

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 25<sup>th</sup> 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 9<sup>th</sup> 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 presentation 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;<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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

---

<sup>2</sup> 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 603 (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 applands 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 \*\*