

2010 WL 7361161 (Md.Cir.Ct.) (Trial Order)  
Circuit Court of Maryland.  
Baltimore City

Quinton RICHMOND, et al, Plaintiff,  
v.  
DISTRICT COURT OF MARYLAND, et al, Defendant.

No. 24-C-06-009911.  
September 30, 2010.

**Order**

Alfred Nance, Judge.

Upon consideration of District Court Defendants' Motion to Dismiss (64), which the Court takes as a Motion for Summary Judgment, Plaintiffs' Motion for Summary Judgment (71), responses thereto, review of the Court file, memoranda and arguments of the parties, it is this 30<sup>TH</sup> day of September, 2010 by the Circuit Court for Baltimore City,

ORDERED, that Defendant's Motion for Summary Judgment is hereby DENIED. And,

ORDERED, that Plaintiffs' Motion for Summary Judgment is hereby GRANTED. And, further

ORDERED, that the decision of this court is hereby STAYED, giving an opportunity for the filing of any appeals and decisions thereon.

<<signature>>

JUDGE ALFRED NANCE

Circuit Court for Baltimore City

cc: Michael Schatzow, Esq.

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***MEMORANDUM AND OPINION***

*NANCE, J.*

***PROCEDURAL HISTORY***

This case comes before this Court on remand from the Court of Appeals. On November 13, 2006, while each remained in detention at the Central Booking facility, Plaintiffs filed the present class action against the District Court Defendants seeking declaratory and injunctive relief arising from the District Court Defendants' failure to provide them with appointed counsel at their initial bail hearings. On February 2, 2007, Plaintiffs filed an Amended Complaint.

On February 13, 2007, the District Court Defendants filed a Motion to Dismiss the Amended Complaint for failure to state a claim. In their opposition, Plaintiffs argued that the Motion to Dismiss should be treated as a Motion for Summary Judgment and, consequently, filed a Cross-Motion for Judgment on Count I (violation of the Public Defender Act), Count IV (violation of the Fourteenth Amendment) and Count V (Violation of Article 24 of the Declaration of Rights). On June 12, 2007, Judge Berger denied the District Court Defendant's Motion to Dismiss the Amended Complaint. The District Court Defendants in turn filed an opposition to Plaintiff's Motion for Summary Judgment and simultaneously filed a cross motion for summary judgment on all five counts asserted by Plaintiffs. Following arguments on the pending motions, this Court granted the District Court Defendant's Motion for Summary Judgment on all counts.

On March 5, 2010, the Court of Appeals issued a *per curiam* order that vacated the judgment entered by this Court in favor of the District Court Defendants; directed this Court to dismiss the action, if Plaintiffs did not amend the Complaint to add the Maryland Public Defender as a party to the case by April 6, 2010 and to conditionally deny Plaintiffs' unopposed motion for class certification.<sup>1</sup> On April 5, 2010, Plaintiffs filed a Second Amended Complaint in which they added the Public Defender as a defendant to the action as directed by the Court of Appeals.

On June 28, 2010, the Public Defender filed a Response to the Plaintiffs' and District court Defendants' previously filed Motions for Summary Judgment. On June 29, 2010, the District Court Defendants moved to dismiss the Second Amended Complaint, arguing that the Public Defender is a necessary party under Md. Rule 2-211 and the Complaint failed to assert a justiciable claim against it, and that the Second Amended Complaint failed to satisfy the mandate of the Court of appeals.

On July 19, 2010, the parties were before this Court to argue District Court Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint.<sup>2</sup> On July 26, 2010, Plaintiff's filed a Third Amended Complaint and on August 3, 2010 filed a Motion for Summary Judgment. Plaintiffs seek summary judgment against all Defendants as to all counts in Plaintiffs' Third Amended Complaint: Count I (violation of the Maryland Public Defender Act); Count II (violation of the right to counsel under the Sixth Amendment of the U.S. Constitution); Count III (violation of the right to counsel under Article 21 of the Maryland Declaration of Rights); Count IV (violation of the Fourteenth Amendment to the U.S. Constitution); and Count V (violation of Article 24 to the Maryland Declaration of Rights).

