IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAN DURAN, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	**No. 74 C 2949**
v.	)	
	)	**Judge Virginia Kendall**
THOMAS DART, Sheriff of	)	
Cook County, *et al.*		)
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR AN ORDER DIRECTING THE COUNTY BOARD DEFENDANTS PROMPTLY TO APPROPRIATE FUNDS FOR THE PURCHASE AND IMPLEMENTATION OF A NEW MANAGEMENT INFORMATION SYSTEM AT THE COOK COUNTY JAIL

Pursuant to 28 U.S.C. §1651, plaintiff Dan Duran, individually and as representative of the certified class of pretrial detainees at the Cook County Jail ("Jail"), moves this court for entry of an order directing the defendant Cook County Board of Commissioners ("Board defendants" or"Board") promptly to appropriate funds for the purchase and implementation of a new management information system at the Jail.

The machine based information system currently in use at the Jail, called Correctional Institution Management Information System ("existing CIMIS"), was originally installed in 1978 Significantly, the existing CIMIS, which is antiquated and fragile, recently went "down" for approximately 18 hours owing to a system crash, and this misfortune greatly disrupted Jail operations even though the downtime was less than a day. The Board's co-defendant, the Sheriff of Cook County, Thomas Dart ("Sheriff"), is concerned that the existing CIMIS will, at

indeterminate times within the next year, crash again or otherwise become inoperative for indefinite periods or even permanently. These eventualities, if they occur, would make difficult or even impossible the Sheriff's efficient management of the Jail on a day to day basis and likely defeat his attempted compliance with the Consent Decree, just when he has recently achieved substantial progress toward that goal. The same eventualities, if they occur, would, by the same token, result in a deprivation of plaintiffs' rights under the Decree, including their right to a permanent bed in a cell.

Prior to the system crash of the existing CIMIS, the Board, informed of its antiquated and fragile nature, had *authorized* purchase and implementation of a new CIMIS ("new CIMIS"). However, the Board had not and still has *not appropriated* funds for it.

The order sought leaves the appropriations vehicle for a new CIMIS (*e.g.*, bonds of various terms, general revenue) entirely to the Board's discretion.

The court-appointed Monitor, the John Howard Association ("JHA"), supports this motion. Moreover, through its counsel, the Board and the Sheriff, while not supporting this motion, have authorized plaintiffs to represent to the court that it may reasonably anticipate the County's and the Sheriff's prompt obedience to an order granting the relief plaintiffs seek.

In further support of this motion, plaintiffs state as follows.

1. The Decree here was entered in April 1982, and the parties intended its scope to be broad. The prefatory paragraphs of the Decree provide, in part:

> *In the establishment and maintenance of adequate conditions of incarceration*, the goals to be attained [by the Decree] include the avoiding of overcrowding and the provision of 1) adequate staffing, adequate food supply and service; (3) adequate facilities and supplies for personal hygiene; (4) reasonable law library facilities and access thereto; (5) reasonable visiting privileges; (6) reasonable recreational

> facilities and access thereto; (7) appropriate classification standards; and (8) reasonable environmental heath conditions.

Decree, prefatory paragraphs at (g) (emphasis added).

2. Recently, the average daily population of the Jail has been almost 9000 persons, enough for the Jail to be understood as a small town. *See* JHA, Population and Capacity Summary, Cook County Department of Corrections (February 18, 2009) (daily average population in January 2009 was 8999.5).

3. Under the Decree and as a practical matter, Jail officials are responsible for regulating and overseeing all aspects of a plaintiff detainee's daily life at the Jail, *e.g.,* his entry into the Jail, in what Jail Division he is housed, which is dependent in part on his security classification, when he sleeps, time in and outside his cell, meal times and what he eats, timely transfers within or outside the Jail for court hearings and medical appointments, his release from the Jail.

