

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO WESTERN DIVISION  
AT DAYTON

FILED  
FEB 28 2007  
FBI 1:45  
JUDGE  
BY TPA

(CATCHMENT DISTRICT

Wayne Doyle

Case no. 3:07-003

Plaintiff,

-vs-

Judge Thomas M. Rose  
Magistrate Michael Merz

Clark County Library and  
John McConagha, et al,

MOTION

**DEFINITE STATEMENT REQUEST EXPLANATION**  
**OBJECTION AND RECONSIDERATION CONCERNING:**

**THIS COURTS 2/21/2007 AND 2/22/2007 ENTRY, ORDER .DECISION, .**  
**DENYING PLAINTIFF'S MOTION FOR DEFINITE STATEMENT AND/OR**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW.**  
**-CRIMINAL CASE CAPTION.**

**1/5/2007 TRANSCRIPT ENCLOSED**

**IN SUPPORT OF THE FOREGOING**

*Civil rule 12(c) states if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a definite statement before interposing his responsive pleading. This motion shall point out the defects complained of and the details desired.*

Recommendation (Doc. #10) on January 16, 2007. On February 8, 2007, there being no further objections to either the Chief Magistrate Judge's Report and Recommendations (Doc. #5) or his Supplemental Report and Recommendations (#10), the Court adopted those Reports and Recommendations overruling Plaintiff's Objections (Doc. #8). To the extent that this pleading objects to either or both Reports and Recommendations (Doc. #5 and #10), it is not timely and the Court's previous ruling adopting said Report and Recommendations (Doc. #5 and Doc. #10) would render these objections moot.

Another document that it would appear Plaintiff objects to is a Decision and Order (Doc. #17) filed by the Chief Magistrate Judge on January 25, 2007. This Decision and Order (Doc. #17) was in response to Plaintiff's Objections (Doc. #15) to the Chief Magistrate Judge's Report and Recommendations (Doc. #13) on a request for preliminary injunctive relief. In said Decision and Order, the Chief Magistrate Judge withdrew that Report and Recommendation (Doc. #13) denied Plaintiff's Motion to Transfer and granted Plaintiff's request for transcript of the January 5 and 22 hearings on the Motions for Temporary Restraining Order and Preliminary Injunction and directed Plaintiff to promptly cause the Clerk to issue process and have process served which would permit the Court to set a preliminary pretrial conference pursuant to Fed. R. Civ. P. 16 at which time any request for preliminary injunctive relief would be reset.

The final document to which Plaintiff objects would be the Chief Magistrate Judge's Decision and Order Denying in Part and Finding Moot in Part Plaintiff's Motion for Findings of Fact and Conclusions of Law (Doc. #22) filed February 2, 2007. This decision was precipitated by Plaintiff's Motion for Findings of Fact and Conclusions of Law (Doc. #21) filed February 1, 2007. The Chief Magistrate Judge rightfully concluded the only matter relevant to Plaintiff's Motion would be his ruling on the Motion for Temporary Restraining Order since the ruling on the Motion for Preliminary Injunction was withdrawn. This Court has specifically reviewed the Magistrate Judge's Report and Recommendations (Doc. #5) that denied the Motion for Temporary Restraining Order and which was subsequently adopted by the Court on February 8, 2007 by Entry and Order (Doc. #23). The Court finds that in this Report and Recommendation the Chief Magistrate Judge did find the facts specifically and stated separately his conclusions of law which this Court subsequently adopted over objections.

IN THE UNITED STATES DISTRICT COURT

*On 2/21/2007, Judge Merz stated: unless Plaintiff causes process to be issued for service no later than March 1, 2007, the Magistrate Judge will recommend that this case be dismissed for want of prosecution.*

*On 1/5/2007, Judge Merz said I had 120 days to serve the defendants. See. Transcript of proceedings page 29.*

*Wayne Doyle's objection: motion for definite statement:*

*Will this Court state for the record how long does Plaintiff Doyle have to serve the defendant, s a copy of the complaint?*

*On 2/22/2007, Judge Rose said: To the extent that this pleading objects to either or both Reports and recommendations (Doc. #5 and #10), it is not timely and the Court's previous ruling adopting the Report and Recommendations (Doc. #5 and Doc. #10) would render these objections moot.*

*Wayne Doyle,s objection: Motion for definite statement:*

*Will this Court state for the record the date Plaintiff Doyle would have had to file objections to the Magistrates decision to be timely filed for this Court to consider the pleading?*

