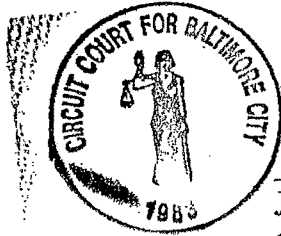
ORDERED:

(1) that the Temporary Restraining Order (TRO) previously issued in the captioned case is extended until February 9, 2006;

(2) that Respondent BCBIC promptly notify this Court and counsel for Petitioners and *amici curiae* when it releases someone pursuant to the TRO, files a motion requesting an exception, or detains someone for more than twenty-four hours without presenting him or her to a judicial officer; and

(3) that, for each such person, BCBIC promptly provide to counsel for Petitioners and *amici curiae* a written explanation for the delay and the following documents from ABS, to the extent they are available: Arrest Information, Booking Information,

Commissioner Information, Offender Delays, Offender Movement, Offender Process Information, Release Information, Statement of Charges, and Statement of Probable Cause.



John M. Glynn, Judge
Baltimore City Circuit Court
** Signature on Original Document **

k/a/05

FRANK M. CONAWAY, CLERK *6/10/05*



RICHARD RODNEY, et al. * IN THE
v. * CIRCUIT COURT
MITCHELL FRANKS, * FOR
WARDEN, CBIC * BALTIMORE CITY
* Case No. 24-C-05-004405

* * * * *

OPINION

Before discussing the pending *Motion to Intervene*, it is important to review the unusual history and even more unusual posture of this case.

I. Case History

This case arises over the concern of the Office of the Public Defender (OPD) that a large number of their clients were being held at the Central Booking and Intake Center (CBIC) without seeing a Court Commissioner within twenty-four hours of their arrest (as required under Md. Rule 4-212). To address this concern, the OPD filed a *Petition for Habeas Corpus* on behalf of each client whom they believed was being wrongfully detained. Invariably, the vast majority of Petitioners had seen a Commissioner or been released from custody before a hearing on their petition could be held—leaving the matter moot, and making resolution of the larger question of the legality of CBIC's practices unlitigated. Hence on the 25th day of April 2005, this Court issued an order granting Class Certification to "all indigent persons arrested and detained at the Baltimore Central Booking and Intake Center, and waiting to see a judicial officer pursuant to Md. Rule 4-212, presently and in the future." *Order, April 25, 2005* (Doc. No. 4001).

Such an order had been requested by the OPD on behalf of 53 named Petitioners through a single pleading simply entitled: "*Petition for Writ of Mandamus, Prohibition or other Appropriate Relief; Motion to Shorten Time to Respond; Motion for Temporary Restraining Order; Motion for Class Certification; and Motion for Immediate Hearing.*"

Pursuant to that same pleading, and on the same date, this Court issued a *Temporary Restraining Order* requiring that the Defendant either present any persons in custody at CBIC to a Commissioner within 24 hours after their arrest (pursuant to Rules 4-212), or release from custody any persons that have not been presented in a timely fashion. Currently, the *Temporary Restraining Order* is set to expire on the 9th of November 2005, the same date on which a hearing on the pending *Petition for Writ of Mandamus* is scheduled.

II. The City's Motion to Intervene

The Mayor and City Council of Baltimore now come before the Court to intervene in the above action as a Plaintiff pursuant to Rules 2-214(a) and (b).

When moving for intervention as of right, a party must show: (1) the application for intervention is timely; (2) the applicant has an interest in the subject matter of the action; (3) the disposition of the action would at least potentially impair the applicant's ability to protect its interest; and (4) the applicant's interest must be inadequately represented by existing parties. Md. Rule 2-214(a). Alternatively, a party may move for permissive intervention where an applicant's claim or defense has a question of law or fact in common with the action. Md. Rule 2-214(b)(1). Government intervention is permissive when the validity of a statute or regulation is drawn in question, or where a party to the action relies for a ground of claim or defense on such law. Md. Rule 2-214(b)(2). In exercising its discretion whether to grant permissive intervention, this Court must consider whether the intervention "will unduly delay or prejudice the adjudication of the rights of the original parties." Md. Rule 2-214(b)(3).