4. The existing CIMIS retains, in machine readable form, all relevant information concerning each plaintiff detainee ("plaintiff" or "detainee"). The CIMIS record as to each plaintiff contains not only basic identifying information (name, address, birth date), but also basic charge information (charge, bond, next court date) that is used to classify him during his incarceration at the Jail. The existing CIMIS also tracks the population of and the availability of beds in the various divisions, permitting Jail officials to assign each plaintiff to appropriate divisions and living units. CIMIS also maintains important archival data, including a history of all

living units to which a plaintiff has been assigned. CIMIS is also an essential element in generating daily court call lists, which enable Jail staff to determine which detainees with court matters that day need to be brought from various divisions to the Receiving Room in Division V by 5 a.m. This court call plan is essential for ensuring that plaintiffs with court matters are timely transported through the tunnel system to the Criminal Courts Building adjacent to the Jail complex, or to one of the approximately 14 outlying criminal courts (*e.g.,* in Skokie, Rolling Meadows, Markham). In sum, the existing CIMIS, even taking into account its deficiencies, *see* ¶6 below, is a critical element in the day to day operations of the Jail and directly impacts defendants' ability to comply with many provisions of the Decree.

5. Given the scope of the Decree, *see* ¶1 above, the size of the Jail population, *see* ¶2 above, the varying daily schedules of the 9000 detainees at the Jail, *see* ¶3 above, and the critical function that the existing CIMIS serves in the day to day operations of the Jail, *see* ¶4 above, Jail officials can meet their responsibilities under the Decree and the Constitution, such as safely housing detainees in a bed and transporting them to court, only if they are equipped with an information system that is adequate to this task. And only a machine (computer) based system is adequate: Cook County, with a Jail population of 9000 and with more than 95,000 admissions and discharges occurring annually at the Jail, is not a "one horse county" at which a paper record keeping system will remotely do, in part because it is impossible to update a paper record system on an ongoing real time basis.

6. Since 1978, the machine based information system that Jail officials have relied

upon, the existing CIMIS, is DOS based, not Windows or XP based. That fact attests to how antiquated the existing CIMIS is: to Jail officials' knowledge, no other public institution in the state is dependent on a DOS based system to carry out its daily operations, or dependent on a system as slow as the existing CIMIS. But the existing CIMIS is subject to a more fundamental infirmity, which is that it is not "backed up" either internally or externally. Thus, if the existing CIMIS were to crash and information on the hard drive lost as a result or for any reason, the information would not be retrievable except by going back to a paper record if one existed and recompiling the data. (There is a paper record for some information, such as the charge against a detainee and his next court date. In contrast, other information, such as whether there are "available beds" in any particular division at any particular time, is not captured on any paper record). Retrieving and recompiling such information to the extent possible and putting the output on paper would take many thousands of hours, during which there would be no meaningful information system upon which Jail officials could rely. Moreover, unless the existing CIMIS could be brought "back up" with its information intact, Jail officials would be stuck with an antiquated paper based management information system.

7. Recognizing how antiquated and inadequate the existing CIMIS was, Sheriff Dart, for at least the last two fiscal years, including the current one (FY 2009, running from December 1, 2008 to December 1, 2009) has requested the Board to authorize the purchase and implementation of a new CIMIS, which, among other things, would have on-site and off-site redundancy. If a new CIMIS (with redundancy) were in place, it would follow that there would

never be any occasion for Jail officials to have to reconstruct from paper records (to the extent possible) data essential to the daily operations of the Jail, such as the transport of hundreds of detainees daily to courts and to medical appointments.

8. On February 8, 2009, the Board approved substantially all of the Sheriff's budget request, including approximately $2.7 million for purchase and implementation of a new CIMIS, a cost figure that includes both software and hardware. The Board also approved the Sheriff's request for other capital expenditures, including a new Residential Treatment Unit ("RTU") and a new Reception, Classification and Diagnostic Center ("RCDC"). The construction of a new RTU and a new RCDC, will, however, likely take two or more years, even if requests for bids are issued promptly. In contrast, a new CIMIS could be online within a few months of purchase.