*On 1/26/2007/ within Magistrate Merz (order for transcript) Criminal Case No. 3:07-cv-03 is recorded.*

*On 2/22/2007, Judge Rose stated: The Court finds that in this Report and Recommendation th Chief Magistrate Judge's did find the facts specifically and stated separately his conclusions of law which this Court subsequently adopted over objections.*

*Wayne Doyles objection: Motion for definite statement.*

*Will this Court state for the record the facts specIFically and separately stated in the Chief Magistrate Judge,s report and recommendation.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

WAYNE DOYLE,

Plaintiff,

:

Criminal Case No. 3:07-cv-03

- vs -

JOHN MCCONAGHA, et al,

Chief Magistrate Judge Michael R. Merz

Defendant.

:

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**ORDER FOR TRANSCRIPT**

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It is hereby ORDERED that the court reporter, Cathy Schutte-Stant, shall be paid for her services and for the transcripts of the Preliminary Injunction Hearing rendered on January 22, 2007, for the use of this Court.

IT IS SO ORDERED.

January 26, 2007

s/ Michael R. Merz  
Chief United States Magistrate Judge

1 THE COURT: Good morning. Mr.  
2 Doyle?

3 MR. DOYLE: Yes, sir.

4 THE COURT: And Ms. Ross?

5 MS. ROSS: Yes, sir.

6 THE COURT: This is Judge Michael  
7 Merz here in Dayton. We have set up this  
8 conference to address Mr. Doyle's motion for  
9 temporary restraining order in the case that he  
10 has filed against the Clark County library and  
11 its director, Mr. McConagha.

12 MS. ROSS: McConagha.

13 THE COURT: McConagha. And the case  
14 number -- I'm reciting all this because we are on  
15 the record. The Case Number is 3:07-cv-003.

16 Mr. Doyle, I assume you have not  
17 previously had a chance to make Ms. Ross's  
18 acquaintance.

19 MR. DOYLE: No, I haven't, sir.

20 THE COURT: All right. Once you  
21 filed the -- your complaint, the Court is obliged  
22 to, if it's not going to issue a temporary  
23 restraining order immediately and without notice  
24 to the other parties.

25 MR. DOYLE: That's right.

1 THE COURT: It is required to give  
2 notice to the other parties unless it finds that,  
3 that it ought to proceed without notice. And in  
4 this case, since you've been suspended since  
5 March of 2005 and since we were able to get  
6 notice to the other party right away, it seemed  
7 to me that that was what I was required to do by  
8 Rule 65.

9 So that's why we've notified the  
10 library and the library of course has retained  
11 Ms. Ross to represent them in this case.

12 The first matter I want to deal with  
13 is the question of consent to magistrate  
14 jurisdiction. I, as Ms. Ross I think probably  
15 knows and, Mr. Doyle, I'll need to explain to  
16 you, I'm a United States magistrate judge. That  
17 means I'm appointed by the judges and not by the  
18 President of the United States, and I'm going to  
19 be handling the case for some -- because Judge  
20 Rose has asked me to, for some parts.

21 I can, with your consent, handle the  
22 case for everything from what we're doing this  
23 morning through the jury trial that you have  
24 demanded to final judgment. But that depends  
25 upon your consent and of course the consent of

1 Ms. Ross's clients.

2 Usually, the advantage to the  
3 parties is that that can let things go a lot  
4 faster. For example, if you consent, then I  
5 would have the authority to decide your motion  
6 for temporary restraining order.

7 If you don't consent or Ms. Ross's  
8 clients don't consent, then we have to -- I have  
9 to make a recommendation to Judge Rose. There's  
10 a fairly long period of time for objections. And  
11 then Judge Rose would have to consider those  
12 objections.

13 That's really the reason why we have  
14 magistrate judges so that some cases can be moved  
15 along a little faster than the other ones would  
16 be.

17 Any questions about that, Mr. Ross?  
18 I'm sorry, Mr. Doyle?

19 MR. DOYLE: Will Attorney Rose  
20 consent?

21 THE COURT: Well, I'll ask her. Ms.  
22 Ross, is the library willing to consent?

23 MS. ROSS: At this point, no, your  
24 Honor.

25 THE COURT: Well, that moots the

1 thing.

