

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NICOLE MARIE MCDANIELS, individually
and on behalf of a class of others similarly
situated, *et al.*

Plaintiffs

- v -

1:04-CV-757
(GLS/RFT)

THE COUNTY OF SCHENECTADY, *et al.*,
Defendants

APPEARANCES:

ELMER ROBERT KEACH, III
Attorney for the Plaintiffs
One Steuben Place
Albany, New York 12207

OF COUNSEL:

ELMER ROBERT KEACH, III, ESQ.

GOLDBERG SEGALLA LLP
Attorneys for the Defendants
7 Southwoods Boulevard Suite 204
Albany, New York 12211

WILLIAM J. GREAGAN, ESQ.

**RANDOLPH F. TREECE
U.S. MAGISTRATE JUDGE**

PROTECTIVE ORDER

WHEREAS, on January 7, 2005, this Court rendered a Ruling, on the record, which was memorialized in an Order dated January 10, 2005. By both the Ruling and the subsequent Order, this Court granted Plaintiffs permission to inspect and videotape specific portions of the Schenectady County Jail Facility and further ordered that the Facility Booking Sheets (Slips) for the relevant period as set forth in the Complaint shall be disclosed but pursuant to a protective order. Both the inspection and the videotaping and the disclosure of the Booking Slips contain either personal or otherwise confidential information or raise a significant security concern that may be the subject of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. Based upon further deliberation it is hereby Ordered:

BOOKING SLIPS

By an Order, dated January 10, 2005, the Defendants are required to disclose to the Plaintiffs the Booking Slips for Non-felony, Pretrial Detainees during the relevant period set forth in the Complaint. The Booking Slips shall be redacted to the extent that they exclude disclosure of medical conditions, illness, medications, special diet, and any other information related to these areas of inquiry. Further, the third page of the Booking Slips, a suicide assessment form, shall be redacted as well. Notwithstanding that certain confidential information has been redacted, the other

information contained therein shall be deemed confidential as well and subject to this Protective Order. To the extent necessary, this information shall be used for this litigation only.

That information within the Booking Slips which shall be considered confidential information and subject to this Protective Order shall include the name, address, date of birth, date of arrival at the Schenectady County Jail Facility, social security number, name of next of kin, phone number of next of kin and offense charged, miscellaneous information and the remainder of the “inmate booking information,” exclusive of that information directed to be redacted, for all non-felony, pretrial detainees.¹

Prior to the Defendants’ actual disclosure to Plaintiffs of the Booking Slips and information contained therein, these documents shall be marked “CONFIDENTIAL” in a manner that will not interfere with the legibility thereof.

Except with the prior written consent of the individual pretrial detainee(s), the individual pretrial detainee(s) stamped confidential Booking Slip(s), or the information contained therein, may NOT be disclosed to any person (including the named Plaintiffs), except for the attorneys for the parties and those employees and

¹ A non-felony, pretrial detainee shall include those charged with misdemeanors, violations, violation of parole, violation of probation, or held in civil or family court matters.

agents working directly with the attorneys, for use only in connection with this action. Should a non-felony, pretrial detainee becomes a plaintiff to this action or is interviewed by either party, that detainee may be shown his or her personal Booking Slip(s) only.

Any person to whom information provided under this order is disclosed must sign a statement agreeing to be bound by this Protective Order. The signed statement, as annexed hereto as Exhibit "A" shall contain:

- (1) a recital that the signatory has read and understands this Order;
- (2) a recital that the signatory understands that unauthorized disclosures of the stamped confidential documents constitutes **contempt of court**.

Plaintiffs' counsel must maintain a list of all persons to whom the Booking Slips and the information contained therein, has been disclosed.

The Defendants may make an application to the Court for the Court to conduct an *in camera* inspection of the Plaintiffs' list of all persons who may have inspected the Booking Slips and the information contained therein. Upon such an application by the Defendants, the Plaintiffs shall make the list available to the Court within five (5) business days of the application.

To the extent that these Booking Slips may be used at any one witness or party's deposition as it may relate to this litigation, said Booking Slips remain subject to this Protective Order. The attorneys for the parties **must**, within fifteen (15) days

after receiving any deposition transcript, designate pages of the transcript and/or exhibits thereto as confidential, if related to disclosure of the Booking Slips or the information contained therein. Until the expiration of the fifteen (15) day period, the entire deposition will be treated as subject to this Protective Order. If the attorneys for the parties do not timely designate the confidential information in a deposition relating to the Booking Slips or the information contained therein, then the entire transcript or its exhibits will be treated as confidential until such time this Court may lift the protection provided by this Order. However, the parties need not re-designate as confidential a document previously so designated.

The Booking Slips or information contained therein, that has been marked confidential pursuant to this Order, shall continue to be treated as confidential information at trial. The trial court may determine how this information and/or documents shall be kept confidential at trial.

The stamped confidential Booking slips or information contained therein, or corresponding pages of depositions deemed confidential, shall not be filed with the Clerk, except when required in connection with motions under Rule 56 or other matters pending before the Court. If required to be filed, said documents shall be filed under seal and shall remain sealed while in the office of the Clerk so long as they retain their status as stamped confidential documents.

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their actual client(s), in the course thereof, relying generally on examination of stamped confidential Booking Slips and information provided therein, provided, however, that in rendering such advice and otherwise communicating with such client(s), counsel shall not make specific disclosure of any item so designated, except to have the client adhere to the procedures set forth above.

