

Exhibit A

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

ANTHONY MURDOCK, ANDREW
CRUZ, THERESA KENNEDY,
JOHONEST FISCHER, and BRIAN
NEALS,

Plaintiffs,

-vs-

CITY OF CHICAGO,

Defendant.

Case No. 20 C 1440

Chicago, Illinois
August 18, 2022
9:30 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE GARY FEINERMAN

APPEARANCES:

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Court Reporter:

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09:32:56 1 (Proceedings heard in open court:)

09:32:56 2 THE CLERK: 20 C 1440, Murdoch versus Chicago.

09:33:03 3 THE COURT: For the plaintiffs?

09:33:04 4 MR. FLAXMAN: Good morning, your Honor. Kenneth
09:33:06 5 Flaxman for the plaintiff.

09:33:07 6 THE COURT: And for the City?

09:33:12 7 MS. BABBITT: Good morning, your Honor. Elizabeth
09:33:14 8 Babbitt on behalf of the City of Chicago.

09:33:18 9 THE COURT: All right. So, we were together last
09:33:22 10 week, and I said I wanted to see the reply brief from the
09:33:27 11 City. That came in.

09:33:30 12 So, you know, last week, I expressed my doubts about
09:33:37 13 a certain argument that the defendant had made, which is
09:33:45 14 because what the City does here is required by Illinois law,
09:33:51 15 it cannot be a Fourth Amendment violation. There can't be
09:33:58 16 liability under 1983, in other words. It can be a Fourth
09:34:02 17 Amendment violation, I suppose, but there can't be any
09:34:06 18 municipal liability under 1983.

09:34:10 19 In the reply brief, the City cited a case, *Bethesda*
09:34:15 20 *Lutheran Homes*, which is 154 F.3d 716 at 718, from the Seventh
09:34:23 21 Circuit, 1998, that seems to stand for the proposition that if
09:34:29 22 state law commands, not merely authorizes, but commands a
09:34:34 23 municipality to do something, then the municipality cannot be
09:34:39 24 held liable under 1983 for doing the very thing that state law
09:34:46 25 commands.

09:34:49 1 And then the City cites two statutes, 725 ILCS
09:34:58 2 5/109-1(a) and -2(a), for the proposition that somebody who's
09:35:09 3 arrested shall be brought in front of a judge. And shall, of
09:35:15 4 course, is a command.

09:35:17 5 So, my question for the City is: For people who are
09:35:23 6 arrested in Chicago on Cook County warrants on non-holiday
09:35:32 7 weekdays who are allowed to post bond at the police station,
09:35:39 8 is the City violating state law with respect to those people?

09:35:48 9 MS. BABBITT: Well, your Honor, I -- this is
09:35:50 10 Elizabeth Babbitt again for the City. I wouldn't concede that
09:35:54 11 we would be violating state statute by permitting people to
09:36:00 12 bond; but I submit that the statute would require presentation
09:36:04 13 in front of the judge as it's currently formulated, which
09:36:11 14 is -- you know, it does, as you say, have a shall requirement
09:36:16 15 on presentation before a judge.

09:36:18 16 THE COURT: But your argument is -- your argument
09:36:21 17 under this *Bethesda Lutheran Homes* theory is that the City has
09:36:28 18 no choice. For bail purposes, the City is required by state
09:36:34 19 law to present all arrested persons to a judge. And the City
09:36:42 20 doesn't do that with respect to people arrested on Cook County
09:36:48 21 warrants on non-holiday weekdays.

09:36:53 22 So, what's going on here? It seems to me then that
09:36:57 23 it's not really a command of Illinois law because the City
09:37:01 24 isn't doing it, and I'm sure that the City has a solid legal
09:37:06 25 basis for not bringing before a judge for bail purposes people

09:37:11 1 arrested on Cook County warrants on non-holiday weekdays.

09:37:19 2 MS. BABBITT: You know, I think it's -- the question
09:37:24 3 for your Honor is: What is happening to individuals being
09:37:28 4 brought in within the city limits? They should be brought
09:37:36 5 before the judge, and I do -- I do view the statute as a
09:37:40 6 command as it relates to these particular plaintiffs.