2 MS. ROSS: Okay.

3 THE COURT: Because as I should have  
4 pointed out, Mr. Doyle, if I didn't, the consent  
5 has to be unanimous. So we will send out a  
6 formal letter with my resume to both parties and  
7 allow you to take a look at that once you've  
8 gotten copies of it.

9 MS. ROSS: Okay.

10 \* THE COURT: All right. So we're  
11 right to the merits then of the temporary  
12 restraining order.

13 Mr. Doyle, is there anything more  
14 you want to tell me about why the library should  
15 be restrained from excluding you other than what  
16 you have said in the papers?

17 MR. DOYLE: Let me look over, let me  
18 look over the pages.

19 THE COURT: Sure. Sure.

20 MR. DOYLE: Due process.

21 THE COURT: Okay. What did you want  
22 to say about that?

23 MR. DOYLE: Can we talk about that  
24 now?

25 THE COURT: Sure.



1 MR. DOYLE: Am I entitled to be in  
2 the library now?

3 THE COURT: Well, that's the  
4 question for the lawsuit. You've got -- as I see  
5 the order from Mr. McConagha, you've been  
6 excluded from the library from March 21st of 2005  
7 up until March the 21st of this year. And  
8 what -- as I understand it, what you're asking  
9 the Court to do is to reverse that order so that  
10 you can be in the library now. Right?

11 MR. DOYLE: Yes.

12 THE COURT: Okay. Is there anything  
13 you want to tell me as to why you think you were  
14 unfairly excluded from the library?

15 MR. DOYLE: Because there is no  
16 written statement from Angie Jones or the person  
17 that is supposed to be my accuser. \*

18 THE COURT: Because she didn't make  
19 a written statement, huh, okay.

20 MR. DOYLE: There's no recorded  
21 statement from this person either.

22 THE COURT: No recorded statement.  
23 Okay. I thought I saw some reference in there,  
24 but I guess maybe not. Yeah. I see a note back  
25 here -- this is a part of your complaint.

1 MR. DOYLE: The public, the public  
2 record request shows that Mr. McConagha said  
3 there was a recorded statement.

4 THE COURT: Right. And it says it  
5 was enclosed. So, this is --

6 MR. DOYLE: Where is the recorded  
7 statement?

8 THE COURT: Well, I --

9 MS. ROSS: Your Honor, I do have  
10 some information about that. There was never any  
11 tape recording. Mr. McConagha spoke with the  
12 complainant and made a written summary of it and  
13 he provided a copy of that written summary to Mr.  
14 Doyle and his attorney.

15 THE COURT: And that would be the  
16 note that, I guess, that's part of your  
17 complaint, Mr. Doyle, that says: Notes from John  
18 McConagha's phone call to complainant regarding  
19 March the 18th, 2005 incident.

20 MS. ROSS: That's my understanding,  
21 your Honor, is when Mr. McConagha got the request  
22 for recorded statement, that's what he provided  
23 in response to that request. There is -- there  
24 never has been any tape recording.

25 THE COURT: Okay.

1 witnessed? Is that what you're saying?

2 MR. DOYLE: Let me ask you, Mr.  
3 Merz, is that the law?

4 THE COURT: I don't know yet. I  
5 haven't had a chance to do any research in this  
6 particular area because I wanted to get this  
7 conference going as quickly as possible, to find  
8 out what the positions of the parties were and  
9 then -- and then do the research once I had a  
10 second or two to do that. There are --

11 MR. DOYLE: Can McConagha be a  
12 witness?

13 THE COURT: To what?

14 MR. DOYLE: Of what happened in the  
15 library.

16 THE COURT: No, is's not a witness  
17 of what happened in the library. \* As far as I  
18 know, it's -- there isn't any other witness  
19 besides Angie Jones. Is that your understanding,  
20 Ms. Ross?

21 MS. ROSS: Well, Ms. Jones first  
22 reported her concerns about Mr. Doyle to the  
23 security officer who was on duty in the library  
24 that day.

25 THE COURT: Right.

\*

10

1 MS. ROSS: So to the extent, to some  
2 extent he is a witness and he, and he saw Mr.  
3 Doyle, I believe, present that day. There also  
4 happened to be a police officer on duty that day  
5 as well who also witnessed Mr. Doyle on the day  
6 in question.

