

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

DOCKET # \_\_\_\_\_

2011 SEP -9 PM 5:27

-----X  
WALLACE S. NOLEN for himself and all  
other persons similarly situated herein who  
have been or will be patrons of the ALDRICH  
PUBLIC LIBRARY,

CLERK  
**JURY TRIAL DEMANDED** *lw*  
DEPUTY CLERK

Plaintiffs,



- against -

**COMPLAINT**

2:11-cv-183

ALDRICH PUBLIC LIBRARY, NANCY F.  
POPE, KAREN LANE, "JANE DOE 1-20"  
names fictitious and intended to be paid staff or  
volunteers employed by Defendant ALDRICH  
PUBLIC LIBRARY, CITY OF BARRE,  
TIMOTHY BOMBARDIER, ANDREW  
MARCEAU, and ROSS WEILAND,

Defendants,

-----X  
STATE OF VERMONT, COUNTY OF CHITTENDEN ss.:

WALLACE S. NOLEN, being duly sworn deposes and says complaining of the  
defendants as follows:

1. At all times herein complained of the Plaintiff, WALLACE S. NOLEN, was and still resides in the City of Barre, County of Washington, State of Vermont.
2. The residence of the Plaintiff forms the basis of venue of this proceeding.
3. This proceeding is being brought for compensatory and punitive damages sustained by the Plaintiff against the Defendants for violating the civil and other rights of the Plaintiff and all other persons similar situated pursuant to 42 U.S.C. § 1983 et seq, the U.S. Constitution's First and Fourteenth Amendments, the Electronic Communications Privacy Act - 18 U.S.C. § 2703(c),

the U.S. Patriot Act, and title 22, Chapter 4 §§ 172 and 173 of the Vermont statutes.

4. Plaintiff hereby is seeking damages against the individual Defendants in both their official and individual capacities.

5. Plaintiff also seeks a preliminary and permanent injunction against the Defendants to restrain or otherwise prevent them from committing unlawful acts/omissions against the Plaintiff and all other persons similarly situated and to compel them to perform certain acts/duties which they are required to do and/or to restrain them from certain acts that they are not permitted to do.

6. This court has jurisdiction based upon violations of federal law.

7. At all times herein complained of the Defendant ALDRICH PUBLIC LIBRARY hereinafter referred to as "ALDRICH" was and still is upon information and belief a Vermont Corporation in good standing authorized to do business within the State of Vermont.

8. At all times herein complained of Defendant, NANCY F. POPE, hereinafter referred to as "POPE" was and upon information and belief still is the Chairman of the ALDRICH PUBLIC LIBRARY.

9. At all times herein complained of Defendant, KAREN LANE, hereinafter referred to as "LANE" was and upon information and belief still is the Library Director of the ALDRICH PUBLIC LIBRARY.

10. At all times herein complained of Defendants "JANE DOE 1-20" were and upon information and belief still are paid employees or volunteers employed by Defendant ALDRICH PUBLIC LIBRARY.

11. At all times herein complained of Defendant, City of Barre was and still is a municipal corporation in good standing within the State of Vermont.

12. ALDRICH, POPE, LANE, and "JANE DOE 1-20" hereinafter are referred to as the

**“LIBRARY STAFF.”**

13. At all times herein complained of ALDRICH was funded in part by the CITY OF BARRE and TOWN OF BARRE through taxpayer funding.

14. At all times herein complained of the municipal taxpayers in CITY OF BARRE and TOWN OF BARRE contributed approximately 50% of the net income to ALDRICH.

15. At all times herein complained of ALDRICH was a public library located in the City of Barre, County of Washington, State of Vermont.

16. At all times herein complained of TIMOTHY BOMBARDIER hereinafter referred to as “BOMBARDIER” was and upon information and belief still is the Chief of Police of the City of Barre Police Department.

17. At all times herein complained of ANDREW MARCEAU hereinafter referred to as “MARCEAU” was and upon information and belief still is the Deputy Chief of Police of the City of Barre Police Department.

18. At all times herein complained of ROSS WEILAND was and upon information still is employed by the City of Barre as a police officer assigned to patrol duties in the City of Barre Police Department.

19. At all times complained of and upon information during the entire time that ALDRICH has existed it has been open on a regular basis and makes available on site, or circulates, materials to the public without a fee.

20. From approximately December 1<sup>st</sup>, 2005 until June 3<sup>rd</sup>, 2011 Plaintiff frequented ALDRICH’s facilities.