09:37:42 7 THE COURT: Right. So, the command doesn't -- the
09:37:45 8 statutory command doesn't distinguish between -- the
09:37:51 9 command -- there's one statute for out-of-county warrants, and
09:37:56 10 there's one statute for in-county warrants. So, it seems to
09:37:59 11 me that you're saying that the City is violating Section 1(a)
09:38:04 12 by not bringing all of these people before a judge and instead
09:38:07 13 allowing them to post bond at the police station.

09:38:10 14 And my -- I say that knowing that, of course, the
09:38:13 15 City isn't violating state law, so there must be a state law
09:38:22 16 that allows people who are arrested to present bond at the
09:38:29 17 police station, right?

09:38:34 18 MS. BABBITT: Yes. I mean, I suppose that there is
09:38:38 19 permissive -- and I think even Mr. Flaxman points to it in his
09:38:42 20 brief under -- I think it's 5/110-9 that would provide
09:38:49 21 discretion as to in-county arrests and being permitted to bond
09:38:56 22 out there. But I think that we would say that the position of
09:39:03 23 the out-of-county arrest warrants and folks arrested on nights
09:39:07 24 and weekends, that there is a shall obligation with respect to
09:39:12 25 them.

09:39:12 1 THE COURT: Well, does Section 110-9 distinguish
09:39:16 2 between in-county and out-of-county warrants?

09:39:20 3 MS. BABBITT: I don't believe it does, your Honor.

09:39:22 4 THE COURT: I'm looking at it right now, and I don't
09:39:24 5 see it. But just because I don't see it doesn't mean it's not
09:39:27 6 there.

09:39:28 7 MS. BABBITT: I don't believe it does, your Honor.

09:39:31 8 THE COURT: Okay. So, state law allows both
09:39:40 9 in-county -- people arrested on both in-county and
09:39:44 10 out-of-county warrants during non-holiday weekdays, weekends,
09:39:51 11 and holidays, to post bond at the station, right?

09:39:55 12 MS. BABBITT: I believe that there is statutory
09:39:57 13 language that provides that that can happen during the
09:40:02 14 non-holiday weekends, those other exceptions that the
09:40:06 15 plaintiffs are a party of.

09:40:09 16 THE COURT: Meaning every -- whoever's arrested is
09:40:13 17 allowed to post bond -- when bail has been set by a judicial
09:40:23 18 officer for a particular offense or offender, any police
09:40:27 19 officer may take bail, and so that applies to everybody,
09:40:31 20 in-county, out-of-county, weekends, holidays, weekdays, right?

09:40:37 21 MS. BABBITT: I think that the statute would provide
09:40:39 22 for that, although I do think when an individual is taken on
09:40:42 23 an out-of-county warrant in particular, the police officers
09:40:48 24 under the special order, and I think consistent with the
09:40:51 25 general order from the Circuit Court and otherwise, would

09:40:54 1 bring the individual to a judge in order to, you know, confirm
09:40:59 2 the identity of the individual, to confirm whether or not
09:41:02 3 they're a flight or safety risk as well.

09:41:08 4 THE COURT: All right. So, it seems like in terms of
09:41:11 5 state law, there isn't the command that is contemplated by
09:41:19 6 *Bethesda Lutheran Homes* because we have, you know, 109-1(a)
09:41:27 7 and 2(a), which seem to say, "shall be brought before a
09:41:32 8 judge," but then we have 110-9, which says that bond can be
09:41:38 9 posted at the police station. So, in terms of Illinois law,
09:41:42 10 we don't have a command.

09:41:45 11 You're saying that this -- you're then going to this
09:41:50 12 general order that Chief Judge Evans issued, right?

09:41:55 13 MS. BABBITT: That's right, your Honor, yes.

09:41:57 14 THE COURT: And is that a -- a federal or state law
09:42:02 15 within the meaning of *Bethesda Lutheran Homes*?

09:42:08 16 MS. BABBITT: Well, I think, your Honor, that there
09:42:11 17 is authority that would support the idea that a general
09:42:14 18 administrative order issued by the Chief Judge of the Circuit
09:42:20 19 Court of Cook County under, I think it's Illinois Supreme
09:42:25 20 Court Rule 21(c), would provide that a court could issue such
09:42:28 21 a general administrative order and that there would be, you
09:42:32 22 know, civil action that the City would be a party to if it
09:42:38 23 were to violate that court order.

09:42:42 24 THE COURT: So, let's just see -- so, in terms of
09:42:46 25 Chief Judge Evans's order, it applies only to out-of-county

09:42:52 1 warrants and not to in-county warrants?

