

Class 32: *Jones v. Clinton V*

I. Joinder

A. Exercise 14

B. Charting a broader perspective of the rules

II. Intervention

A. Limited purpose intervention by press

B. Comparison with other settings



CONFIDENTIALITY ORDER ON CONSENT OF ALL PARTIES

....

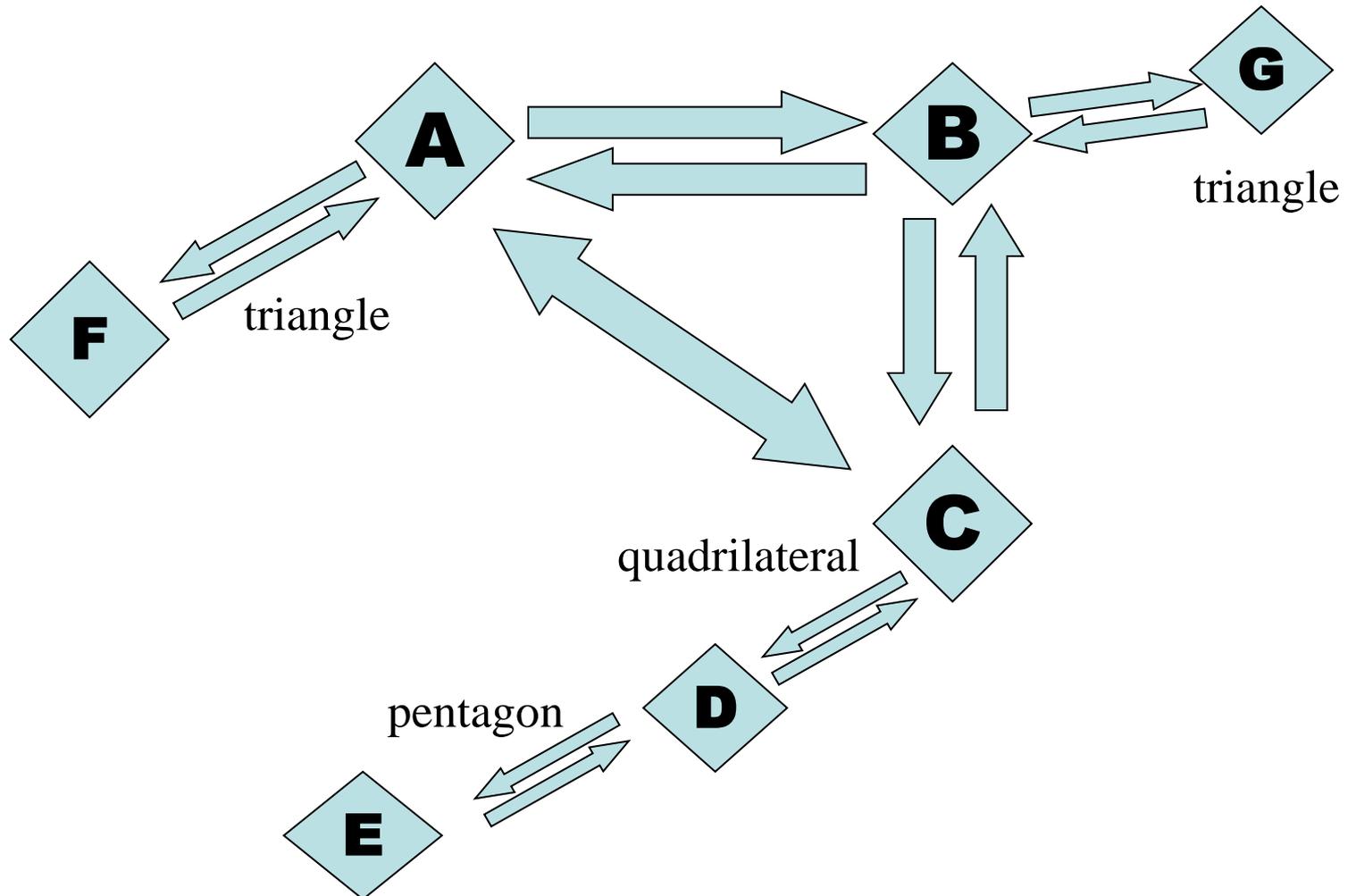
IT IS HEREBY ORDERED, AND COUNSEL FOR ALL PARTIES CONSENT to the entry of the following confidentiality order . . . , prohibiting disclosure directly or indirectly of:

1. The time, place, or date on which any deposition is to be taken or the identity of any witness to be deposed; and
2. The content of any deposition . . . ; and
3. The content of any written discovery . . . sought from any party or third party, the identity of persons or entities from which information is sought, and the content of any responses thereto

IT IS HEREBY FURTHER ORDERED, AND COUNSEL FOR ALL PARTIES CONSENT that all materials, including motions and briefs, filed with the Court concerning discovery matters shall be filed under seal and the parties, counsel for the parties, and agents (including spokespersons) for the parties will not disclose the fact that any such filing has been made or any information concerning the content of such filings, responses thereto or resolution thereof;

....