21. From approximately January 17, 2006 to the date of this complaint and continuing forward, the Plaintiff has owned and continues to own the premises commonly known as 22

Gallow Ave locate within the City of Barre, County of Washington, State of Vermont.

22. As such some of the Plaintiff's taxes has gone to and has been used by ALDRICH.

23. As a resident of the City of Barre, the Plaintiff is entitled to full use of the public facilities, services, etc. of ALDRICH.

24. Pursuant to the customs, policies and/or procedures of ALDRICH in order to use certain access to computerized information including but not limited to the ALDRICH's public computers including access to the Internet, LIBRARY STAFF required Plaintiff and all other similarly situated patrons to sign into a paper register.

25. Such register was and upon information still is on public display so that any other patron could view any patron so registering to use such computer access/services.

26. Unless a patron signed such register, such patron was not permitted to use such computer system.

27. Such custom, policy, procedure, etc. clearly violates Title 22, Chapter 4 § 172 of the Vermont statutes,

28. Title 22, Chapter 4 § 172 of the Vermont statutes states:

“§ 172. Library record confidentiality; exemptions”

“(a) A library's patron registration records and patron transaction records shall remain confidential.”

“(b) Unless authorized by other provisions of law, the library's officers, employees, and volunteers shall not disclose the records except:”

“(1) with the written permission of the library patron to whom the records pertain;”

“(2) to officers, employees, volunteers, and agents of the library to the extent necessary for library administration purposes;”

“(3) in response to an authorized judicial order or warrant directing disclosure;”

“(4) to custodial parents or guardians of patrons under age 16;”

“(5) to the custodial parents or guardians of a student, in accordance with the federal Family Education Rights and Privacy Act, by the library at the school the student attends.”

“(c) Statistical records pertaining to the patronage, circulation activities, and use of any service or consultation the library provides, provided that they do not contain the names of patrons or any other personally identifying information, shall be exempt from the provisions of this chapter.”

29. At no time whatsoever has the Plaintiff, nor upon information and belief any other patron of ALDRICH has provided permission for ALDRICH to waive any provision of said statute permitting disclosure that Plaintiff or anyone else have permission for such patron’s name to be disclosed to anyone looking at such “sign in sheet”.

30. Section 171 of said chapter goes on to define the various terms used in such section as:

“(1) ‘Library’ means a public library as defined in subdivision 101(2) of this title, any college, university, or school library, or any other library or archive that is open on a regular basis and makes available on site, or circulates, materials to the public without a fee.”

“(2) ‘Patron registration records’ means library records that contain information a library patron must provide in order to be eligible for borrowing privileges at a library.”

“(3) ‘Patron transaction records’ means library records that contain names or other personal identifying information that discloses an individual’s activities within a library, including the materials that have been viewed in print or electronic form, research questions posed, materials in any format that the patron has requested through interlibrary loan or has borrowed, or any other library service or consultation that the patron has requested.”

31. Section 173 of said chapter states:

“Any person whose confidential patron registration records or patron transaction records have been disclosed, except as provided in this chapter, is authorized to bring a civil action against the

library that disclosed the records.”

32. The customs, policies, rules and/or procedures of ALDRICH also violate provisions of the Electronic Communications Privacy Act - 18 U.S.C. § 2703(c).

33. The rules, regulations, customs, policies and/or procedures of ALDRICH and the LIBRARY STAFF in requiring all patrons of its facilities including Plaintiff to sign a “sign in sheet” in order to avail themselves of the use of any of ALDRICH’s computers and the accompany services offered through the same including Internet clearly violate the aforementioned sections for which the Plaintiff is entitled to relief as so requested herein including damages stemming from the unlawful relief.

34. The Plaintiff and all other patrons of ALDRICH are therefore entitled to a preliminary and permanent injunction barring ALDRICH and the LIBRARY STAFF from either requiring that they sign a “sign-in sheet” which permits any other patron or other person to view the prior sign-ins or in the alternative, if they choose to simply have a single use sign up form which its inspection is limited to a selected number of key staffers.

35. The public display of all sign-ins serves no valid purpose and clearly violates the aforementioned sections.

36. The Plaintiff therefore seeks actual and punitive damages in the sum of \$5,000,000 against ALDRICH, POPE, LANE, the LIBRARY STAFF, and the members of the Board of Trustees in their individual as well as their official capacity .