The City asserts that the systemic failures at CBIC underlying this case pose a substantial risk to the health, safety, and welfare of the citizens of Baltimore, as well as directly impacting the work of the Police Department. It further argues that as a result it has an interest in such failures, and that its ability to protect its interests is compromised by being excluded from this case. As the City's *Motion to Intervene* was timely filed (the *Petition for Writ of Mandamus* has yet to be ruled on, or even heard), this Court must decide the *Motion* on the issue of the City's interest in the underlying the case.

III. Discussion and Analysis

Due to both the uniqueness of CBIC as an institution, as well as the confluence of civil and criminal issues, the case *sub judice* is essentially one of first impression in Maryland.

The decision on intervention is affected by one question, simple and direct: What is this case about? Only when this question is answered can the Court properly rule on the City's *Motion to Intervene*. The OPD represents all of the Petitioners; individuals, who by class definition, are all charged with a crime. The interests of these individuals are the OPD's sole interest, and that interest is satisfied by their release or prompt presentment before a commissioner as required by law. The Respondent has more complex responsibilities, but has generally complied with the Court's *Temporary Restraining Order* by releasing certain defendants, while working outside the purview of the Court to resolve its broader problems. Never the less, the parties have involved the Court, perhaps inevitably, in the management of the CBIC, since it is the problems at that institution and which caused this case to be filed. While the claims made by the Petitioners could be resolved by a plan which assures the limited relief requested by the Petitioners, the lawful, efficient, and humane management of the CBIC presents much broader legal and public policy concerns. This Court shares these concerns, but has questioned on the record in this case, whether broader issues concerning management of the CBIC are amenable to judicial action, or has even been presented to this Court by the pleadings of the parties now before the Court.

The request by the City to enter this case emphasizes the need to answer promptly and correctly questions about the scope of the case. The City raises questions about how performance of the CBIC and Orders of this Court might affect the health safety and well-being of its citizens. These questions are legitimate and important. No city worthy of the name can prosper without both protecting its citizens and respecting their rights. Any city, which fails on either count, is doomed. However, these concerns are much broader than those raised by the Petitioners. Indeed, the City raises serious questions of interest and concern to all parties and persons interested in the criminal justice system, most of whom are not parties to this case. Even were this Court to give a narrow construction to these concerns, a number of troubling issues would require consideration before any

meaningful resolution could be achieved. This Court has no doubt that all the parties wish nothing more than meaningful resolution to these concerns.

These concerns go beyond what, on its face, this case seems to be about: presentment of an arrestee to a court commissioner within 24 hours of arrest. Some of these are the same systemic problems that caused the Defendant's failure to comply with the law in the first instance. The recently filed "Plan for the Central Booking and Intake Facility" ("the Plan") touches on all aspects of management, since only a holistic approach is likely to produce an effective, lasting solution. A review of the Plan calls attention to a number of issues needing improvement. These would include: (1) improving the efficiency of the system in identifying and charging those delivered to its care and custody by the police; (2) creating a shared and efficient statewide criminal information system to eliminate errors and assure that the correct people are charged correctly and the remainder are freed; (3) improving the efficiency and accuracy of statewide warrant checks and the prompt service of warrants; (4) developing an effective mechanism for prompt and impartial handling of any State requests for relief from the 24 hour presentment requirement;¹ and (5) improving the credibility of the criminal justice system, in part through eliminating the consequences imposed by the arrest policies of the police and the declination for prosecution of a large percent of all cases and persons charged. This Court has no doubt that there are numerous other important issues that could be raised, all of which are only limited by the imagination and motivation of the parties and their counsel.