7 THE COURT: Okay.

8 MS. ROSS: So we have some  
9 additional fact witnesses or direct witnesses, I  
10 suppose.

11 THE COURT: Other people --

12 MR. DOYLE: Excuse me.

13 THE COURT: Go ahead.

14 MR. DOYLE: At the appeal hearing,  
15 were they present, those --

16 THE COURT: I don't know.

17 MR. DOYLE: The officer, Angie Jones  
18 and whatever, the fact Mr. McConagha, was they  
19 actually at the meeting, at the hearing?

20 THE COURT: I don't know, Mr. Doyle.  
21 Were you there?

22 MR. DOYLE: Yes.

23 THE COURT: \* So you know whether they  
24 were there or not. I don't. What can you tell  
25 us about that?

1 MR. DOYLE: I was asking that to the  
2 attorney for the library.

3 THE COURT: Do you know, Ms. Ross?

4 MS. ROSS: No, I was not present.  
5 It's my understanding, as you just suggested,  
6 that Mr. Doyle was present.

7 THE COURT: Right. What can you  
8 tell us about that, Mr. Doyle?

9 MR. DOYLE: Okay. I'm -- just a  
10 minute. I'm looking at McConagha's statement at  
11 the hearing.

12 THE COURT: Okay.

13 MR. DOYLE: Does Mrs. Ross have the  
14 injunction in front of her?

15 THE COURT: I hope so.

16 MS. ROSS: Well, I have the  
17 complaint and the motion for temporary  
18 restraining order in front of me, yes.

19 THE COURT: Right.

20 MS. ROSS: The library, to my  
21 knowledge, has not received them yet but I pulled  
22 them off the Court's electronic dockets.

23 THE COURT: Right. There hasn't  
24 been any process issued in the case. We'll come  
25 back to that issue.

1 MS. ROSS: Right.

2 MR. DOYLE: Look at page 3.

3 THE COURT: Page 3 of? Page 3 of  
4 what? Oh, I see. Okay. That's Mr. McConagha's  
5 letter of April 25th, 2005 to Mr. Edwin  
6 Grinvalds, G-R-I-N-V-A-L-D-S who, I guess, was  
7 your lawyer at the time.

8 MR. DOYLE: Yes, sir.

9 THE COURT: Okay. So I'm looking at  
10 that. Do you have that, Ms. Ross?

11 MS. ROSS: Yes, I do, your Honor.

12 THE COURT: Excellent.

13 MR. DOYLE: Could you, judge, could  
14 you please have their attorney to read that?

15 THE COURT: She has read it.

16 MS. ROSS: Yes, I have.

17 MR. DOYLE: So is this her  
18 understanding that anyone in McConagha's favor  
19 was there.

20 THE COURT: I'm sorry? What's your  
21 question?

22 MR. DOYLE: Is it, does she ~~\*\*\*~~  
23 understand that there was no one else in the  
24 meeting or in the hearing?

25 THE COURT: Except for you and

1 McConagha.

2 MR. DOYLE: Me and my attorney.

3 THE COURT: And McConagha.

4 Yeah, I think she understands that.

5 \*\*\*  
I do too.

6 MR. DOYLE: Okay. Well, earlier she  
7 said she didn't know if they was there.

8 THE COURT: She -- knowing,  
9 sometimes lawyers, lawyers will use the word  
10 "knowing" really to mean: Did I see it or did I  
11 hear it. She wasn't there, so she doesn't know  
12 in that sense, same as me.

13 But her understanding is that Mr.  
14 McConagha is telling the truth in this letter  
15 and, according to what you've told us, that's  
16 accurate, that you and your lawyer and McConagha  
17 were the only persons who were there.

18 MR. DOYLE: And the prosecutor's  
19 office.

20 MS. ROSS: Yes.

21 THE COURT: Or was there somebody  
22 there?

23 MS. ROSS: Your Honor, the library  
24 was represented in this matter and subsequent  
25 administrative charges with the Ohio Civil Rights

1 Commission by an assistant county prosecutor.  
2 According, my understanding from reviewing the  
3 records relating to the Ohio Civil Rights  
4 Commission Charge which was dismissed, that ?  
5 assistant county prosecutor was present at the  
6 appeal hearing as well.

7 THE COURT: Okay. I didn't know  
8 that.

9 MR. DOYLE: But were the witnesses  
10 there?

\*\*\*

11 THE COURT: No. Not unless you tell  
12 us they were.

13 MR. DOYLE: What I was saying is,  
14 based on the hearing decision, and what you're  
15 reading, were they there?

16 THE COURT: No.

17 MR. DOYLE: So did Mr. McConagha  
18 just rely on the security officer's report?

19 THE COURT: Well, what he says is,  
20 and we don't have at the present time any basis  
21 to dispute this. What he says is he relied on  
22 the security officer's report, plus his call to \*\*  
23 Angie Jones plus the affidavit of Stephanie  
24 Southers, and I don't know -- I haven't seen that  
25 document. I don't know what that is. Plus your



1 statement. That's what he says he relied on.