Impleader Summary from Class 30



Legal Attack Could Undo Reforms of Political Funding

Financial Restraints Faulted by Everyone
From ACLU to the NRA to AFL-CIO
By **TOM HAMBURGER**

. . . . In April, the federal district court panel reviewing the cases decided to consolidate 11 separate lawsuits into one

The NRA resisted, arguing that its interests were distinct from those of other plaintiffs such as the National Association of Broadcasters. The NRA is particularly wary of mainstream media and contends in its legal brief that the organization needs to be able to advertise independently because gun owners' views don't get a fair hearing otherwise. The NAB's suit, meanwhile, claimed unfair treatment because the law restricts issue ads on television, limiting TV revenues, while imposing no restrictions on radio or print advertising.

But the three-judge federal court panel . . . decided to consolidate anyway. . . .

In late April, a disparate group of plaintiffs and defense lawyers faced each other for the first time across a large wooden conference table inside the Justice Department. There, led by a career department attorney assigned to the case's defense, James Gilligan, more than three dozen lawyers hammered out proposed dates for filing briefs and making their arguments to the court.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*

Defendants.

Civ. No. 02-582 (CKK, KLH, R/JL)

FILED

APR 24 2002

HANDY BAKER WHITTINGTON, CLERK
U.S. DISTRICT COURT

NATIONAL RIFLE ASSOCIATION OF
AMERICA, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*

Defendants.

Civ. No. 02-581 (CKK, KLH, R/JL)

EMILY ECHOLS, a minor child, by and through
her next friends, TIM AND WINDY ECHOLS, *et
al.*

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*

Defendants.

Civ. No. 02-633 (CKK, KLH, R/JL)

CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*,

Plaintiffs,

v.

Civ. No. 02-751 (CKK, KLH, RJ)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NATIONAL ASSOCIATION OF BROADCASTERS,

Plaintiff,

v.

Civ. No. 02-753 (CKK, KLH, RJ)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-754 (CKK, KLH, R)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CONGRESSMAN RON PALL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-781 (CKK, KLH, R/J.)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ORDER CONSOLIDATING CASES

(April ____, 2002)

These cases come before the Court upon a suggestion to consolidate the three original cases by Defendants in all the matters and by Plaintiffs in the *McConnell* action. After reviewing the various filings in these matters, the Court has concluded, in its discretion, that the above-captioned cases shall be consolidated for all purposes pending further order of the Court. The Court has also designated the case *McConnell v. FEC* to be the lead case of this litigation.

Rule 42(a) provides, in pertinent part, that “[w]hen actions involving a common question of law or fact are pending before the court . . . it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Fed. R. Civ. P. 42(a). As is apparent from the text of Rule 42(a), the decision to consolidate is discretionary. See 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2383 (2d ed. 1995) (“The district court is given broad discretion to decide whether consolidation would be desirable and the decision inevitably is contextual.”)

Although it is not the usual practice for this Court to *sua sponte* order consolidation of cases, there is precedent from this District that such a practice is appropriate given the Court’s wide latitude concerning case management. *In re Papco Employment Litigation*, 1990 WL

WWF's "Tag Joinder"



The "Bushwhackers" posing after yet another tag team victory

Exercise 14

Rule 20 Joinder

(A) Identify the allegations in the Complaint that provide a basis for the joinder of Ferguson under Rule 20. What other concerns about joinder would arise? Would his joinder nonetheless be proper?