Anyone who is permitted access to stamped confidential Booking Slips or information contained therein pursuant this Order shall use the information only for preparation and the trial (itself) of this litigation and shall not use such information for any other purpose.

INSPECTION AND VIDEOTAPING

By an Order, date January 10, 2005, this Court granted Plaintiffs permission to inspect and videotape certain aspects or rooms of the Schenectady County Jail Facility, which shall occur on either January 11 or 12, 2005, at a time that is not disruptive to the operation of the Facility. The rooms identified to be inspected and/or videotaped shall be the booking area, the sally port, and the jail control room.

The jail control room video shall be on a separate and independent tape from the videotape of the sally port and booking area. The videotapes of the inspection shall be subject to this Protective Order and shall not be used for any other purpose other

than this litigation.

The videotape of the booking area and the sally port may not be disclosed to any person, except for the attorneys for the parties and those employees and agents working directly with the attorneys, for use only in connection with this action. To the extent said videotape needs to be disclosed to the Plaintiffs or anyone who may become a named plaintiff to this action, said videotape may be disclosed consistent with the conditions set forth in this Protective Order.

The videotape of the jail control room is for the attorneys for the parties and those employees and agents working directly with the attorneys only. Said videotape shall not be disclosed to the Plaintiffs and anyone who may be named as a plaintiff in this action, without prior court order.

A copy of all videotapes taken during the inspections shall be shared with the Defendants. All other copies of the videotapes shall remain in the exclusive custody and control of the attorneys.

Any person to whom the videotapes have been shown or provided under this order must sign a statement agreeing to be bound by this Protective Order. The signed statement, as annexed hereto as Exhibit "A" shall contain:

- (1) a recital that the signatory has read and understands this Order;
- (2) a recital that the signatory understands that unauthorized disclosures of the stamped confidential documents constitutes **contempt of court**.

Plaintiffs' counsel must maintain a list of all persons to whom the videotapes have been shown, disclosed or reviewed.

The Defendants may make an application to the Court for the Court to conduct an *in camera* inspection of the Plaintiffs' list of all persons who may have reviewed the videotapes. Upon such an application by the Defendants, the Plaintiffs shall make the list available to the Court within five (5) business days of the application.

To the extent that these videotapes may be used at any one witness or party's deposition as it may relate to this litigation, said videotapes remain subject to this Protective Order.

The videotapes shall continue to be treated as confidential information at trial. The trial court may determine how this information and/or documents shall be kept confidential at trial. Further, the videotapes shall not be filed with the Clerk, except when required in connection with motions under Rule 56 or other matters pending before the Court. If required to be filed, said videotapes shall be filed under seal and shall remain sealed while in the office of the Clerk.

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their actual client(s), in the course thereof, relying generally on examination of the videotapes, provided, however, that in rendering such advice and otherwise communicating with such client(s), counsel shall not make specific

disclosure of any depictions of the jail control room.

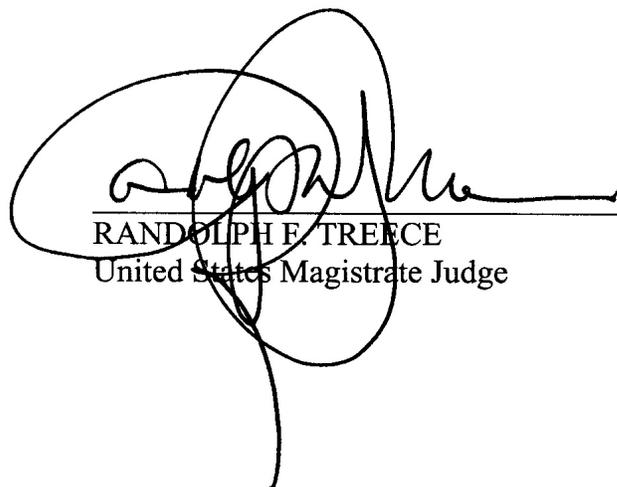
Anyone who is permitted access to videotapes shall use the information only for preparation and the trial (itself) of this litigation and shall not use such information for any other purpose.

The provisions of this Order shall not terminate at the conclusion of this action. Within thirty (30) days after final conclusion of all aspects of this litigation, which may include an appeal, stamped confidential Booking Slips and all copies of same (other than unsealed exhibits of records) and the videotapes shall be returned to the Defendants or, at the option of Defendants, destroyed. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Defendants not more than sixty (60) days after final termination of this litigation.

All attorneys of record are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of copies of stamped confidential documents and the videotapes.

SO ORDERED.

January 11, 2005
Albany, New York



RANDOLPH F. TREECE
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NICOLE MARIE MCDANIELS, individually
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THE COUNTY OF SCHENECTADY, *et al.*,
Defendants

I, _____, being 18 years of age or older, have read and
understands the PROTECTIVE ORDER ON BOOKING SLIPS, RELATED INFORMATION
THEREIN, AND REVIEWING THE VIDEOTAPES, attached hereto as Exhibit "A".

I, _____, understand that the unauthorized disclosure of
the stamped confidential document(s), known as the booking slips, the information contained
therein, and the videotapes constitutes contempt of court.

Dated: _____, 200 .

Signature

Sworn to before me
this day of _____, 200 .

Notary Public