Many of these issues are complicated by the fact that the CBIC is run by the State, while the City controls the day-to-day management of the police. When CBIC was taken over by the State and re-opened in 1995 under the management of the Division of Pretrial Detention and Services ("DPDS"), the City became the only political subdivision in the State not to oversee its own local correctional facility. Thus, the City Police deliver the accused to a state run facility. These political entities may well not share the same goals, or see the need to account for the impact of their policy decisions on each other. The

¹ This is the issue raised by the Petitioner in the case *sub judice*. The Court suggested that the court Commissioners who work in CBIC and are allegedly the independent judicial officers who already decide issues of bail and release might be uniquely suited to handling this responsibility. They have declined this duty.

City is in effect free to respond to the demand of the citizenry to arrest in great numbers its least productive, most annoying citizens, and ignore whether those arrests lead to overcrowding, delays in booking at CBIC, or damage the credibility of the justice system as a whole.

Nonetheless, as important and disturbing as these and other issues may be, the Court has serious qualms about the legality or appropriateness of judicial action in certain of these areas. It is easy for this Court to order the State of Maryland to obey the Rules promulgated by the highest Court of this State. This it has done. However, this Court cannot intelligently move forward with this case until it is confident of the extent of its powers and the existence of sound and lawful reasons to exercise them. The Court noted this concern when it asked the parties at an earlier hearing, to assume that the CBIC was simply incapable of lawfully processing those souls delivered through its portals. In such a dismal case, the Court inquired what exactly should it, and could it do; or was the consequence of bureaucratic blundering and ineptitude in the hands of the citizens who might, if they wished, punish incompetence at the polls. While the City has touched on this issue the Parties thus far have not elaborated upon it. This all depends on answer to the question previously noted: What is this case about? Is it merely the delay in presenting the accused to a Commissioner? Or is it about the difficulty various public agencies have in effectively operating and cooperating with each other?

IV. CONCLUSION

It is of the opinion of this Court that the City be named as an *amicus curiae* specifically for the purpose of assisting the Court in resolving the questions raised herein.² The Court shall reserve ruling further on the City's *Motion to Intervene* and other issues mentioned in this opinion until the parties and City submit to this Court their position as to the questions raised herein.

By entering the City as an *amicus curiae* it will be able to present its concerns and recommendations for the Court's consideration. The Third Circuit has ruled that "friends of the court...may be advisable where third parties can contribute to the court's

² E.g., what is the chief issue in this case, what can this Court do, what is the City's interest in such an issue, does such an interest involve the city or other potential parties, in what role (as plaintiff/petitioner, or as defendant?), etc.

understanding of the consequences of the settlement proposed by the parties." *Harris v Parnsley*, 820 F.2d at 503 (3d Cir. 1987). Clearly, the consequences of this Court's previous ruling, exemplified by the possibility of the release of individuals the Police Department may be required to re-arrest, has had an affect on the City. As this case progresses the Court can foresee additional consequences that may affect the City as partners of the criminal justice system. Additionally, as noted earlier in this opinion this Court applauds the recommendations made by the City, and therefore it should be given a voice in this case.

THUS DONE AND SIGNED, this 29 day of September 2005, Baltimore City,
Maryland.

John M. Glynn, Judge
Baltimore City Circuit Court
** Signature on Original Document **

RICHARD RODNEY, et al.	*	IN THE
v.	*	CIRCUIT COURT
MITCHELL FRANKS,	*	FOR
WARDEN, CBIC	*	BALTIMORE CITY
	*	Case No. 24-C-05-004405

* * * * *

ORDER

UPON CONSIDERATION of the case file and pleadings in the above captioned matter, following a hearing in open court, and for the reasons stated in the preceding *Opinion*,

IT IS HEREBY ORDERED that the City's *Motion to Intervene* be held SUB CURIA pending the filing of supplementary pleadings by itself and the named parties in the above captioned matter, and

IT IS FURTHER ORDERED that pending such pleadings and a ruling on the *Motion*, the City be permitted to participate in the above captioned matter as an *amicus curiae*.

THUS DONE AND SIGNED, this *29th* day of September 2005, Baltimore City, Maryland.

<p>John M. Glynn, Judge Baltimore City Circuit Court ** Signature on Original Document **</p>
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