9. Since this case was transferred to Your Honor, the principal subject occupying its attention has been overcrowding at the Jail, characterized by detainees "sleeping on the floor," rather than in a permanent bed in a cell, as the Decree (at ¶2) requires.

10. When this case was last before this court on February 11, 2009, the Sheriff, by his counsel (Daniel Gallagher), reported that no plaintiff had been required to sleep on the floor for many months, and therefore that the defendants were now surely in compliance with the population provisions of the Decree. Plaintiffs quarreled with the representation that no detainee has been on the floor for many months. But they did not deny that their number was relatively small, or that the Sheriff had made very substantial progress toward the goal of full compliance with the population provisions. This court in turn expressed great satisfaction at the progress

the parties had made in relieving, if not even entirely eliminating, overcrowding at the Jail and congratulated all counsel for their efforts.

11. At the end of the February 11 hearing, both Mr. Driscoll for the Board defendants and Mr. Gallagher for the Sheriff represented to the Court that the Board had very recently approved the Sheriff's capital budget request, *see* ¶8 above. Counsel for the defendants thereby implied to the court that the Board need do nothing further to ensure the expenditure of funds for such capital items, including a new CIMIS. This happy implication, advanced in good faith, turned out to be incorrect, however: the intervening seven weeks between February 11, 2009 and the filing of this motion, have been occupied, in part, by the Board's deliberations of whether and through what financing vehicle (*e.g.,* bonds, general revenues), if any, it should appropriate money to cover the capital expenditures it has authorized. The distinction, familiar to budget analysts, is between *authorization* of projects or undertakings or programs (including capital projects) and *appropriations* for them ("capital project authorizations" and "capital project appropriations").

12. Counsel for the Board and counsel for the Sheriff have advised counsel for plaintiffs that the Board has considered and is considering several options so far as capital project appropriations involving the Jail are concerned. These options involve two choices: (i) whether to appropriate money for each particular capital project (*e.g.*, new CIMIS, new RTU, new RCDC); (ii) if there is to be an appropriation for a capital project, whether the revenue source should be general revenues or 30 year County bonds.

13. On Sunday, March 15, 2009, at approximately noon, the existing CIMIS crashed, and Jail IT staff could not bring the system back up for more than 18 hours, till approximately 6 a.m. on March 16. The result, according to Charles Fasano, the JHA Monitor, was virtually to "paralyze" the Jail. Mr. Gallagher, counsel for the Sheriff, has also described the result in strong terms, referring to "great stress" on Jail staff when the existing CIMIS was down. Both Mr. Fasano and Mr. Gallagher discussed in particular the extent to which Jail staff was unable timely to transport detainees to their court dates: despite concerted efforts by Jail staff on the evening of March 15 and the early morning of March 16 to ascertain, by consulting paper records, the March 16 court dates for the hundreds of plaintiffs who had them, many plaintiffs were late for their court dates in the Criminal Courts building at 26th and California, or at one of the outlying courtrooms. As a result, their cases were not heard in a timely manner or not heard at all, but continued. The Sheriff also reports that the 18-hour period in which the CIMIS was down also delayed release of some detainees in a timely manner (since they could not readily be identified as detainees who had *no charge* pending against them precluding release) and delayed the new admission of others (because they had to be processed in the RCDC utilizing paper records).

14. At the earliest date convenient to the court after the date for which this motion is noticed for hearing (April 7, 2009), Mr. Fasano, the JHA Monitor, will be available to testify concerning the possible consequences should the existing CIMIS become disabled for a protracted period (days or even weeks) or permanently. But it takes no testimony to conclude that the possible consequences are serious. The possible consequences for overcrowding at the Jail makes

the point. If, for example, Jail officials are unable, because the CIMIS is down, timely to transport detainees to their scheduled court dates at the outlying courtrooms or at the Criminal Courts building, *see* ¶13 above, then, for each day that this situation persists, detainees who would have been released as a result of their court appearances will be held in or returned to the Jail. The Jail population would thus back-up--and just when the defendants, by their account, have recently achieved compliance with the population provisions of the Decree, *see* ¶10 above.