2 MR. DOYLE: So what I want to know  
3 is: What evidence was presented at the hearing.

4 THE COURT: Just exactly what you've  
5 already been told.

6 MR. DOYLE: I mean as far as the  
7 evidence.

8 ~~\*\*\*~~  
9 THE COURT: The security officer's  
10 statement, the complainant's telephone  
11 conversation with McConagha, the Stephanie  
12 Southers affidavit which I haven't seen and your  
13 statement. That's what was presented.

14 MR. DOYLE: Is, is, is that legal  
15 evidence for a security officer to supposedly  
16 take a person's, you know, accusations on another  
17 person?

18 THE COURT: Well, that's what we've  
19 got to decide, you know, if Ms. Jones, this is  
20 purely hypothetical, but if Ms. Jones had gone to  
21 the police and said, you know, "on this day, Mr.  
22 Doyle threatened me," that would be enough for a  
23 police officer to file a criminal complaint, but  
24 obviously it wouldn't be enough to convict you in  
25 a court of law. They would have to bring in Ms.  
Jones and she'd have to testify under oath in a

1 court of law.

2 But of course that's the whole  
3 question that this case seems to raise, is  
4 whether Mr. McConagha, or whether any public  
5 library, has to follow rules of evidence such as  
6 are applicable in criminal court.

7 MR. DOYLE: Could that just be  
8 hearsay evidence? \*\*\*

9 THE COURT: It is hearsay.

10 MR. DOYLE: That this is based on.  
11 Then this is why I'm filing this.

12 THE COURT: Okay. All right. We  
13 have an understanding of your position then.

14 As I understand your position, it is  
15 that you cannot, or no one can be barred from a  
16 public library on the basis of a finding which is  
17 just based on hearsay evidence.

18 MR. DOYLE: Yeah, because Mrs. \*\*\*  
19 Jones, I don't even know -- for one thing, I  
20 don't even know a Mrs. Jones and probably never  
21 seen her before.

22 THE COURT: Okay.

23 MR. DOYLE: And this invisible  
24 person coming forward that he so-called saying  
25 that made the statement, in other words, if I,

1 could see something handwritten in her, that she  
2 made some kind of report on me. I mean, because  
3 basically, Mr. Merz, it seems like she would have  
4 to make a report, or a written statement to the  
5 officer against me before the officer could make  
6 a move.

7 THE COURT: Well, that's not -- that  
8 wouldn't be the law if it were a criminal charge,  
9 a person who alleges that they are a victim of a  
10 crime does not have to make a written report  
11 before a criminal charge can be filed or a  
12 warrant can be issued for your arrest. Those  
13 kinds of complaints are made verbally all the  
14 time. But I hear what you're saying. I  
15 understand what your claim is.

\*\*\*

16 MR. DOYLE: Does the Constitution  
17 allow a person to face their accuser?

18 THE COURT: In a criminal case, yes.

19 MR. DOYLE: What about any other  
20 case?

21 THE COURT: Not necessarily.

22 MR. DOYLE: Give me an example.

23 THE COURT: Well, I, I just did.  
24 You couldn't be convicted in a criminal case  
25 without being given an opportunity to face your

1 accuser but you could be arrested. And I guess  
2 the question of whether you can be excluded from  
3 a public library, based upon hearsay evidence, is  
4 the question that this case presents. \*

5 MR. DOYLE: I'm talking about being  
6 found guilty.

7 THE COURT: You haven't been found  
8 guilty of anything, have you?

9 MR. DOYLE: I've been barred from  
10 the library for years.

11 THE COURT: Well, that's not a  
12 criminal conviction. That's a, that's your being  
13 barred from a public place.

14 MR. DOYLE: Yes.

15 THE COURT: The question is whether  
16 that's --

17 MR. DOYLE: On what grounds? In  
18 other words -- what grounds? \*\*

19 THE COURT: On grounds of harassing  
20 a patron. That's the way I read it anyway.

21 MR. DOYLE: If I haven't faced the  
22 patron then, how do they know it was me?

23 THE COURT: Well, because I guess --

24 MR. DOYLE: Or if -- how does he \* \* \*  
25 know it was me? In other words, if I -- okay.

1 THE COURT: I understand the  
2 question you're raising. ~~\*\*\*~~

3 Ms. Ross, does -- anything that you  
4 want to add to the record at this point? I think  
5 we understand what, I understand pretty  
6 completely what Mr. Doyle's claim is.

7 MS. ROSS: Yes, a couple things,  
8 your Honor. First, I mentioned briefly in  
9 connection with the county prosecutor's presence,  
10 in 1990 -- excuse me, 2005 after being barred  
11 from the library most recently, Mr. Doyle filed a  
12 charge with the Ohio Civil Rights Commission  
13 alleging race discrimination and also retaliation  
14 because he had previously filed a charge with  
15 OCRC when he had been banded before.

16 Anyway, the -- a couple months  
17 later, the OCRC issued its decision dismissing  
18 his charge, finding no evidence of race  
19 discrimination or retaliation. And as we've been  
20 talking, even with Mr. Doyle's questions, about  
21 the appeal hearing that he was granted it appears  
22 that this complaint is focussed primarily upon  
23 due process. Clearly, Mr. Doyle was given due  
24 process. ~~\*\*\*~~ He was given notice of the allegations  
25 against him and given an opportunity to be heard.

*NOT IN COURT*

1 That's all that the Constitution requires in  
2 administrative hearings which this doesn't even  
3 rise to that level.

4 There is no constitutional right to  
5 face your accuser, hearsay evidence is permitted  
6 and so I think the, even assuming that Mr. Doyle  
7 had a Constitutional Right or a property right or  
8 a liberty interest, you know, in being present in  
9 the library, I think that right was not taken  
10 away from him without due process.

11 Also as you pointed out at the  
12 beginning, your Honor, this notice barring Mr.  
13 Doyle from the library was issued almost two  
14 years ago. The two-year period of bar is  
15 going -- due to expire in March. So the doctrine  
16 of laches would suggest that there's no need for  
17 a temporary restraining order at this time.

18 I am -- the Ohio Revised Code does  
19 give the library and any public library the right  
20 to set rules of conduct for its patrons.

21 THE COURT: Do you have a reference  
22 for me on that?

23 MS. ROSS: Yes, I do, your Honor.  
24 It is 3375.40H. 3375 is the general chapter  
25 about public libraries under Ohio law. And there

1 happens to have been some recent case law  
2 concerning that subsection involving the Columbus  
3 Metropolitan Library. There's a Sixth Circuit  
4 case and an Ohio Court of Appeals case involving  
5 a patron who sued the Columbus library.

6 THE COURT: Could you give Mr. Doyle  
7 and me the citations on that.

8 MS. ROSS: Yeah, I pulled those out  
9 late yesterday. The case name is Neinast,  
10 N-E-I-N-A-S-T versus Board of Trustees of the  
11 Columbus Metropolitan Library.

12 MR. DOYLE: Say that again.

13 MS. ROSS: N-E-I-N-A-S-T.

14 THE COURT: Neinast.

15 MS. ROSS: I happen to have some  
16 vague recollection about it, your Honor, because  
17 I read about it in the Columbus paper. It  
18 involves a barefoot patron. And the library  
19 enforced its rule concerning having to wear  
20 shoes.

21 THE COURT: Okay.

22 MS. ROSS: It barred Mr. Neinast  
23 from the library. Unfortunately -- ah, here's my  
24 citation. The Sixth Circuit case is, it was  
25 recommended for full text publication. I'm not

1 sure my copy here has the text. It is Neinast  
2 versus Columbus Metropolitan Library. I it was  
3 issued August 1st -- excuse me. October 10th,  
4 2003.

5 THE COURT: All right.

6 MS. ROSS: And then --

7 MR. DOYLE: The Case Number.

8 MS. ROSS: Yes, it is 02-3482.

9 THE COURT: That's in the Sixth  
10 Circuit Court of Appeals.

11 MS. ROSS: Yes.

12 THE COURT: All right.

13 MS. ROSS: And then there is a  
14 Franklin County Court of Appeals case that was  
15 reported.

16 THE COURT: Same title?

17 MS. ROSS: Yes, 165 Ohio App 3d 211.

18 MR. DOYLE: Say that again.

19 MS. ROSS: 165 Ohio App 3d 211. I  
20 can give you another Case Number too. It's  
21 2006-Ohio-287.

22 THE COURT: All right.

23 MS. ROSS: Those appear to be the,  
24 certainly, the most recent cases and the main  
25 cases that discuss the authority of the library



1 to regulate the conduct of its patrons.