## ***PARTIES***

### ***Plaintiffs***

Plaintiffs, Quinton Richmond, Jerome Jett, Glenn Callaway, Myron Singleton, Timothy Wright, Keith Wilds, Michael LaGrasse, Ralph Steele, Laura Baker, Erich Lewis and Nathaniel Shivers, allege that they are indigent individuals who were arrested and detained at the Baltimore City Central Booking facility. They were each brought before a Commissioner for an initial bail hearing while being held at the Central Booking facility and each specifically requested to be represented by appointed counsel at that hearing. Plaintiffs allege that they were denied such representation by the Commissioner in violation of their statutory constitutional rights. In each case, the Commissioner proceeded to conduct the initial bail hearing for the purpose of determining the named Plaintiff's eligibility for pretrial release without appointed counsel present.

Plaintiffs seek relief on behalf of themselves and all indigent persons<sup>3</sup> who have been denied their statutory and/or constitutional right to counsel at their initial appearance before the Commissioner for their initial bail hearing. (Complaint 1).

### ***The Office of the Public Defender and the Public Defender Act***

The Office of the Public Defender is part of the Executive Branch of State government, with the Public Defender as its head. Md. Crim. Proc. Code Ann. §§ 16-202-203.<sup>4</sup> The primary duty of the Public Defender is to provide legal representation for indigent individuals in accordance with the Public Defender Act, and such representation may be provided by the Public Defender, or subject to the supervision of the Public Defender, by the deputy public defender, district public defenders, assistant public defenders, or panel attorneys. *Id.* at §§ 16-207(a) and 204(a). The Office of the Public Defender currently provides representation for indigent<sup>5</sup> individuals under this title in: (i) a criminal or juvenile proceeding in which a defendant or party is alleged to have committed a serious offense; (ii) a criminal or juvenile proceeding in which an attorney is constitutionally required to be present prior to presentment being made before a commissioner or judge; (iii) a post conviction proceeding for which the defendant has a right to an attorney under Title 7 of this article; (iv) any other proceeding in which confinement under a judicial commitment of an individual in a public or private institution may result; (v) a proceeding involving children in need of assistance under § 3-813 of the Courts Article; or (vi) a family law proceeding under Title 5, Subtitle 3, Part II or Part III of the Family Law Article, including: for a parent, a hearing in connection with guardianship or adoption; a hearing under § 5-326 of the Family Law Article for which the parent has not waived the right to notice; and an appeal. Public defenders also provide representation for indigent individuals at all bail review hearings before District Court judges in Baltimore City, Montgomery County and Harford County. *Id.* at § 16-204(b). Further, the Public Defender Act provides that representation shall be provided to an indigent individual in all stages, including, in criminal

proceedings, custody, interrogation, preliminary hearing, arraignment, trial, and appeal. *Id.*

Currently, Public defenders do not represent indigent individuals in initial bail hearings before Commissioners.

### ***District Court Defendants***

Under Maryland's bail and pre-trial release system, following an arrest, criminal suspects are brought before a Commissioner for an initial appearance and an initial bail hearing pursuant to Md. Rule 4-213. The governing statute, CJP § 2-607, provides that Commissioners need not be lawyers and indeed need not have any minimum qualifications for service, such as a college degree, high school diploma, or criminal justice background; however, Commissioners shall be adult residents of the counties in which they serve. CJP § 2-607.

At the bail hearing, the Commissioner informs the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. Md. Rule 4-213. Additionally, the Commissioner advises arrested persons of their constitutional rights, set bond or commit persons to jail in default of bond or releases them on personal recognizance if circumstances warrant, and conduct investigations and inquiries into the circumstances of any matter presented to the Commissioner in order to determine if probable cause exists for the issuance of a charging document, warrant, or criminal summons and, in general, perform all the functions of committing magistrates. CJP § 2-607. Additionally, the Commissioner advises the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel Md. Rule 4-213.

### ***ISSUE***

The issue presented to this Court is whether an initial bail hearing before a Commissioner is a critical stage in a criminal proceeding entitling representation by an attorney?