15. In light of the age and fragility of the existing CIMIS, the Sheriff is concerned that this system will again become inoperative one or more times during the coming year. This is a risk that, because of its consequences for management of the Jail, the Monitor does not believe the Sheriff should run. *See* Letter from Charles Fasano to Commissioner Suffredin (March 16, 2009) (urging Board to support appropriation for new CIMIS), Ex. A hereto

16. Notwithstanding the events of March 15/16 and the consequences of another crash of the existing CIMIS for management of the Jail, the Board has not acted on the capital project appropriation issue as of the date plaintiffs are e-filing this motion, March 30, 2009. The Board's next meeting is April 1, 2008.

17. If the Board acts at its April 1 meeting to appropriate funds for a new CIMIS, such action will moot this motion. If it does not so act, then this court should direct the Board defendants to make such an appropriation, pursuant to the All Writs Act ("Act"), 42 U.S.C.§1651.

18. The Act, 28 U.S.C. §1651(a), provides as follows.

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law

19. The Supreme Court has interpreted the Act to authorize a federal district court to "issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of its orders it has previously issued in its exercise of jurisdiction otherwise obtained," *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977).

20. Specifically, the Act authorizes the entry of an order such as that sought here when two requirements are met: the order must: (i) be "necessary or appropriate" in aid of the court's [subject matter] jurisdiction; and (ii) be "agreeable to the usages and principles of law." *See In Re: Uranium Antitrust Litigation Westinghouse Electric Corporation*, 617 F.2d 1248, 1260 (7th Cir. 1980).

21. The federal courts have interpreted both of these criteria broadly.

(a.) The first criterion is generally invoked to protect and preserve the jurisdiction of the court against actions which would frustrate or impinge upon its administration of pending litigation," *Rose v. Giamatti*, 721 F. Supp. 924 (S. D. Oh. 1989); *accord, In Re Uranium Antitrust Litigation* etc., 617 F.2d at 1260 ("aid the Court in the exercise of its powers, *i.e.*, in enforcing its judgment"); *Dino Cinel v. Connick*, 729 F. Supp. 492, 497 (E.D. La. 1992))("a district court may rely on the All Writs Act to control actions or conduct that would inhibit its ability to resolve or manage a case before it"). Thus, the first criterion is not restricted to situations where a failure to issue the order "would . . . technically . . . rob [ ] [the court] of subject matter jurisdiction," *In Re*

Uranium Antitrust Litigation etc, 617 F.2d at 1260. The second criteria ("agreeable to the usages and principles of law") requires simply that the equitable and other factors ordinarily determinative of whether the order in question should issue, apply, *see Uranium Antitrust Litigation, id.* at 1261 (All Writs Act injunction affirmed; the"district court's exercise of discretion in entering a preliminary injunction is measured against four prerequisites [all of which are met here]").

22. The relief plaintiffs seek by this motion meets the qualifying criteria.

(a) The failure of the Board to appropriate funds for a new CIMIS, notwithstanding its having authorized its purchase and implementation, threatens to frustrate this court's enforcement of the Decree. Plaintiffs' pending motion for implementation of their "long term proposal" for elimination of overcrowding at the Jail ("Implementation Motion"), at Dkt. 1048 (filed 10/9/2008), makes the point.[1] Specifically, obedience to an order granting the Implementation Motion assumes that the Sheriff will be able to generate reliable (including continuously updated) records of the Jail population overall and by division, including the

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[1] Plaintiffs' long term proposal provides, in relevant part, that the Sheriff must assign class members to Electronic Monitoring or other home detention program if the state court bond decisions on any given day result in the assignment of a larger number of persons to the Sheriff's custody than the Jail can accommodate on that day, "accommodation" meaning housing each class members in a permanent bed in a cell. Implementation Motion at ¶3