37. In addition the Plaintiff hereby requests that this court issue a preliminary and permanent injunction barring the requirements for any patron to either have to sign in to receive access to any services or in the alternative, to bar the Defendants from permitting anyone other than supervisory personnel to view and/or otherwise have access to such information.

**AS AND FOR A SECOND CAUSE OF ACTION**

38. Plaintiff repeats paragraphs numbered as if stated herein in full.

39. Approximately August 2010, the Plaintiff, as a valid library patron, requested that he receive a copy of the 2009 Vermont State Bar directory which lists law firms and practicing attorneys throughout the entire State of Vermont.

40. Defendant ALDRICH supplied such books to the Plaintiff.

41. Approximately one week after being given said books, said book was returned by the Plaintiff depositing the same into a receptacle reserved specifically for the purposes of returning of previously checked out books which is located immediately outside of the front door of the building of said library.

42. Such book was returned prior to the date set forth by library personnel in which such book was due back.

43. In approximately October 2010, the Plaintiff received a notice that said book was not returned as agreed.

44. Such notice also set forth a fee almost three times the amount of the actual cost of such book and whatever extra handling fee that the staff of the library might reasonably expect to charge for such already outdated and untimely directory.

45. Plaintiff immediately called the main number for defendant ALDRICH and spoke to a female who refused to give her name but did state that she was one of the "librarians" of ALDRICH.

46. After explaining why Plaintiff was calling the Plaintiff asked such person if a librarian of other person so designated had checked to see if the book was "shelved" into their library collection or perhaps was returned to the original library which upon information and belief was

from the State Library archives without proper recording.

47. She said she would write down Plaintiff's name and telephone number as well as the information about the book and get back to me "shortly" within the same business day.

48. Not receiving any call back, Plaintiff went to the library the very next date and spoke with a librarian who agreed to check the shelf where such book would have been shelved if it wasn't for the fact that such book was an "inter-library loan" from another library.

49. As soon as she went to the shelf, she found the subject book in question.

50. Plaintiff asked her if it was the routine of the library for whomever receives a book from a different library under the inter-library loan program through the outside book drop whether or not it was customary for the person checking in the book to note that it was an inter-library loan book and take appropriate steps to insure that the book would not be reshelved at the Defendant's library.

51. Plaintiff also asked her if it was customary for whomever was sending out notices to patrons whose books are overdue to check the shelves to make sure that the library was not in possession of the book and/or that the book was misshelved or other similar clerical error.

52. She replied that she was not sure what the procedure was but that she would check on it for me.

53. Plaintiff then spoke to other library personnel including defendant LANE about Plaintiff's concerns as aforementioned.

54. Staff told Plaintiff that the price of the book was dictated by the State Library and that it was the State Library that determined the rate of reimbursement.

55. Plaintiff contacted the State Library and inquired as to the methodology of how they calculated the replacement price that they demand or charge a patron for a lost or missing book.



56. Plaintiff was provided a chart or schedule of such rates.

57. Plaintiff actively pursued an attempt to the State Chief Librarian as well as the ALDRICH library to review the reimbursement schedule, but in each case they refused to do so or otherwise change/alter the schedule to make the reimbursement rate more reasonable.

58. A few months before the book incident above, Plaintiff had a need to use the library's public computers on a longer time period than usual, and so asked library staff if during off-peak periods (when there were a sufficient number of computers to provide any person so requesting to use any computer access.

59. LANE and other librarians granted such requests and in a handful of cases told Plaintiff that there were other patrons who needed to use the computer assigned that day to the Plaintiff and Plaintiff promptly stopped using such computer.

60. There came a time about a month after Plaintiff's book incident in which LANE and other LIBRARY STAFF revoked the special access permission which granted Plaintiff extra time to use a vacant computer for longer than the customary time period.

61. Plaintiff was told that because Plaintiff was protesting various customs, policies and/or procedures that the staff felt that Plaintiff should not be given such "special treatment".

62. Again, Plaintiff complained to supervisory personnel including but not limited to LANE, but was denied reconsideration.

63. On or about June 1<sup>st</sup>, 2011 Plaintiff, while using his own personal computer (not the library's) at a table provided therefore, Plaintiff received two urgent telephone calls within a few minutes apart relating to the results of medical testing of Plaintiff.

64. Each time, the Plaintiff told the caller that he could not talk and asked that Plaintiff call the caller back after a few minutes.

65. Plaintiff immediately began putting his computer, power supply and related items into his computer bag in anticipation of leaving the library to make such calls.