### ***DISCUSSION***

Plaintiffs contend that the Court should grant summary judgment in their favor and declare that Plaintiffs enjoy a constitutional right to representation by counsel at initial bail hearings because the initial bail proceedings are a critical stage of a criminal proceeding.

Any party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Md. Rule 2-501. *See Syme v. Marks Rentals, Inc.*, 70 Md. App. 235, 520 A.2d 1110 (1987)(when ruling on motion for summary judgment, trial court must address two separate issues: whether the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact and whether the movant is entitled to judgment as a matter of law). Factual disputes that are irrelevant or unnecessary will not be counted, and when a movant has carried its burden, the party opposing summary judgment must do more than simply show there is some metaphysical doubt as to the material facts. *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 603 A.2d 1357 (1992).

To defeat a motion for summary judgment, the respondent must show that there is a genuine dispute as to a material fact; an affidavit or other sworn statement of fact to the effect that the allegation is true to the best of one's knowledge and belief is not sufficient. *Lowman v. Consolidated Rail Corp.*, 68 Md. App. 64, 509 A.2d 1239 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 603 A.2d 1357 (1992). A material fact must be one the resolution of which will somehow affect the outcome of the case. *King v. Bankerd*, 303 Md. 98, 492 A.2d 608 (1985).

In resolving the issue of whether a material fact remains in dispute, the court must accord great deference to the opposing party against whom the motion for summary judgment has been filed. *Syme v. Marks Rentals, Inc.*, 70 Md. App. 235, 520 A.2d 1110 (1987). In Maryland, when there is a genuine issue of material fact, the evidence, or the inferences deducible therefrom, is sufficient to permit the trier of fact to arrive at more than one conclusion; consequently, the moving party is not entitled to judgment as a matter of law. *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 836 A.2d 655 (2003).

### ***Initial Bail Hearing***

Plaintiffs argue that the initial bail hearing is an adversarial proceeding, and as such, is a critical stage of a criminal case. Specifically, Plaintiffs argue that if the proceeding pits the defendant in an adversarial confrontation with agents of the State

or otherwise presents significant legal problems or risks the loss of important rights, a critical stage exists.

Defendants contend that the initial bail hearing is an informal procedure for the determination of probable cause and advises the defendant of his rights and sets temporary conditions of release. Defendants argue that these duties do not transform the initial bail hearing into a critical stage.

This case was originally before this Court on October 24, 2007. At that time, this Court, citing *Fenner v. State*, 381 Md. 1 (2004) as the prevailing law, granted summary judgment in favor of Defendants.

In *Fenner*, the defendant challenged the decision of the Court of Special Appeals which affirmed a trial court's ruling denying Petitioner's motion to suppress inculpatory statements made during a bail hearing where he was not represented by counsel. *Id.* The bail review hearing took place one day after the petitioner's arrest and followed his appearance before a Commissioner for an initial hearing. Ultimately, the defendant was convicted of distribution of cocaine and conspiracy to distribute cocaine. The Court of Appeals held that a bail review hearing conducted by a district court judge pursuant to Md. Rule 4-216 for the purpose of setting the appropriate amount of bail is not a critical stage of a criminal proceeding requiring the appointment of counsel under the Sixth Amendment. *Id.*

Since the initiation of this case, the Supreme Court has ruled in *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191, 128 S. Ct. 2578 (2008). In *Rothgery*, officers brought Petitioner before a magistrate, as required by state law, for a so-called "article 15.17 hearing," at which the Fourth Amendment probable-cause determination was made, bail was set, and Petitioner was formally apprised of the accusation against him. *Id.* at 370. After the hearing, the magistrate committed Petitioner to jail, and he was released after posting a surety bond. Petitioner had no money for a lawyer and made several unheeded oral and written requests for appointed counsel. He was subsequently indicted and rearrested, his bail was increased, and he was jailed when he could not post the bail. *Id.* Petitioner sued Respondent pursuant to 42 U.S.C.S. § 1983, alleging that his Sixth Amendment right to counsel was violated by the county's unwritten policy of denying appointed counsel to indigent defendants out on bond until at least the entry of an information or indictment. *Id.* The Supreme Court held that a criminal defendant's initial appearance before a magistrate, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. *Id.*