09:42:55 2 MS. BABBITT: That's right.

09:42:56 3 THE COURT: So, it seems like you don't have the
09:42:58 4 command, either under state law or under the Chief Judge Evans
09:43:02 5 general order, for in-county warrants, is that right?

09:43:07 6 MS. BABBITT: On in-county warrants, under the
09:43:10 7 general administrative order, yes, your Honor, I would agree
09:43:13 8 with that.

09:43:14 9 THE COURT: Or state law. So, basically -- I'm
09:43:21 10 suggesting you don't have a good *Bethesda Lutheran Homes*
09:43:26 11 argument with respect to in-county warrants, and I'm wondering
09:43:31 12 if you agree with me.

09:43:32 13 MS. BABBITT: Well, I don't know that I want to agree
09:43:36 14 that I don't have a good argument on that, your Honor, but I
09:43:41 15 understand the distinction that the Court is making with
09:43:43 16 respect to the in-county warrants and how the statute -- if
09:43:47 17 you look at one portion of the Illinois criminal code, it is
09:43:50 18 permissive or provides discretion. Other portions of the
09:43:56 19 statute are mandatory and provide shall.

09:44:02 20 And so, there is, I think, at the -- there is
09:44:07 21 competing language in the statute as it's currently drafted
09:44:13 22 with respect to those in-county warrant arrests.

09:44:17 23 THE COURT: All right. Let me throw it over to
09:44:19 24 plaintiff -- plaintiffs to see -- so, I think I -- you don't
09:44:22 25 have to argue about in-county warrants on the *Bethesda*

09:44:30 1 *Lutheran Homes* theory because I agree with you. What about --
09:44:34 2 doesn't the Chief Judge Evans general order give the City what
09:44:39 3 it needs in order to make a *Bethesda Lutheran Homes* argument
09:44:45 4 on the out-of-county warrants?

09:44:48 5 MR. FLAXMAN: No, your Honor. If we look at --

09:44:51 6 THE COURT: And if you can speak up -- Mr. Flaxman,
09:44:53 7 you're very faint. Turn your volume up or bring yourself
09:44:58 8 closer to mic.

09:44:59 9 MR. FLAXMAN: Is this better? It's the best I can
09:45:01 10 do.

09:45:02 11 THE COURT: No.

09:45:02 12 MR. FLAXMAN: If you wait a minute.

09:45:04 13 THE COURT: Well, just do the best you can do.

09:45:06 14 MR. FLAXMAN: All right. The last sentence of the
09:45:08 15 chief judge's order says -- I think if you have it in front of
09:45:13 16 you, you can read it to yourself. I don't have to read it if
09:45:17 17 you can't hear me. It talks about, "shall be admitted to
09:45:30 18 bail." Are you there or --

09:45:32 19 THE COURT: Yeah. I see what you're saying. So,
09:45:34 20 you're at docket 115-1, and --

09:45:46 21 (Short interruption.)

09:45:46 22 THE COURT: Jackie, can we mute everybody except the
09:45:51 23 people on this call. Thank you.

09:46:01 24 So, I have the general order in front of me right
09:46:06 25 now. And the first paragraph says, "shall be required to

09:46:09 1 appear in bond court."

09:46:14 2 MR. FLAXMAN: But the --

09:46:17 3 THE COURT: If it's a non-Cook-County warrant. The
09:46:20 4 bail hearing should be held. And then you're pointing to the
09:46:24 5 third paragraph.

09:46:27 6 MR. FLAXMAN: That's correct, your Honor. And I
09:46:30 7 do --

09:46:31 8 THE COURT: It says, "The sheriff may release the
09:46:34 9 defendant, upon receiving notice from the demanding authority.
09:46:38 10 Further, when the defendant is able to post the bail set on
09:46:45 11 the warrant issued by the demanding authority, the defendant
09:46:47 12 shall be admitted to bail and scheduled for a court
09:46:51 13 appearance."

09:46:51 14 Yeah, but what does that refer to? Does that refer
09:46:53 15 to the police station, or does that refer to in front of the
09:46:56 16 judge?

09:46:57 17 MR. FLAXMAN: Am I muted, Judge? I might be muted.

09:47:00 18 THE COURT: No, you're not muted. You're very faint,
09:47:04 19 but you're not quite 100 percent muted.