2 THE COURT: Okay.

3 MS. ROSS: Again, they go more on  
4 the issue of whether regulating the required --  
5 regulating shoes is within the library's  
6 authority, but they do touch on the authority of  
7 the library to have rules and to bar patrons who  
8 don't follow those rules.

9 THE COURT: All right. I promised  
10 that before we finished I would come back to the  
11 question of process.

12 Mr. Doyle, when you sue somebody --

13 MR. DOYLE: Wait a minute.

14 THE COURT: Okay.

15 MR. DOYLE: My question was still  
16 not answered. In other words, how do they know  
17 that it was me?

18 THE COURT: Well, the question --

19 MR. DOYLE: I'm asking the attorney.

20 THE COURT: I understand that.

21 MR. DOYLE: Okay.

22 THE COURT: She's already answered  
23 that question to the extent that she knows. That  
24 is that there's a police officer and a security  
25 guard who saw you on the premises, and Miss Jones

\*\*\*\*

1 says it was you. And that's all hearsay, and  
2 that's all McConagha had to go on


3 MR. DOYLE: That's hearsay.

4 THE COURT: Yes, it is. ~~\*\*\*~~


5 MR. DOYLE: I'm asking Mrs. Ross,  
6 Mrs. Ross, how does McConagha know that it was  
7 me?

8 THE COURT: She's already answered  
9 that question.

10 MR. DOYLE: I did not hear her  
11 answer.

12 ~~\*\*\*~~  
13 THE COURT: She's answered it to my  
14 satisfaction. She knows it exactly the same way  
15 you know it, which is McConagha's statement which  
16 is that there was a police officer present, there  
17 was a security officer present, and Miss Jones  
18 identified you. That's all she knows. 

19 If she's got some private  
20 conversation with McConagha, she is required, by  
21 the law of attorney ethics, not to talk to you or  
22 me about what McConagha has said to her other  
23 than what's in this record.

24 I don't mean to cut you off, Ms.   
25 Ross, if you've got additional anything you want  
to say about that.

1 MS. ROSS: No, that's precisely  
2 correct, your Honor, thank you.

3 THE COURT: All right. Let me come  
4 back to the question of process. We've talked a  
5 lot during this discussion about due process.

6 One of the things that is required  
7 by due process, Mr. Doyle, when you sue somebody  
8 in federal court, you have to serve them with a  
9 summons and a copy of the complaint.

10 And the summons is just essentially  
11 an order from the Court that the defendant has to  
12 answer it, has to file a formal answer with the  
13 Court.

14 MR. DOYLE: Yes, sir.

15 THE COURT: Is any of this ringing a  
16 bell? Do you know anything about that?

17 MR. DOYLE: You keep talking.

18 THE COURT: Okay. My question was:  
19 Do you know anything about service of process?

20 MR. DOYLE: I mailed a copy to the  
21 defendant.

22 THE COURT: See, that doesn't get  
23 it. Under, under the Federal Rules of Civil  
24 Procedure, you have to have the clerk issue a  
25 summons, a formal court document, and it has to

1 be served on them. There are a number of ways  
2 that it can be legally be served on them. But  
3 just sending a copy in the mail is not sufficient  
4 under the rules.

5 You're in Springfield. You can, I  
6 understand that these papers were filed in the  
7 court in Columbus. Is that right?

8 MR. DOYLE: Yes, sir.

9 THE COURT: They got transferred to  
10 Dayton because Clark County is within, if you  
11 want to talk about, I guess we might call it the  
12 catchment area of the Dayton location of court,  
13 any cases filed against a defendant in Clark  
14 County get handled in Dayton, so that's why it's  
15 here in Dayton, but if you want to come to the  
16 clerk's office in Dayton, they can provide you  
17 with a summons form for you to fill out.

18 They can also provide you, we have a  
19 kind of a guide on some of the procedural stuff  
20 that we've written up for folks who are filing  
21 their own cases and don't have a lawyer. They  
22 could give you a copy of that.