This Court finds the hearing before the magistrate in *Rothgery* to be similar to the initial bail hearing before the Commissioner in the present case. In the instant matter, Plaintiffs allege that they are indigent individuals who were arrested and detained at the Baltimore City Central Booking facility; brought before a Commissioner for an initial bail hearing while being held at the Central Booking facility; specifically requested to be represented by appointed counsel at that hearing; and were denied such representation. In the case of each Plaintiff, the Commissioner proceeded to conduct the initial bail hearing for the purpose of determining Plaintiffs' eligibility for pretrial release without an appointed counsel represented. Plaintiffs, as in *Rothgery*, bring this action against Defendants claiming that denying appointed counsel to Plaintiffs is a violation of their constitutional right to counsel.

During the initial bail hearing defendants appear before a Commissioner, are informed of each offense with which he or she is charged, informed of the allowable penalties, has a bond set or is committed to jail. This commitment to prosecute and the accusation prompt restrictions on the defendant's liberty which is sufficient to establish a critical stage.<sup>6</sup>

Many courts have held that an event carrying a risk of incrimination is recognized as a critical stage.<sup>7</sup> The initial bail hearing in the present case requires the Commissioner's careful consideration of a host of facts about the defendant and the crimes charged. Ultimately, the initial bail hearing determines whether a defendant will be allowed to retain, or forced to surrender, his liberty during the pendency of his criminal case. This proceeding is not held in a courtroom and is never transcribed or recorded, making it impossible to review what the Commissioner or arrestee said to determine the basis for the Commissioner's ruling. During the initial bail review, Commissioners ask a series of questions concerning residence, employment and other ties that defendants have to the community. Defendants are expected to answer these questions and most often they do. By responding to these questions, defendants run the risk of incrimination by possibly making an inculpatory statement that he or she mistakenly believes would assist in the chance of obtaining bail.

This Court, having reviewed *Rothgery* in light of facts and arguments of the case *sub judice*, must conclude that the initial bail hearings are a critical stage in a criminal proceeding.

### ***Right to Counsel***

Secondly, Plaintiffs argue that because the initial bail hearing is a critical stage of the criminal process, Plaintiffs and those similarly situated enjoy the right to counsel as established by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights.

The Sixth Amendment to the United States Constitution serves to assure aid at trial, and therefore attaches at the commencement of adversary judicial criminal proceedings. *Fenner v. State*, 381 Md. 1, 846 A.2d 1020 (2004). Article 21 of the Maryland Declaration of Rights also guarantees criminal defendants the right to assistance of counsel. *Id.* See also *State v.*

*Tichnell*, 306 Md. 428, 509 A.2d 1179 (1986)(there is no distinction between the right to counsel guaranteed by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights).<sup>8</sup> The right to counsel extends to those critical proceedings in which the accused is confronted, just as at trial, by the procedural system or by expert or adversary, or by both...in a situation where the results of the confrontation might well settle the accused's fate and reduce the trial to a mere formality. *Fenner*, 381 Md. at 20.

Plaintiffs argue that by denying them any representation by counsel at their initial bail hearings before the Commissioner, Defendants violated Plaintiffs' right to counsel as declared by the Sixth Amendment, Article 21 and the Public Defender Act.<sup>9</sup> The District Court Defendants contend that Plaintiffs' arguments concerning the right to counsel at initial bail hearings are inconsistent with the Public Defender Acts' legislative history, legislative intent, and the Public Defender's long-standing practice under the Act.

In *Rothgery*, the Supreme Court determined that the Sixth Amendment right of the accused to assistance of counsel in all criminal prosecutions is limited by its terms: it does not attach until a prosecution is commenced. *Id.* For purposes of the right to counsel, commencement is pegged to the initiation of adversary judicial criminal proceedings, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment. *Id.*<sup>10</sup> The rule is not mere formalism, but a recognition of the point at which the government has committed itself to prosecute, the adverse positions of government and defendant have solidified, and the accused finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law. *Id.*

In the present case, Plaintiffs were brought before a Commissioner for an initial bail hearing and requested to be represented by counsel and they were denied that representation.