Exercise 14

Count I (deprivation of a federal right): Jones v. Clinton

Count II (conspiracy to deprive): Jones v. Clinton + Ferguson

Count III (IIED): Jones v. Clinton

Count IV (defamation): Jones v. Clinton + Ferguson

Exercise 14

Count I (deprivation of a federal right):

Jones v. Clinton

Rule 18(a)

Count II (conspiracy to deprive):

Jones v. Clinton + Ferguson

Rule 20(a)

Count III (IIED):

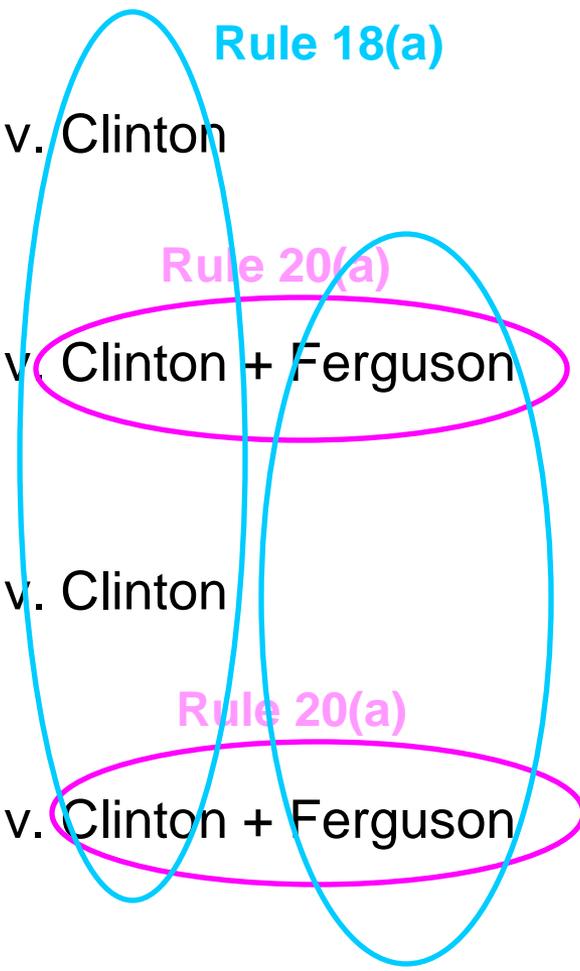
Jones v. Clinton

Count IV (defamation):

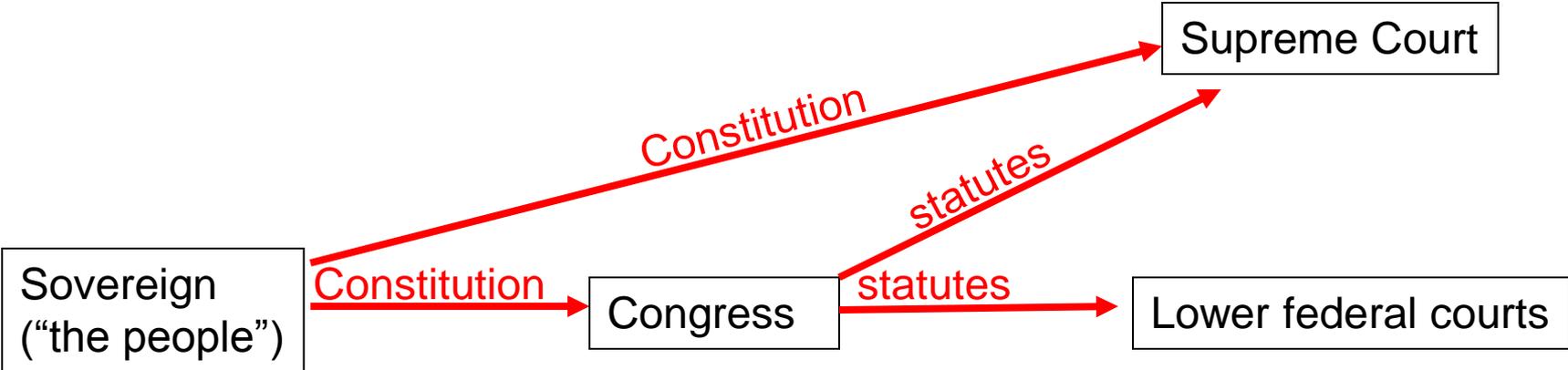
Jones v. Clinton + Ferguson

Rule 20(a)

Rule 18(a)



Jurisdiction



Exercise 14

Count I (\$175,000): Jones (CA) v. Clinton (AR)

Count II (\$175,000): Jones (CA) v. Clinton (AR) + Ferguson (AR)

Count III (\$175,000): Jones (CA) v. Clinton (AR)

Count IV (\$175,000): Jones (CA) v. Clinton (AR) + Ferguson (AR)

Exercise 14

State Law Sex Discrimination - \$175,000: Jones (CA) v. Clinton (AR)

+ ???

State Law Sex Discrimination - \$10,000: Smith (AR) v. Clinton (AR)

+ ???

State Law Sex Discrimination - \$75,000: Lee (DC) v. Clinton (AR)

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
<p>P (any party acting in offensive posture)</p>	<p>Add participants</p>	<p>Rule 20(a) Person may be joined if claims arise out of “same transaction, occurrence, or series of transactions or occurrences” and have common question of law or fact.</p>	<p>(via Rules 8 and 15)</p> <p>Interpreted flexibly, with an eye to judicial economy.</p> <p>The judge may still order separate trials under Rules 20(b) or 42(b), either sua sponte or on D’s motion.</p>
		<p>Rule 22 or 28 U.S.C. § 1335 Persons may be joined as opposing parties if they have claims against P that may expose P to multiple liability</p>	<p>Note that 28 U.S.C. § 1335 provides its own basis for jurisdiction, is linked to specific venue requirements under 28 U.S.C. § 1397, and entails certain procedural differences from Rule 22 interpleader.</p>
		<p>Rule 23 Only if (1) class is so big that “joinder of all members is impracticable,” (2) there are common questions of law or fact, (3) P’s claims or D’s defenses against P’s claims are “typical” of class, (4) P or D can “fairly and adequately protect” class interests, and (5) class falls within a Rule 23(b) category.</p>	
		<p>Rule 42(a) Claims must simply have common question of law or fact.</p>	<p>Broader than Rule 20(a), but has different effect: Rule 20(a) completely merges the two actions, whereas Rule 42(a) does not.</p>
		<p><i>Note that Rule 19(a) is not listed here in order to convey the idea that this Rule is mainly intended for use by parties in a defensive posture who seek to force either joinder or dismissal.</i></p>	

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
<p>P (any party acting in offensive posture)</p>	Subtract participants	<p>Rule 21 P can always argue that D “misjoined” a party.</p>	
		<p>Rule 42(b) Court has discretion to order separate trials for “convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.”</p>	
	Add more claims against someone who is already an opposing party	<p>Rule 18(a) A party “may join...as many claims...as the party has against an opposing party.”</p>	<p>(via Rules 8 or 15, and/or 13(a) or (b))</p> <p>The judge may still order separate trials under Rule 42(b), either sua sponte or on D’s motion.</p>
	Assert claim against someone who is already a co-party	<p>Rule 13(g) Claim must (1) arise out of same “transaction or occurrence that is the subject matter of the original action or of a counterclaim therein,” or (2) relate to “any property that is the subject matter of the original action.”</p>	<p>The judge may still order separate trials under Rule 42(b), either sua sponte or on D’s motion.</p>

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
<p>D (any party acting in defensive posture)</p>	Add participants	<p>Rule 14(a) Must assert that 3rd party is liable to D for some or all of D's liability to P.</p>	<p>The judge may still order separate trials under Rule 42(b), either sua sponte or on P's motion.</p>
		<p>Rule 42(a) Claims must simply have common question of law or fact.</p>	<p>Actions will not be completely merged.</p>
	<p><i>Note that parties cannot make use of Rules 20(a) or 23 in a defensive posture.</i></p>		
	Force P to add a party	<p>Rule 19(a) Person "shall be joined" if (1) no complete relief is possible in her absence, or (2) she claims an interest "relating to the subject of the action" and her absence may either (i) practically impair or impede her ability to protect that interest, or (ii) subject a party to "substantial risk" of double, multiple, or otherwise inconsistent obligations.</p>	<p>(via Rule 12(b)(7))</p> <p>If joinder is not feasible (due to lack of jurisdiction, service, or venue), case may be dismissed.</p>

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
<p>D (any party acting in defensive posture)</p>	<p>Subtract participants</p>	<p>Rule 21 D can always argue that P “misjoined” a party.</p>	
		<p>Rule 42(b) Court has discretion to order separate trials for “convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.”</p>	
	<p>Separate a party or claim that P has joined</p>	<p>Rule 42(b) Court has discretion to order separate trials for “convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.”</p>	