09:47:06 20 MR. FLAXMAN: All right. I apologize for my voice
09:47:09 21 quality.

09:47:09 22 THE COURT: Go ahead.

09:47:10 23 MR. FLAXMAN: It -- it -- first, the general order
09:47:17 24 can't violate Illinois law to be a valid general order.
09:47:22 25 Illinois law says when you're arrested on a warrant and you

09:47:25 1 have the money, the arresting authority may take the money.

09:47:29 2 The other thing that I want to point out is real --
09:47:34 3 very important is the general order relates to the warrants
09:47:38 4 issued outside of Cook County. The Chicago special order
09:47:43 5 relates to warrants issued outside of the district, which is
09:47:50 6 the City of Chicago. And it also has this thing about court
09:47:54 7 holidays and weekends, not being permitted to post bond at the
09:47:59 8 police station.

09:48:00 9 If we accept the City's reading, then -- well, and
09:48:06 10 also -- then we get to the point, is this order binding on
09:48:10 11 the City of Chicago? And there's no authority for that. It's
09:48:18 12 a fanciful reading of Supreme Court Rule 21(c), and this is
09:48:22 13 not the kind -- the order is consistent with state law if you
09:48:28 14 read the last sentence, "Further, when the defendant is able
09:48:31 15 to post the bail set on the warrant, the defendant shall be
09:48:35 16 admitted to bail."

09:48:37 17 It doesn't limit that to posting bail after you see
09:48:42 18 the sheriff. It complies with the actual practice throughout
09:48:47 19 the State of Illinois outside of the City of Chicago that if
09:48:50 20 you're arrested on a warrant where bail has been set and you
09:48:53 21 can post that bail, you can be released.

09:48:57 22 The other thing that's, I think, important to note at
09:49:01 23 this stage is that we're really getting beyond a 12(c) motion.
09:49:05 24 We're moving into disputed questions of fact and the meaning
09:49:10 25 of what statutes are, which --

09:49:12 1 THE COURT: Well, Mr. Flaxman, Mr. Flaxman, you know
09:49:15 2 that the meaning of a statute is a question of law, not a
09:49:18 3 question of fact.

09:49:19 4 MR. FLAXMAN: Well --

09:49:20 5 MS. BABBITT: Your Honor, may I be heard on your
09:49:22 6 question about the general administrative order?

09:49:24 7 THE COURT: Not quite yet.

09:49:26 8 MS. BABBITT: Sure.

09:49:27 9 MR. FLAXMAN: Thank you. The other thing to keep in
09:49:31 10 mind is that this general order was adopted in July of 2015.
09:49:37 11 The policy that we're challenging was adopted by the City in
09:49:42 12 2012. That's significant, I think, in deciding whether the
09:49:47 13 City is allowed to rely on the order, which is at best
09:49:52 14 ambiguous, that was adopted three years after it adopted its
09:49:56 15 policy.

09:49:57 16 That's it.

09:49:58 17 THE COURT: All right. So, City, what were you about
09:50:03 18 to say?

09:50:04 19 MS. BABBITT: Yes, your Honor. I was just going to
09:50:07 20 point out, you know, Mr. Flaxman was focusing on that last
09:50:10 21 paragraph of the general administrative order. I think when
09:50:13 22 you read that language as a whole, that element is referring
09:50:16 23 specifically to what the sheriff may do, and that's after it
09:50:20 24 describes the defendant being remanded by mittimus to the
09:50:29 25 custody of the Cook County Sheriff; and then it provides what

09:50:31 1 the sheriff would do with the defendant in custody and whether
09:50:34 2 it would post bond on that basis.

09:50:36 3 So, I don't believe that that portion of this general
09:50:38 4 administrative order gives the City the authority that
09:50:41 5 Mr. Flaxman was just suggesting that it does.

09:50:43 6 And I would also just address on the point as to
09:50:46 7 timing, you know, the special administrative order and the
09:50:51 8 plaintiffs, and even the proposed class that Mr. Flaxman is
09:50:55 9 trying to bring in this case all follow the issuance of the
09:50:59 10 general administrative order and the special order that's
09:51:03 11 being challenged in the complaint itself.