In finding that the initial bail hearing is a critical stage of a criminal proceeding, this Court also finds that Defendants violated Plaintiffs' Sixth Amendment and Article 21 right to counsel by continuing with the bail hearing once Plaintiffs requested representation. There can be no doubt that the appearance before a Commissioner, where each Plaintiff was informed of the accusations that were lodged and where each had restrictions placed on his or her liberty, constitutes a critical stage for purposes of the right to counsel. Representation by counsel at the initial bail hearings would provide substantial benefits to the detainees; including to provide verifiable information about the arrestee that would assist the Commissioner to make a more informed decision about the arrestee.<sup>11</sup>

As the Court of Appeals has pointed out on several occasions, "the right to counsel under the Public Defender Act is significantly broader than the constitutional right to counsel. *McCarter v. State of Maryland*, 363 Md. 705, 714, 770 A.2d 195 (2001). See *State v. Flansburg*, 345 Md. 649, 700 n.4, 694 A.2d 462, 465 n.4; *Wilson v. State*, 284 Md. 664, 670-671, 399 A.2d 256, 259-260 (1979). The Public Defender Act provides that representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. Md. Crim. Proc. Code Ann. §§ 16-202. It is clear that the Public Defender Act provides for representation at a proceeding where possible incarceration may result. This obviously includes an initial bail hearing."<sup>12</sup>

### ***Due Process***

Lastly, Plaintiffs argue that Defendants' actions, policies and practices violated their constitutional due process rights.<sup>13</sup> Plaintiffs contend that a due process interest exists because initial bail hearings involve a determination of a defendant's physical freedom.

Article 24 of the Maryland Declaration of Rights provides that no person may be imprisoned or otherwise deprived of his liberty without due process and application of the law of the land. The essential elements of "due process of law" and "the law of the land," as they relate to a judicial proceeding, are notice and an opportunity to defend. *Accrocco v. Splawn*, 264 Md. 527, 287 A.2d 275 (1972); See also *J. Whitson Rogers, Inc. v. Hanly*, 21 Md. App. 383, 319 A.2d 833 (1974). Identification of the specific dictates of due process generally requires consideration of three distinct factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Id.*

The initial bail hearing before the Commissioner holds significant consequences to the accused which involves potential prejudice to the defendant's rights; it decides the defendant's liberty. If bail is denied or set at a level that the defendant cannot afford, the defendant is deprived of his or her freedom, a fundamental right. At this initial hearing, the State has statutorily committed to prosecute and without a change of position, a defendant is subject to accusation after initial

appearance and is headed to trial. *See Rothgery*, 554 U.S. at 193. This Court finds any stage that could result in a finding that would place the defendant in jeopardy of loss of liberty or being confined, the defendant is entitled counsel, and proceeding with the matter after representation is requested to be a violation of due process.

### ***CONCLUSION***

In light of the facts and arguments of the parties, this Court finds that Plaintiffs and similarly situated indigent individuals have a right to counsel at initial bail hearings and that by denying Plaintiffs and those similarly situated any representation at the initial bail hearing, Defendants violated Plaintiffs due process rights.

This Court in reviewing the pleadings and arguments made, finds there is no dispute as to material facts and hereby GRANTS Plaintiffs' Motion for Summary Judgment and DENIES Defendants' Motion for Summary Judgment.

This Court is aware of arguments and contentions by Defendants raising issues of separation of powers and budgetary matters that may result from this Court's decision. In light thereof, this Court hereby STAYS its decision, giving an opportunity for the filing of any appeals and decisions thereon.

September 30, 2010

<<signature>>

Judge Alfred Nance

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Footnotes	
1	<i>Richmond v. Dist. Ct. of Md.</i> , 412 Md. 672, 673 (2010).
2	District Court Defendants' Motion to Dismiss is denied as moot as Plaintiffs filed a Third Amended Complaint on July 26, 2010.
3	The certified class having been reinstated.
4	Formally Md. Ann. Code art 27A, § 4.

5	<p>Md. Court. Ann. Crim. Proc. § 16-210. Eligibility for services</p> <p>(a) Application as indigent individual. -- An individual may apply for services of the Office as an indigent individual, if the individual states in writing under oath or affirmation that the individual, without undue financial hardship, cannot provide the full payment of an attorney and all other necessary expenses of representation in proceedings listed under § 16-204(b) of this subtitle.</p> <p>(b) Determination of eligibility. --</p> <p>(1) Eligibility for the services of the Office shall be determined by the need of the applicant.</p> <p>(2) Need shall be measured according to the financial ability of the applicant to engage and compensate a competent private attorney and to provide all other necessary expenses of representation.</p> <p>(3) Financial ability shall be determined by:</p> <p>(i) the nature, extent, and liquidity of assets;</p> <p>(ii) the disposable net income of the applicant;</p> <p>(iii) the nature of the offense;</p> <p>(iv) the length and complexity of the proceedings;</p> <p>(v) the effort and skill required to gather pertinent information; and</p> <p>(vi) any other foreseeable expense.</p> <p>(4) If eligibility cannot be determined before the Office or a panel attorney begins representation, the Office may represent an applicant provisionally.</p> <p>(5) If the Office subsequently determines that an applicant is ineligible:</p> <p>(i) the Office shall inform the applicant; and</p> <p>(ii) the applicant shall be required to engage the applicant's own attorney and reimburse the Office for the cost of the representation provided.</p> <p>(c) Investigation of financial status. --</p> <p>(1) The Office shall investigate the financial status of an applicant when the circumstances warrant.</p> <p>(2) The Office may:</p> <p>(i) require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide the Office with access to confidential records of public or private sources that are needed to evaluate eligibility; and</p> <p>(ii) on request, obtain information without charge from a public record office or other unit of the State, county, or municipal corporation.</p>
6	<p>Case law has defined a critical stage for purposes of the right to counsel as proceedings between an individual and agents of the state (whether formal or informal, in court or out) that amount to trial-like confrontations, at which counsel would help the accused in coping with legal problems or meeting his adversary. <i>U.S. v. Wade</i>, 388 U.S. 218, 226 (1967).<sup>6</sup> A critical stage is a phrase used to denote a step of a criminal proceeding, such as arraignment, that holds significant consequences for the accused. <i>Bell v. Cone</i>, 535 U.S. 584 (2002). If the presence of counsel is essential to protect the fairness of the trial, a pretrial proceeding is a critical stage. <i>United States v. Ashe</i>, 413 U.S. 300, 322 (1973). "Critical stages" are identified as those pretrial procedures that would impair defense on the merits if the accused were required to proceed without counsel. <i>Ut v. State</i>, 293 Md. 271, 443 A.2d 582 (1982). A pretrial proceeding is not a critical stage where basic rights cannot be said to be irretrievably lost and the absence of counsel will not impair defense on the merits. <i>Id.</i></p>
7	<p><i>See Estelle v. Smith</i>, 451 U.S. 454 (1975) (the Supreme Court held that an uncounseled psychiatric interview used to support a death sentence violated the Sixth Amendment because a laymen may not be aware of the precise scope, nuances, and the boundaries of his Fifth Amendment privilege, the assertion of that right often depends upon legal advice from someone who is trained and skilled in the subject matter).</p>
8	<p><i>See Rutherford v. Rutherford</i>, 296 Md. 347, 464 A.2d 228 (1983) (the Sixth Amendment and Article 21 of the Maryland Declaration of Rights and this article guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration).</p>
9	<p>The Court notes that the Public Defender agrees that indigent defendants have a right to representation at the initial bail hearing.</p>
10	<p><i>See Marshall Adams v. State of Maryland</i>, 192 Md. App. 469, 482; 995 A.2d 763 (2010).</p>
11	<p>Right to counsel includes making the hearing and detainee available to counsel for adequate representation.</p>
12	<p>Even privately retained attorneys have difficulty in gaining access to the place where the hearing and the detainee are held for the purpose of providing adequate representation.</p>
13	<p><i>See also Vavasori v. Commission on Human Relations</i>, 65 Md. App. 237; 500 A.2d 307 (1985) (the due process clauses of Md. Const. Decl. Rts. art. 24 and the Fourteenth Amendment have the same meaning. U.S. Supreme Court interpretations of the federal provision are authority for interpretation of Article 24).</p>

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