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
3rd Party	Participate in dispute	<p>Rule 24(a) Anyone “shall be permitted to intervene” if: (1) federal statute confers an unconditional right to do so, or (2) applicant claims an “interest relating to the property or transaction which is the subject of the action,” is not adequately represented by existing parties, and will be practically impaired or impeded in his ability to protect the interest if he is absent.</p>	<p>Application must be “timely.”</p> <p>Note that Rule 24(a)(2) is nearly identical to Rule 19(a)(2)(i).</p> <p>The judge may still order separate trials under Rule 42(b), either sua sponte or on a party’s motion.</p>
		<p>Rule 24(b) Anyone “may be permitted to intervene” if: (1) federal statute confers a conditional right to do so, or (2) applicant’s claim or defense shares common question of law or fact with the main action. Court shall consider delay and prejudice to original parties in exercising discretion.</p>	<p>The judge may still order separate trials under Rule 42(b), either sua sponte or on a party’s motion.</p>
		<p>Motion to file brief as amicus curiae</p>	<p>This simply allows a person to file a brief. It does not make the person a party to the action.</p>

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
Court	Adjudicate two claims, or parts of two claims, at the same time	Rule 42(a) Claims must simply have common question of law or fact.	Claims will not be completely merged.
	Separate claims or parties that have been joined	Rule 42(b) Court has discretion to order separate trials for “convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.”	



CONFIDENTIALITY ORDER ON CONSENT OF ALL PARTIES

....

IT IS HEREBY ORDERED, AND COUNSEL FOR ALL PARTIES CONSENT to the entry of the following confidentiality order . . . , prohibiting disclosure directly or indirectly of:

1. The time, place, or date on which any deposition is to be taken or the identity of any witness to be deposed; and
2. The content of any deposition . . . ; and
3. The content of any written discovery . . . sought from any party or third party, the identity of persons or entities from which information is sought, and the content of any responses thereto

IT IS HEREBY FURTHER ORDERED, AND COUNSEL FOR ALL PARTIES CONSENT that all materials, including motions and briefs, filed with the Court concerning discovery matters shall be filed under seal and the parties, counsel for the parties, and agents (including spokespersons) for the parties will not disclose the fact that any such filing has been made or any information concerning the content of such filings, responses thereto or resolution thereof;

....

Judge Wright's proceedings on remand from 8th Circuit Court of Appeals

1. All parties are requested to file briefs on the issue of whether the confidentiality order should be kept in place. This appears to include the media group, whose arguments are discussed in Judge Wright's decision to modify the order: "*Plaintiff essentially argues that the Confidentiality Order should remain in effect The President likewise argues that . . . the Confidentiality Order should thus remain in place. The media entities, however, argue that*" 12 F. Supp. 2d 931, 933.
2. After Judge Wright makes her decision to modify the order, Clinton moves to have her reconsider. In her new decision, Judge Wright states that the "*plaintiff and the media have responded to the President's motion and the President has filed a reply to the plaintiff's and the media's responses.*" 12 F. Supp. 2d 931, 936. And in this new decision, she again discusses the media's arguments. See *id.* at 937.

8th Circuit's decision to dismiss and remand

In view of the grant of summary judgment, we remand the case to the District Court and request that court to consider the need for keeping its confidentiality order in place. Given this disposition, we do not reach the merits of the appeal. The appeal is dismissed and remanded to the District Court.

138 F.3d 758.

Rule 24: Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

....

Actor	Goal	Rule	Notes (in all cases, remember to check jurisdiction, service, and venue)
3rd Party	Participate in dispute	<p>Rule 24(a) Anyone “shall be permitted to intervene” if: (1) federal statute confers an unconditional right to do so, or (2) applicant claims an “interest relating to the property or transaction which is the subject of the action,” is not adequately represented by existing parties, and will be practically impaired or impeded in his ability to protect the interest if he is absent.</p>	<p>Application must be “timely.”</p> <p>Note that Rule 24(a)(2) is nearly identical to Rule 19(a)(2)(i).</p> <p>The judge may still order separate trials under Rule 42(b), either sua sponte or on a party’s motion.</p>
		<p>Rule 24(b) Anyone “may be permitted to intervene” if: (1) federal statute confers a conditional right to do so, or (2) applicant’s claim or defense shares common question of law or fact with the main action. Court shall consider delay and prejudice to original parties in exercising discretion.</p>	<p>The judge may still order separate trials under Rule 42(b), either sua sponte or on a party’s motion.</p>
		<p>Motion to file brief as amicus curiae</p>	<p>This simply allows a person to file a brief. It does not make the person a party to the action.</p>

What procedures has the press used to challenge secret deportation hearings?



Administrative detainees in an INS detention facility in Baltimore