09:51:06 12 THE COURT: All right. So, this is where I am right
09:51:09 13 now. I think I agree with the plaintiffs about the scope of
09:51:15 14 the *Mitchell* decision. As to the *Bethesda Lutheran Homes*
09:51:25 15 theory, I think I agree with the plaintiffs regarding warrants
09:51:31 16 that are issued by Cook County. I'm not sure about *Bethesda*
09:51:42 17 *Lutheran Homes* as it pertains to warrants issued outside of
09:51:46 18 Cook County, given the general order.

09:51:51 19 The defendant didn't cite, I don't believe, the
09:51:54 20 *Bethesda Lutheran Homes* case until the reply brief, so I'd
09:51:59 21 like to give the plaintiffs an opportunity to address the
09:52:05 22 *Bethesda Lutheran Homes* theory as it pertains to
09:52:12 23 non-Cook-County warrants based on the Chief Judge Evans
09:52:22 24 general order.

09:52:23 25 And I think there are two questions -- at least two

09:52:25 1 questions, but two questions that I can think of that are
09:52:33 2 pertinent. The first is: Does the general order actually
09:52:37 3 require that people arrested on non-Cook-County warrants be
09:52:41 4 brought before a judge for bail purposes? And that turns on:
09:52:47 5 What does this third paragraph -- the second sentence of the
09:52:51 6 third paragraph mean? If the answer to that question is it
09:52:57 7 allows bond to be posted at the station for out-of-county
09:53:04 8 warrants, then, you know, the plaintiffs prevail.

09:53:07 9 But I'd also like -- so, I'd like the plaintiff to
09:53:10 10 address the meaning of the general order, and also, assuming
09:53:15 11 that the general order does require that people arrested on
09:53:22 12 non-Cook-County warrants be brought before a judge for bond
09:53:27 13 purposes, whether that general order qualifies as state or
09:53:34 14 federal law, in other words, a state or federal law command
09:53:41 15 within the meaning of the *Bethesda Lutheran Homes* decision.

09:53:48 16 So, a very limited surreply. Mr. Flaxman, how long
09:53:52 17 do you need?

09:53:54 18 MR. FLAXMAN: A week, your Honor.

09:53:56 19 THE COURT: That's fine. So, let's say August 25th.
09:54:05 20 And then, Jackie, let's set this for a continued motion
09:54:08 21 hearing during the week of September 6.

09:54:11 22 THE CLERK: Sure. How about we say September 6 at
09:54:15 23 9:30 a.m.

09:54:17 24 THE COURT: Does that work for both sides? That's
09:54:19 25 the day after Labor Day.

09:54:21 1 MR. FLAXMAN: Works for plaintiff, your Honor.

09:54:23 2 MS. BABBITT: Your Honor, I have a conflict at
09:54:25 3 9:00 a.m. on September 6.

09:54:27 4 THE COURT: All right. Are you free later on that
09:54:29 5 day?

09:54:30 6 MS. BABBITT: Yes.

09:54:31 7 THE COURT: Or later on during the week?

09:54:33 8 MS. BABBITT: Yes. I can do 10:30.

09:54:36 9 THE CLERK: How about the 7th, September 7th?

09:54:43 10 MS. BABBITT: I have a hearing before Judge Lee at
09:54:46 11 9:15, but I'm free after that, your Honor.

09:54:51 12 THE CLERK: How about 10:00 a.m.?

09:54:53 13 MS. BABBITT: That should be fine for the City, your
09:54:57 14 Honor.

09:54:57 15 MR. FLAXMAN: That works for plaintiff also, your
09:54:59 16 Honor.

09:54:59 17 THE COURT: Great. Great. All right. Well, this is
09:55:02 18 really a very interesting issue, and I appreciate the parties'
09:55:08 19 thoughts on the issue and research and presentations. And we
09:55:13 20 just have that one final piece of the puzzle to work through.

09:55:21 21 And then I'll give you some -- obviously, we have a
09:55:26 22 class certification motion and the defendant's motion for a
09:55:29 23 stay. We'll figure all that out when we get together on the
09:55:33 24 7th.

09:55:34 25 Thanks, everybody.

09:55:35

1 MS. BABBITT: Thank you, your Honor.

2 (Which were all the proceedings heard.)

3 CERTIFICATE

4 I certify that the foregoing is a correct transcript from
5 the record of proceedings in the above-entitled matter.

6

7 */s/Charles R. Zandi*

August 19, 2022

8 Charles R. Zandi
9 Official Court Reporter

Date

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