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**OBSERVATIONS IN BOND COURT
2600 S. California Avenue
Chicago, Illinois**

4 March 2008

Duran v. Sheahan et al.
74 C 2949
The Honorable Virginia M. Kendall
United States District Court
for the
Northern District of Illinois
Eastern Division

Prior to her scheduled visit to the Cook County Department of Corrections on 8 February 2008, Judge Virginia Kendall, U. S. District Court for the Northern District of Illinois, asked to observe the First Municipal Bond Court located in Courtroom 101 at 2600 S. California. This court sits from about 1:30 pm each weekday afternoon to set bonds for all persons who are brought to the Cook County Jail after arrest. Persons arrested in Cook County and taken to municipal courts in other locations do not appear in this court. However, the bond court at 2600 S. California is a high volume court and a significant number of persons enter jail after having bond set there.

For at least two reasons, bond setting decisions in this court are relevant to the jail crowding issues in the Duran litigation. First, the numbers of inmates committed to the jail out of the court are, obviously, a major contributor to the jail population. Second, Defendant Sheriff Thomas Dart has suggested that bond setting courts should make decisions about a defendant's eligibility for release from jail on electronic monitoring and other release mechanisms operated by the Sherriff. His position has been that bond setting courts have more information about a defendant and the allegations being made against him or her than do the Sheriff's employees who screen inmates for participation in the Sheriff's house arrest/electronic monitoring and other programs. Part of the purpose of the visit was to observe the flow of information about defendants to the judge setting bonds.

We approached Bond Court from the tunnels or passages at a basement level that run from the jail to the courthouse. We saw recently arrested persons crowded into several holding areas at the end the tunnel. There appeared to be two mostly bare rooms which can be observed through glass or plastic walls. Each room has television monitors located toward the ceiling. Each room is just a few feet from the entrance to the holding areas. The arrestees were lining up in the holding areas as we passed. Corrections Officers were present and giving instructions, but there was no obvious number of attorneys or interviewers present.

We walked up stairs to the ground level and the interior of the courthouse, which is directly above the holding area. Courtroom 101 is large, with room for perhaps 40-60 friends, relatives or interested observers who can watch the proceedings from rows of benches facing the judge. At the time of this visit there were perhaps 6-10 people observing court from the public area, in addition to the members of the Court's visiting team. The judge sits on an elevated bench, court officers and a court reporter on either side, and two attorneys for the state and defense at the table before the bar. Private attorneys come in, file their appearances, and sit and watch until their cases are called.

There are several television monitors in the courtroom. They are located in front of and above the judge's bench where they can be seen by the judge, court officers, and people in the audience.

The process we observed involved the following: an individual can be seen on the courtroom television monitors entering one of the two mostly bare rooms in the basement level. He or she peers upward toward the television monitors which show the judge. In the courtroom, arrested persons appear on the monitors, standing with their necks tilted back, their faces upturned, eyes looking upward in an awkward position. Speech is carried between the courtroom and the basement rooms by microphones and speakers. The judge states the individual's name to verify

identity and quickly reads the charge, citing a code section and a few words of nomenclature, enters a plea of “not guilty,” assigns a court date and courtroom, and then halts while the prosecution reads off some information, usually an incomplete sentence or two describing the acts that led to the charge, the arrest and conviction record, and the defendant’s history of failure to appear and bond forfeiture warrants. In the majority of cases, but not all, a representative of the Public Defender’s office will state: the number of years the person for whom bond is to be set has lived in the area; the extent of schooling; the number of children, if any; and, sometimes, employment. This information is provided to the Public Defender’s representative in advance of the hearing by way of notes messaged up from an investigator who interviews the persons who are collected in the holding areas. We do not know if the Public Defender’s representative elects to make no statement about a significant number of persons because the information was not provided, or because the information was provided but then thought to be unfavorable for the person whose bond is to be set.

The judge then reads off the bond, which will be either an “I bond,” permitting release on individual recognizance, or a “cash bond” which requires that 10% of the amount of bond be posted. Immediately the person for whom bond is set is motioned by someone to move out of the small room. A piece of paper can be seen pushed at the person as they leave. A second person appears on the courtroom television screens, either quickly entering the room just vacated or already in the second room, to which the camera switches.

We randomly timed hearings. Most lasted in the range of 30-60 seconds. Some took less than 30 seconds from start to finish. We observed the judge who set bond glance upward at the television monitors on which the person for whom bond was set for a period of usually no more than 2-4 seconds, sometimes once and seldom more than twice in the course of a hearing.