The Sheriff opposes plaintiffs' Implementation Motion.

number of vacant beds (associated with what security classification), if any, are available in each division. Only if the Sheriff will be able to access such information at all times, in real time, will he be able to classify the continuing stream of plaintiffs into the Jail (while releasing plaintiffs too) and assign the new entrants to a vacant bed in a division appropriate to his classification. Only a machine based system is capable of generating such information; a paper based system is not. So far as the Implementation Motion is concerned, this motion therefore seeks to bring about an "action[ ] ," *Dino Cinel*, 729 F. Supp. at 497-- a Board decision to appropriate money for a new CIMIS --that, if the Board were not to take it, would "inhibit . . . [this court's] ability to manage a case in front of it,"*id.*. The same basic analysis applies to virtually every aspect of the Decree: the Sheriff cannot safely manage the small 21st Century town that the Jail resembles utilizing an antiquated management system that has recently suffered 18 hours of downtime, and may suffer durations of equal or greater length in the next year if not promptly replaced.

(b) The traditional criteria for deciding whether to grant relief such as that sought here are familiar ones. First, plaintiffs must have succeeded on the merits of their claim. *Plummer v. American Institute of Certified Public Accountants*, 97 F.3d 220,229 (7th Cir. 1996). The Decree itself establishes that this requirement is met. Second, plaintiffs may be irreparably harmed if the order they seek is not granted, *see id.* This requirement is met too: missing court dates, medical clinic appointments or being required to sleep on the floor are not injuries that damages will remedy. Third, the threatened harm to plaintiffs outweighs the threatened harm to defendant, *see id.* Here, the balance weighs very heavily in plaintiffs' favor, *see id.* To plaintiff's knowledge, the

Sheriff thus claims no injury if the order plaintiffs seek is granted, only threatened injury to his ability to manage the Jail if it is not. To be sure, the County Board defendants may claim injury, but the injury they may claim–a trespass on its authority-- is modest. The order sought thus affects only the timing of an appropriation for a new CIMIS, which the Board has already authorized. The requested order therefor does not intrude on the Board's authority by designating a capital purchase that the Board has not itself chosen or by selecting a financing vehicle for that purchase. Finally, granting the order plaintiffs seek here, which is intended to give the Sheriff the tools he needs to manage the Jail safety and efficiently and in compliance with the Decree, will not harm the public interest, *see id.*, but serve it.

(c) That the Decree here is a Consent Decree is of no moment, orders under the Act to enforce consent decrees being commonplace. *See Yonkers Racing Corp v. City of Yonkers*, 858 F.2d 855, 863-5 (2d Cir. 1988) (affirming injunction directing removal of case from state to federal court; "removal was necessary to prevent frustration of the consent decree"); *Muse B* v. *Upper Darby School District*, 2007 LEXIS 74963 (E. D. Pa) ("Pursuant to . . . 28 U.S.C. §1651, defendant is directed to fund the guardian's services at the rate of $100 per hour. . . . This order is necessary and appropriate to aid in the enforcement and implementation of . . . [[the] May 3, 2006 consent decree").

(d) Nor would the order plaintiffs seek here run afoul of the principles of federalism and comity that must guide federal courts in cases involving state and local governmental defendants. *See Missouri v. Jenkins*, 495 U.S. 33 (1990)(school desegregation case; approving

remedial plan enforcing school desegregation decree under which district court could free local school district from state imposed limits in collection of property takes, leaving school district with authority to finance implementation of school desegregation decree by imposing higher property taxes than authorized by state law).

WHEREFORE, plaintiffs pray for the following relief:

A. Entry of an order, pursuant to 28 U.S.C. §1651, directing the Board defendants promptly to appropriate funds for the purchase and implementation of a new management information system at the Jail;

B. Any other relief this court deems appropriate.

Respectfully submitted,

s/Robert E. Lehrer

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