23 On the other hand, if you like, I  
24 can have the clerk mail that to you.

25 MR. DOYLE: Yes, sir.

1 THE COURT: You'd like to have it  
2 mailed?

3 MR. DOYLE: Yes, sir.

4 THE COURT: We'll have that done  
5 yesterday.

6 All right. I think I understand  
7 what the issues are on the temporary restraining  
8 order motion, and I will be preparing a report  
9 and recommendations to Judge Rose.

10 I will be sending Mr. Doyle the  
11 summons forms and the forms, if he chooses to  
12 proceed this way, to have the United States  
13 marshal make the service, and the guide for pro  
14 se litigants.

15 And I take it from your having  
16 raised the question of process at the outset, Ms.  
17 Ross, the library's not willing to waive service  
18 of process in this case.

19 MS. ROSS: That's correct, your  
20 Honor. At this point would you like me to enter  
21 a notice of appearance?

22 THE COURT: I would appreciate that.

23 MS. ROSS: I was thinking about that  
24 yesterday. I'll try to get that done today or  
25 Monday so that you'll have that officially in the

1 file.

2 THE COURT: All right. And then I  
3 will also be sending out a formal suggestion of  
4 the possibility of consent.

5 MR. ROSS: Okay.

6 THE COURT: With a resume so that  
7 people -- both sides can take a look at that and  
8 see what you think.

9 MS. ROSS: Yeah. I'll be glad to  
10 revisit that issue, your Honor.

11 THE COURT: All right. Anything  
12 else for the record?

13 MR. DOYLE: If you haven't received  
14 service yet, how can you sign on?

15 THE COURT: Well, I notified, I  
16 notified her so we could have this discussion,  
17 Mr. Doyle. I actually didn't notify her. I  
18 notified the library.

19 They know about it. But they have  
20 to be notified in a formal kind of way. It's  
21 kind of like you know who the witnesses against  
22 you are, but you say: Hey, all we've got from  
23 them is hearsay. It's just another formal  
24 requirement.

25 MR. DOYLE: When does the case

1 start?

2 THE COURT: The case starts when you  
3 file it.

4 MR. DOYLE: Is it filed?

5 MS. ROSS: But it's not served.

6 THE COURT: But not served. That's  
7 the next step. You might want to get a hold of a  
8 copy of the Federal Rules of Civil --

9 MR. DOYLE: How many days do I have  
10 to serve it?

11 THE COURT: A hundred and 20. But  
12 until you make service this court can't make any  
13 order against the defendant.

14 MR. DOYLE: Can anything else go on  
15 in this case?

16 THE COURT: Well, yeah, we've just  
17 had this temporary restraining order hearing.  
18 Again, that's the -- because you -- when a  
19 person --

20 MR. DOYLE: I was talking about the  
21 case itself.

22 THE COURT: Beyond the temporary  
23 restraining order hearing and the report that I  
24 write and any objections that either party might  
25 have to that, no, there can't be any discovery in

1 the case.

2 Really the first step has to be  
3 service of process. The only reason why we've  
4 done this little hearing is because, you know,  
5 when a person, particularly a person who's  
6 proceeding without a lawyer, files a motion for  
7 emergency relief, the Court tries to, tries to  
8 hold a hearing on that as quickly as possible.

9 Anything else for the record?

10 MR. DOYLE: As soon as you mail that  
11 to me, I will get it to him.

12 THE COURT: Excellent. All right.  
13 I'll get those out yet today.

14 MS. ROSS: Thank you very much, your  
15 Honor.

16 THE COURT: Thanks very much.

17 (Proceedings concluded.)

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C-E-R-T-I-F-I-C-A-T-E

I, Debra Lynn Futrell, Notary Public  
in and for the State of Ohio at large,

Do Hereby Certify that the foregoing  
pages are a true and correct transcription of the  
CD taken of the proceedings held in the  
afore-captioned matter before the Honorable  
Michael R. Merz, Chief Magistrate Judge, to the  
best of my ability to hear and discern speakers  
over the CD.

S/Debra Lynn Futrell

Debra Lynn Futrell, RMR-CRR  
Notary Public, State of Ohio  
My Commission Expires 12-27-08

*IN THE UNITED STATES DISTRICT COURT*

*SERVICE*

*I HERBY CERTIFY THAT A TRUE COPY OF THE foregoing MOTION  
WAS SERVED UPON Lauren M. Ross. P.O. Box 1488 Springfield, Ohio  
45501-148 this 27 day of february 2007.*

*Wayne Doyle*

*Wayne Doyle*  
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