66. A librarian came over to Plaintiff and began yelling at the Plaintiff that he should not use his cell phone in the library.

67. Plaintiff apologized and tried to explain that he was in the process of leaving to go outside the library to call these persons back, but she insisted that Plaintiff leave the library.

68. Plaintiff immediately left the library and made such calls back to the callers who had just called immediately outside of the library's building.

69. Upon successful completion of such calls Plaintiff left the premises.

70. On or about June 8<sup>th</sup>, 2011 the Plaintiff returned to the library.

71. Plaintiff followed the standard procedure to sign in on the sign-in sheet and was provided a special password to sign into the computer.

72. As is the current policy a patron who needs more than initial 30 minutes can request prior to the expiration of the 30 minutes an additional 30 minutes, so the Plaintiff went up to the desk approximately 10 minutes prior to the expiration of the 30 minutes to renew such time.

73. The same person who was involved in the cell phone incident above, told plaintiff that she would add the time so that Plaintiff would not have to re-sign into the system using a different assigned password.

74. Plaintiff returned to his seat at the public computer but found that the necessary "reset" was not performed as required.

75. Plaintiff returned back to the librarian's desk and inquired as to why the extension hadn't been processed or otherwise did not take effect.

76. Plaintiff was given a new password on a slip of paper and was told to sign in again.

77. Plaintiff signed in and used the computer for the 30 minute time period.

78. After finishing Plaintiff returned to the librarian desk and asked to be provided with a list of the board members of said library.

79. The librarian began to rant on that Plaintiff was given special privileges and that she had "checked out" Plaintiff on the Internet and that she saw that Plaintiff was a "trouble maker".

80. After leaving the library, Plaintiff telephone POPE and began to explain the various issues as so stated herein and ask POPE to intervene and to resolve these issues.

81. POPE indicated that these policies were in existence for a considerable length of time and that she would need time to consult with LANE and/or other LIBRARY STAFF.

82. Plaintiff advised POPE that the library was clearly in violation of state statutes and even federal statutes with respect to the unauthorized release of Plaintiff's name by reason of the sign-in sheet procedure.

83. Plaintiff advised POPE that Plaintiff was prepared to "seek judicial intervention" to resolve the issues presented to POPE and that Plaintiff felt that since other patrons were similarly situated that the matter should be dealt with expeditiously with the goal to correct these illegal and/or otherwise improper customs, policies and/or procedures.

84. On June 3<sup>rd</sup>, 2011 in the afternoon of said day, POPE telephone Plaintiff and said that she and the LIBRARY STAFF had met and that I would be receiving a letter "shortly".

85. When Plaintiff inquired as to what the contents of such letter might be POPE repeatedly refused.

86. A short time later, while Plaintiff was at his residence, defendant ROSS ran the front door bell of Plaintiff's residence.

87. When Plaintiff went to the door, ROSS handed the Plaintiff a piece of paper annexed

hereto as Exhibit "A" entitled "NO TRESPASS ORDER".

88. Ross advised Plaintiff that he was not permitted to enter onto the premises of the ALDRICH PUBLIC LIBRARY under any circumstances.

89. Plaintiff advised ROSS that he was violating Plaintiff's rights including that of free speech [pursuant to the US Constitution's First Amendment] and unless ROSS retracted such order, it was the intention of the Plaintiff to seek judicial relief including but not limited to damages against ROSS in ROSS' individual capacity

90. ROSS smirked and told Plaintiff to have a good day.

91. A few days later Plaintiff received via US Mail a copy of the same "No Trespass Order".

92. The Defendant's have violated Plaintiff's Constitutional Rights under the equal protection clause of the US Constitution's Fourteenth Amendment by discriminating against the Plaintiff in its alleged enforcement of unwritten rules and regulations for which the Plaintiff has never ever received a copy of the same assuming that they exist as applicable to the acts/omissions complained of herein.

93. The Barre City Police Department has created a customs, policies and/or procedures in which they routinely advise complainants to serve a "no-trespass order" even if, as in the instant case, the premises are a public place.

94. The Barre City Police Department has created customs, policies and/or procedures in which they routinely violate the civil and/or other rights of individuals such as the Plaintiff by the service of a "no-trespass order".

95. The Barre City Police Department has created a customs, policies and/or procedures in which they encourage complainants to retaliate against the subjects of the "no-trespass order"

by so doing in retaliation for the subject exercising of his/her constitution, civil and/or other rights and/or privileges.