During the time we were in the courtroom two private attorneys stepped up for clients. Both offered somewhat more information than was given in the cases in which the Public Defender represented the person for whom bond was being set, but not much more.

There was no indication of any communication in any form -- written or oral -- between the attorney or investigator who collected information from the newly arrested persons in the holding area and the people involved in the proceedings in the courtroom after the bond hearing commenced. It was therefore not clear whether or how, if something in the recitation of the defendant’s background was inaccurate or felt to be prejudicial, the defendant would alert the defense attorney. We never saw the public defender’s representative challenge or question information put forth by the State or discuss anything with the person for whom bond was set. If there is a mechanism for confidential discussion between the two, we did not see it.

For one case involving a charge of violent assault, bond was set above \$80,000. Otherwise bond was most frequently set in a range of \$20,000 to \$50,000, and some went to \$5,000 or less. Several cases resulted in “I bonds.” Except in the one more serious assault case, we were not able to identify a pattern in the amount of bond set. From the courtroom perspective, we did not have all of the information available to the judge. But what was of concern to us, as monitors in the Duran litigation, were the number of low cash bonds, those in the range of \$5,000. These were set in cases that seemed, from what we heard, less serious: drug possession or theft. A

bond in this amount would require a payment of only \$500 to obtain release. But it is a fair guess that most of the persons for whom this bond amount was set would either not be able to obtain that amount of money, or that it would take days or weeks to do so. They would then presumably obtain release. But in the meantime they would have required processing and assignment to a space in a facility that is very short on space, and to no real correctional purpose.

According to the theory upon which the Sheriff relies, a judge sitting in bond court should be provided information about a defendant's criminal history and the nature of the offense charged from which a judgment about the appropriateness of release and the conditions of release might be determined. This much is done, on a minimal level, in the bond court at 2600 S. California. But as we observed, information about the person's social history, employment record, family ties, any medical or mental health factors, amount of money he or she might be able to post for bond, or information family members who come to court may have to offer, is simply not presented or considered. There is no dialogue between the attorneys in the courtroom and the person for whom bond is being considered, so there is no way for the attorney to assert positive information or correct errors on behalf of the defendant. The length of the hearing itself speaks volumes about its adequacy. It may well be, as a practical matter, that a careful scrutiny of even the meager information available to the Sheriff, combined with some conversation with the inmate about his living situation outside the jail, would in fact provide more information about his or her appropriateness for release on electronic monitoring than is provided in bond court on these issues.

At the same time, in many cases there will likely be information which the Sheriff cannot obtain or should not be privy to that is relevant to setting bond and which should be presented in bond court. This information includes employment information, family situations, medical conditions, and also information about the defendant's involvement in other offenses or threats or intimidations of a witness by a defendant. A bond hearing for which more information was obtained about the person being considered and in which that information was presented in court where it is subject to correction, challenge or explanation from either the prosecution or defense should result in a higher degree of reliability than the Sheriff could reasonably be asked to obtain on his own.

Of particular note, we observed that one of the factors presented to the court in the course of the typical case was the number of a defendant's prior failures to appear and/or bond forfeiture warrants acquired in previous cases. It seems to us quite likely that prior failures to appear and bond forfeitures played a role in the judge's decision to set cash bonds higher than many defendants can afford. But judges setting bond would have another way to assure a defendant's appearance in court if they chose to utilize electronic monitoring and other release mechanisms operated by the Sheriff of Cook County. These programs have helped ensure that defendants are notified of upcoming court appearances and comply with conditions of supervision (e.g., use of drugs or alcohol) that are strongly correlated to the likelihood of them remaining at liberty and free of additional arrests through the disposition of current criminal charges.

We note that there are plans underway to move bond court to the jail side. This will eliminate the need for movement of numbers of arrestees and inmates between the jail and the court buildings. As the arrangements unfold, it does appear that there would be more space in which

attorneys could meet to talk with clients, and that the person for whom bond is to be set would be with his or her attorney in the courtroom. These would be positive improvements. But alone they will have minimal impact on the quality of an important decision making process unless the public, defenders and other attorneys on the one hand, and the prosecution on the other, take more time, obtain, and are willing to present, more information relevant to bond and the conditions that might be imposed to allow release on bond to the judge who is tasked to make the decision.