

## MOTION HEARING MINUTES

**CASE NAME:**

<b>Nichole Marie McDaniel</b>	<b>VS</b>	<b>The County of Schenectady, et al.</b>
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**CAUSE:** 42:1983 Civil Rights Act      **DATE:** September 29, 2005

**PROCEEDING:**      Motion Hearing

**LAW CLERKS:** \_\_\_\_\_      **CASE NUMBER:** **1:04-cv-757 (GLS/RFT)**

**TRIAL DATE:** \*\*/\*\*/\*\*      **STENO:** Theresa Casal

Note:      None

<b>PRINT NAME</b>	<b>FIRM NAME</b>	<b>PHONE #</b>	<b>PARTY:</b>
Bob Keach	Office of Elmer R. Keach	(518)434-1718	Plaintiff
Jason Rozger	Beranbaum, Menken Law Firm	(212)509-1616	Plaintiff
William J. Greagan	Goldberg, Segalla Law Firm	(518)463-5400	Defendants

**BEGINNING TIME:**      10:50 A.M.      **END TIME:** 11:57 A.M.

**APPEARANCES:**      All attorney's are present.

- 10:50 a.m.      Court states the motions and issues pending before the court.
- 10:54 a.m.      Court turns to the sua sponte issue. Court turns to warning on the record regarding authority. Discipline is governed by Local Rule 83.4(j and k). General Order 25 has been amended on civility of litigation.
- 10:59 a.m.      Court turns to the unobjected report-recommendation. Court adopts report-recommendation in its entirety. Court turns to the defendants' motion for summary judgment. Court adopts decision brought by Judge Homer's decision.
- 11:01 a.m.      Atty. Greagan states Judge Homer's decision is unconstitutional. Due process and equal protection. Gives an example to the court. Creates disparate treatment on the proposed class. Those out of jail recover and those in jail can't recover. Creates mischief on both sides if apply standard that you have to wait until you get out of jail. All things create an unconstitutional result. Southern District decision is Affirmed. Difference in rights in upstate inmates and downstate inmates. Addresses point 23 rule.
- 11:08 a.m.      Court states point is not without merit. Court understands argument on constitutionality but disagree.

- 11:13 a.m. Atty. Greagan states 5 lawsuits in NDNY currently pending. 1<sup>st</sup> one to raise issue before District Court Judge. Would like the court to certify to the court of appeals.
- 11:14 a.m. Court states will give defendant to submit to the court that gives this court the empowerment to do and whether the court should and give the plaintiff a chance to respond. Until definitively resolved by this circuit at odds on how to resolve it. Judge Homer represents that how courts resolved it is adverse to the decision. Court gives the defendants 3 weeks and the plaintiff receive 3 more weeks. Submissions by depts. due on or before October 20 and the plaintiff's submissions due on or before November 10<sup>th</sup>. Court asks exercise discretion under 4m.
- 11:17 a.m. Atty. Greagan states court has authority. Next issue is claim against them on Monell claim. Frivolous to serve them courts decision not Frivolous.
- 11:18 a.m. Court denies motion as premature. Court gives examples to counsel. Denying aspect of that motion with leave to renew. Does not have full record to proceed on this issue.
- 11:19 a.m. Atty. Greagan states plaintiff offered no evidence. No proof of what happened to plaintiff and that any of these people had participated in the booking or created policy on this record. No affidavit from the plaintiff. No proof of policy the plaintiff was subjected to. In plaintiff's power to address. In m/s/j under these circumstances and could not survive.
- 11:22 a.m. Court states issues are in outstanding discovery. Court states ruling is motion is denied as premature with right to renew. Need to proceed with further discovery then will rule on it. Court turns to the two magistrate appeals.
- 11:22 a.m. Atty. Keach states plaintiff's opportunity to serve the two plaintiffs. Court gives the plaintiff 30 days.
- 11:23 a.m. Atty. Greagan states will notify plaintiff if can accept service.
- 11:23 a.m. Court turns back to civility issue. Court turns to the magistrates standard of review. Context in which these appeals arise. Court declines to adopt Haines standard. Court adopts standard in this district. Court lists citations. Court cites the local rule that governs appeal of magistrate judge's decision.
- 11:32 a.m. Court states test adopted is there reasonable view of law that justifies decision he made and that decision is not clearly erroneous. Court turns to McDaniel appeal. Court states obligation to disclose those witnesses.
- 11:35 a.m. Atty. Keach states some disagreement states withdraws this appeal. Atty. Keach states interviewed witness. Defendants have possession of book.
- 11:36 a.m. Court affirms order of the magistrate judge. Certain timing components. Refer back to magistrate. Date has gone by. Understand points plaintiff is making. Leave that to the discretion of the magistrate. Not regulate the actual disclosure.
- 11:38 a.m. Court turns to the 2<sup>nd</sup> appeal. Court states takes as collateral issues. Court discusses change of call to magistrate judge for conference prior to filing a non-dispositive motion. State privileges do not apply in federal court. In federal court, federal privileges apply.
- 11:46 a.m. Atty. Greagan states federal rules allow litigants make discovery motion. Moves to the issue of relevancy. One remedy would to be filed all under seal. Rule 23 states get discovery after class certification. Even under seal, still an invasion here. Action has been going on since June 2004. Record contains plaintiff had other people. Only reason to obtain these individuals is for a fishing trip. No rational explanation. Burden being placed upon the defendant.

- 11:49 a.m. Court gives an example to defense counsel. 2<sup>nd</sup> circuit has ruled a strip search policy is unconstitutional. Court states decisions are summarized.
- 11:51 a.m. Atty. Greagan states plaintiff have obligation to have good faith basis.
- 11:53 a.m. Court states issue is magistrate judge had good faith basis on order appealing.
- 11:54 a.m. Atty. Greagan states he was wrong on the law. Unholy burden on defendants just because it is called a class action. Still before the proof stage. Unfair to the defense.
- 11:54 a.m. Court denies the appeal. Order is not clear and erroneously. Refer back to magistrate judge. Court asks what else leaves us.
- 11:55 a.m. Counsel state all issues before court.
- 11:56 a.m. Transcript constitutes the decision of the record. No written order forthcoming.