96. The Defendants BOMBARDIER, MARCEAU the CITY OF BARRE, knew or should have known that their staff was routinely instructed to violate the rights and/or privileges of individuals as the Plaintiff served with their issuance and subsequent service of "no trespass" orders on individuals.

97. The defendants BOMBARDIER, MARCEAU and the CITY OF BARRE failed to properly train and/or otherwise supervise its staff thereby which gave rise to the acts/omissions complained of herein.

98. The defendants BOMBARDIER, MARCEAU and the CITY OF BARRE failed to properly train its personnel leading up to the acts/omissions complained of herein.

99. The defendants BOMBARDIER, MARCEAU and the CITY OF BARRE failed to remedy the acts/omissions complained of.

100. The acts/omissions complained of herein have been found by various courts within the State of Vermont, the 2<sup>nd</sup> Circuit, and elsewhere to be illegal and/or otherwise improper therefore such conduct was established as being illegal and/or improper long before such acts/omissions took place as complained of herein.

101. The defendants individually and in concert acting under color of state law violated Plaintiff's Constitutional Right and other rights by retaliating against the Plaintiff for his attempts to exercise his federal and state rights.

102. The board members and other LIBRARY Staff acting individually violated claimants rights by forcing claimant and all other persons similarly situated to sign their sign-in sheet which clearly violated federal and state laws including privacy laws.

103. The board members and other LIBRARY Staff knew or should have known that such acts/omissions complained of herein violated federal and state laws but despite having the authority and duty to do so failed to remedy the same after Plaintiff complained or attempted to complain about such illegal acts/omissions.

104. The defendants acting individual and/in concert intentionally inflicted emotional distress by engaging in outrageous conduct, done intentionally and/or with reckless disregard resulting in the suffering of extreme emotion distress and/or actually approximately caused by such outrageous conduct.

105. During some of the incidents complained herein third parties not employed by the Defendants observed and/or overheard said conversations by the defendants which served no other legitimate purpose and which caused Plaintiff damages including slander, defamation of character.

106. The acts and/or omissions of the defendants as complained herein constitute slander and/or libel against the Plaintiff and his reputation.

107. The public utterances by the Defendants complained of herein served no legitimate purpose.

108. The public utterances complained of herein were uttered to inflict severe emotional distress and/or otherwise cause damage to the Plaintiff.

109. The Plaintiff hereby demands trial by jury.

WHEREFORE the Plaintiff hereby requests that this court:

a) Enter judgment against the defendants in both their individual and official capacities as well as a preliminary and permanent injunction to permit the Plaintiff to receive all rights and privileges as a resident and taxpayer of the City of Barre in terms of access to the Aldrich Public

Library and its grounds as any other resident/taxpayer is so entitled and to vacate the “no trespass order”.

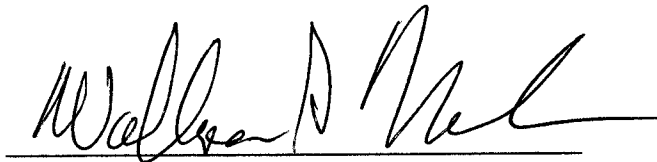
b) That this court declare that the customs, policies and/or procedures of ALDRICH and its staff with respect to requiring the Plaintiff and all other similarly situated patrons to sign-in on a publicly available log or sign-in sheet which is visible to other patrons in violation of federal and state statutes as aforesaid.

c) That this court issue a temporary and permanent restraining order barring the defendants, each of them from restraining or otherwise prohibiting the Plaintiff from entering upon the premises commonly known as the Aldrich Public Library and restricting the Plaintiff from the use of any library materials and/or other services provided to persons similar situated to the Plaintiff;

d) That this court issue a temporary and permanent restraining order barring the defendants, BOMBARDIER, MARCEAU, THE CITY OF BARRE from issuing “no trespass orders barring the Plaintiff and/or anyone else from entering upon any public premises including but not limited to the Aldrich Public Library premises and/or otherwise violating the Constitutional and/or rights/privileges of the Plaintiff and all others similarly situated.

e) And whatever other and further relief this court feels just and proper herein together with costs, disbursements and reasonable attorney fees necessary to prosecute this action

Dated: July 14, 2011

A handwritten signature in black ink, appearing to read "Wallace S. Nolen", written over a horizontal line.

WALLACE S. NOLEN

Mailing Address: PO Box 1025

Montpelier VT 05601-1025

Physical Address: 22 Gallow Ave

Barre VT 05641

Telephone: (802) 839-7392