

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

STEVEN CASPERSON, MATTHEW FRANK,  
JON E. LITSCHER, LAURA WOOD,  
GERALD BERGE, PETER HUIBREGTSE,  
GARY BOUGHTON, VICKI SEBASTIAN,  
CPT. TIMOTHY HAINES, LINDA HODDY,  
CINDY O'DONNELL, LT. GARDINER,  
JULIE BIGGAR, SGT. HANKE, TODD OVERBO,  
SANDRA GRONDIN, JoANNE GOUIERE (JANE DOE),  
JOHN DOE #'S 6 and 8, ELLEN RAY,  
GARY McCAUGHTRY, MARC CLEMENTS,  
DEBRA TETZLAFF, CPT. STEVE SCHUELER,  
C.O. WATSON, CHAPLAIN FRANCIS,  
BYRON BARTOW, KATHLEEN BELLAIRE,  
and STEVE SPANBAUER,

Defendants.

ORDER

02-C-473-C

-----  
In accordance with Magistrate Judge Stephen Crocker's preliminary pretrial conference order of August 31, 2004, defendants have identified John Doe #6 as Mike Vanderloh and John Doe #8 as Ron Kaplitz. Now plaintiff has filed a "Notice and Motion

to Rename Doe Defendants in his Complaint.” In a separate document, plaintiff moves to compel defense counsel to specify which of five potential defendants identified by counsel is the Doe defendant who “held Lindell’s head [on April 8, 2002] and . . . poked his eyes and nose while dragging Lindell from his cell.”

In the August 31 order, the magistrate judge instructed plaintiff to submit, not later than September 17, 2004, a pleading in which he replaces all references to the Doe defendants with the names provided to him by the state. The magistrate judge cautioned plaintiff not to make any other changes to his complaint without first asking for and receiving permission from the court. In addition, he gave the “now-identified ‘John Doe’ defendants” until September 27, 2004, in which to file and serve their answer to the complaint.

Although the magistrate judge acted at my behest to set an abbreviated schedule for moving this two-year-old case to resolution, my desire for expedited treatment of the case cannot trump the requirement under the Federal Rules of Civil Procedure that all new defendants be served with plaintiff’s complaint. Plaintiff has not yet provided the court with an amended complaint that shows the names of the new defendants in the caption and in the body of the complaint where plaintiff previously identified the defendants as John Does. It is not the court’s responsibility, as plaintiff suggests, to “substitute the two named Doe defendants” for him. Therefore, I am enclosing to plaintiff with a copy of this order a copy

of the operative pleading in this case, on which he is to cross out the references to John Doe Nos. 6 and 8 and insert in their place the names of Mike Vanderloh and Ron Koplitz.

With respect to plaintiff's request that Assistant Attorney General Mark Neuser be directed to determine which of the five persons he identified as members of the extraction team who removed plaintiff from his cell on April 8, 2002, might have poked plaintiff in the eye and squeezed his nose, I decline to require defense counsel to do more than he already has done. If plaintiff intends to pursue this excessive force claim, he is free to name all five persons who have been identified as potential defendants and, after they have been served with plaintiff's complaint, conduct proper discovery in an effort to ascertain which of the five might have committed the offensive acts.

#### ORDER

IT IS ORDERED that plaintiff's motions for the court to rename the Doe defendants in his complaint and require defense counsel to determine which of the five persons counsel identified used excessive force against plaintiff on April 8, 2002, are DENIED.

Further, IT IS ORDERED that plaintiff may have an enlargement of time to October 11, 2004, in which to substitute in the caption and the body of his complaint the names of the persons previously identified as John Doe defendants ## 6 and 8 and the Doe defendant who allegedly used excessive force against plaintiff on April 8, 2002. A copy of

the operative pleading in this case is enclosed to plaintiff so that he can make the changes and return the copy to the court. As soon as the amended copy of the pleading is returned to the court, the court will duplicate the pleading for service on the newly added defendants and forward it to the Attorney General for informal service of process. Because the pleading is to contain no changes other than substitution of the Doe defendants' identities in the caption and body of the complaint, I will assume that the existing defendants will stand on their response to plaintiff's present complaint as their response to the amended complaint.

Finally, IT IS ORDERED that the newly-added defendants may have 20 days from the date of service of the amended complaint upon them in which to serve and file a responsive pleading to the complaint. In all other respects, the magistrate judge's scheduling order of August 31, 2004, stands as entered.

Entered this 27th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge