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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUANE DOAN,

Defendant.

REPORT AND RECOMMENDATION

05-CR-179-S

REPORT

Defendant Duane Doan is charged with possessing on his computer images of minors engaged in sexually explicit conduct (hereafter child pornography). Before the court for report and recommendation are Doan's motion to suppress physical evidence because the search warrant was invalid, and to suppress his statements because they derived from this allegedly unconstitutional search and seizure. Brown also challenges my denial of his request for a *Franks* hearing.[1] (dkt 13).

For the reasons stated below, I am recommending that this court deny Doan's motion.[2]

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[1] *See Franks v. Delaware*, 438 U.S. 154 (1978).

[2] It might seem self-serving to review a warrant that I issued, but I have admitted error in other cases when persuaded that my initial ruling was incorrect. *See, e.g.,* Report and Recommendation in *United States v. Brown,* 00-CR-112-C, dkt. 30 at 16-18 (error to allow no-knock entry to seize computer). Further, the district judge has the final say on whether to quash this warrant.

On September 20, 2004, I issued a search warrant aimed at Doan's computer and peripherals. A copy of the warrant, application, and supporting affidavit are attached to Doan's motion to suppress, dkt. 11, and the government's response, dkt. 16. Doan contends that probable cause did not support the warrant. Doan's main point is that the evidence that he visited child pornography websites was stale. He also challenges the opinions offered and conclusions drawn by the affiant, BICE (formerly U.S. Customs) Senior Special Agent Steven Sutherland, who has participated in numerous investigations relating to child exploitation over the last 17 years. Doan requested a *Franks* hearing on his challenge to the warrant, supporting his request with the affidavit of former U.S. Customs Senior Special Agent William J. Docken, who now works as a private consultant (and who I presume is a former colleague of Agent Sutherland's). I declined Doan's request. *See* Feb. 15, 2006 Pretrial Motion Hearing Order, dkt. 13, at 2-3.

I. Renewed Request for a *Franks* hearing

In my pretrial motion hearing order, I denied Doan's request for a *Franks* hearing because Doan had failed to make the required substantial preliminary showing on any of the three predicates: (1) the challenged search warrant affidavit contained false material statements or omitted material facts; (2) the affiant made the false statement(s) or omitted the material fact(s) intentionally or with reckless disregard for the truth; and (3) the false

statement or omitted fact was necessary to support the finding of probable cause. 438 U.S. at 155-56. As the Court stated in *Franks*,

> Our reluctance . . . to extend the rule of exclusion beyond instances of deliberate misstatements, and those of reckless disregard, leaves a broad field where the magistrate is the sole protection of a citizen's Fourth Amendment rights, namely, in instances where police have been merely negligent in checking or recording the facts relevant to a probable-cause determination.

438 U.S. at 170.

Put another way, *Franks* hearings are necessary to ensure that a defendant is protected "where a Fourth Amendment violation has been substantial and deliberate." *Id.* at 171. Although Docken's affidavit is highly critical of Agent Sutherland's investigation and his report to the court, Docken never stated or implied that Sutherland's alleged omissions or failure to investigate further were deliberate or reckless. As I stated in my earlier order,

> A failure to investigate more thoroughly or a failure to provide the court with more information that might better illuminate the situation is, at most, negligence. " A little negligence–actually even a lot of negligence–does not the need for a *Franks* hearing make." [*United States v. Swanson*, 210 F.3d 788 (7th Cir. 2000)] at 790-91. Rather, Doan has to make a substantial preliminary showing that the claimed omissions were intentional, and that they were in fact material. *See id.* at 790. In order to prove deliberate falsehood or reckless disregard a defendant must offer direct evidence of the affiant's state of mind or inferential evidence that the affiant had obvious reasons for omitting facts. *United States v. Souffront*, 338 F.3d 809 (7th Cir. 2003).
>
> As previously noted, Docken has not accused the government's affiant of intentionally or recklessly misleading the court, nor do

> I infer such an accusation from my review of Docken's entire affidavit. But even assuming, *arguendo*, that Doan is alleging willful or reckless behavior by the agent, Doan has not come close to making the required substantial preliminary showing.

Dkt. 13 at 2-3.

In his renewed motion, Doan would have this court conclude that Agent Sutherland willfully lied to the court or was reckless in presenting facts to the court about how probable it was that Doan still had certain images on his computer 17 months later because Agent Sutherland "should have known" that it was "unlikely" that a person would hold such images on his computer image for such a long time. Brief in Support, dkt. 15, at 15. But Agent Sutherland's marginal notation in his affidavit specifically states to the contrary: he claims that he has recovered child pornography 18 months after his last investigative hit on a suspect. Doan has substantively challenged this assertion; I reject his challenge in the next section; in light of this, Doan's premise is based on a blend of wishful thinking and a self-interested perspective on what's more likely than not.

But even if this court were to accept, *arguendo*, Doan's premise that Agent Sutherland "should have known" this "fact," this is would establish negligence, not recklessness. *See United States v. Ladish Malting Co.,* 135 F.3d 484, 487-88 (7th Cir. 1998). Accordingly, his failure to provide the court with information that he did not have cannot be deemed reckless or intentional.

Interestingly but unpersuasively Doan subtly bootstraps his "should have known" contention into an alleged actual omission by Agent Sutherland during the course of his

argument. *See* dkt. 15 at 15. To the same effect, Doan argues that if an agent "could have known something" but didn't, this demonstrates reckless disregard for the truth. *Id.* Absent some showing of a more intentional avoidance of knowledge by the agent, this argument is a non sequitur.

Doan, like many defendants, is unhappy with the agent's version of events as set forth in the affidavit and presses for an opportunity to impeach him after the fact. But this search warrant cannot be challenged simply because Doan has offered competing background information about the appropriate lens through which to view his 17-month old subscriptions to two child pornography websites. Doan is not entitled to a *Franks* hearing on his motion.

For what it's worth, a *Franks* hearing probably would not have resulted in suppression: pursuant to *Franks'* redaction/supplementation variation, 438 U.S. at 171-72, even if this court had read both Agent Sutherland's and Docken's affidavits at the application phase, it is possible the court still would have issued the warrant given the low evidentiary threshold necessary to establish probable cause (discussed next). Since we don't get to this phase, I will not explore this possibility in depth.

II. Probable Cause

If Doan might have lost even with a *Franks* hearing, he definitely loses without one. This is because the facts presented by Agent Sutherland in his affidavit are sufficient to

establish probable cause for the requested search. That said, this is not a slam-dunk case for the government because probable cause depends on drawing certain inferences that some courts have refused to draw. But the probable cause threshold is very low and the facts of this case suggest that the disputed inferences, while not ineluctable, were reasonable. (If the district court disagrees, then the government likely avoids suppression under the good faith doctrine, discussed in Section III).

A court that is asked to issue a search warrant must determine if probable cause exists by making a practical, common-sense decision whether given all the circumstances, there exists a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Walker*, 237 F.3d 845, 850 (7th Cir. 2001), quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1982).

To uphold a challenged warrant, a reviewing court must find that the affidavit provided the issuing court with a substantial basis for determining the existence of probable cause. In the Seventh Circuit, this standard is interpreted to require review for clear error by the issuing court. Reviewing courts are not to invalidate a warrant by interpreting the affidavits in a hypertechnical rather than a common sense manner. *Id.*

Put another way, a court's determination of probable cause should be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the court reasonably could conclude that the items sought to be

seized are associated with the crime and located in the place indicated. Doubtful cases should be resolved in favor of upholding the warrant. *United States v. Quintanilla*, 218 F.3d 674, 677 (7th Cir. 2000), quoting *United States v. Spry*, 190 F.3d 829, 835 (7th Cir. 1999), *cert. denied*, 528 U.S. 1130 (2000).

The Supreme Court has declined to define "probable cause" precisely, noting that it is a commonsense, nontechnical concept that deals with the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act. *Ornelas v. United States*, 517 U.S. 690, 695 (1996). Despite the lack of a firm definition, the Supreme Court tells us that probable cause to search exists

> where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.

Id. at 696, citations omitted. Probable cause is a fluid concept that derives its substantive content from the particular context in which the standard is being assessed. *Id.*, citations omitted.

"Probable cause requires only a probability or a substantial chance of criminal activity, not an actual showing of such activity." *United States v. Roth*, 201 F.3d 888, 893 (7th Cir. 2000), *quoting Illinois v. Gates*, 462 U.S. 213, 244 (1983); *see also United States v. Ramirez*, 112 F.3d 849, 851-52 (7th Cir. 1997)("all that is required for a lawful search is *probable* cause to believe that the search will turn up evidence or fruits of crime, not certainty that it will") (emphasis in original). Although people often use "probable" to mean "more likely than

not," probable cause does not require a showing that an event is more than 50% likely. *See United States v. Garcia,* 179 F.3d 265, 269 (5th Cir. 1999);*see also United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003) (probable cause determination does not require resolution of conflicting evidence that preponderance of evidence standard requires); *Edmond v. Goldsmith*, 183 F.3d 659, 669 (7th Cir. 1999)(Easterbrook, J., dissenting) (probable cause exists somewhere below the 50% threshold).

In making probable cause determinations, law enforcement agents are entitled to draw reasonable inferences from the facts before them, based on their training and experience. *Funches*, 327 F.3d at 586. As the court noted in *Funches*, a drug case,

> Such expertise is highly significant because . . . officers assigned to specialized areas of enforcement become familiar with the methods of those engaged in particular types of criminal activity, giving them an ability to detect unlawful activity where laymen might not.

Id.

There are two prongs to Doan's probable cause challenge: first, Agent Sutherland did not provide sufficient evidence that Doan ever had child pornography on his computer; second, even if he did establish this, he did not provide sufficient evidence that this contraband still would be on Doan's computer 17 months later.

Doan cites to the "Candyman" child pornography prosecutions in New York to argue that subscription to a child pornography website does not necessarily imply use of the website. As Doan acknowledges, district and circuit court opinions arising out the of

Candyman search warrant fiasco have reached conflicting conclusions on the question whether visiting a child pornography website implies that the visitor downloaded contraband images. The court's opinion in *United States v. Coreas*, 419 F.3d 151, 152 (2nd Cir. 2005) provides an overview of the tainted Candyman investigation and the suppression motions/ *Franks* hearings that followed. In a nutshell, an FBI agent prepared an affidavit in which he falsely alleged that subscribers to the Candyman website actively had to join by sending an e-mail, and thereafter automatically received e-mails from the site, many of which contained child pornography. This affidavit served as the basis for dozens of search warrants. However, as was objectively proved at subsequent *Franks* hearings, both of these assertions were false: a subscriber could join the Candyman site just by clicking a button at the site; the subscriber then had the *option* to request automatic e-mails from the site; only 15% of the subscribers chose this option. *See id.* at 152-53.

These false allegations led agents to assert and courts to accept the faulty syllogism that if all subscribers automatically received all Candyman e-mails, and if John Doe subscribed to Candyman, then John Doe had received from Candyman e-mails containing child pornography. As a result, the government obtained warrants to search dozens of computers without having done any additional investigation into whether the suspects actually had downloaded any child pornography from the Candyman site. *Id.*

Once the false allegations from the search warrant affidavits were removed, what remained were allegations that the suspects had subscribed to the Candyman site. (There

also were allegations about the traits of child pornography "collectors" meant to address staleness concerns, but those were irrelevant to the *Franks* issues in the Candyman cases. *Id.* at 153-54.) Some courts found that the remaining allegations were insufficient to establish probable cause to search. *Id*. at 156.

The court in *Coreas*, however, acknowledged that a sister panel in its own circuit had decided otherwise in a non-Candyman case. *See United States v. Martin*, 426 F.3d 68, 75, *reh. en banc den'd*, 431 F.3d 73 (2nd Cir. 2005). The *Coreas* court attempted to distinguish *Martin* on its marginally different facts, but ultimately decided that the *Martin* panel simply reached the wrong conclusion. *Id.* at 157-58.

In *Martin*, the court held that there was probable cause to search the defendant's computer based on his subscription to a webgroup entitled "Girls12-16," even without any evidence that he personally had downloaded images from the website. The court based its decision on the affiant's explanation of the traits and proclivities of the types of people who join websites like "Girls12-16;" the court's conclusion, drawn from the content of the website, that the unabashed essential purpose of the site was to trade child pornography; the fact that the website did, in fact, contain child pornography; and the court's conclusion that "it is common sense that an individual who joins such a site would more than likely download and possess such material." 426 F.3d at 74-75. Most (but not all) courts that have considered this question have sided with the panel in *Martin*. *Id.* at 75 (collecting cases).

So it is in Doan's case. Admittedly, the court in *Coreas* makes a valid, important point: to the extent that a website serves as a forum for *speech* that is *about* sex with children and child pornography, the First Amendment protects this speech, however repugnant. 419 F.3d at 156-57. But where the evidence suggests that a website's primary purpose is the dissemination of actual child pornography (namely, visual images of minors engaged in sexually explicit conduct), the calculus changes. *Id.* at 157.

In the instant case, Agent Sutherland reported in his affidavit that on April 7, 2003, Doan used his e-mail account to visit www.lust-gallery.com and www.veiled.pages.com. Doan provided his personal credit card information to buy time at these websites. (The agents had to pay $49.95 to obtain access to "lust-gallery" and $57.90 for a subscription to "veiledpages"). As Agent Sutherland described in ¶¶ 44-48 of his affidavit, the "lust-gallery" and "veiled pages" websites contained actual images of child pornography and touted themselves as such, quoting a sales pitch from one site:

> Expect all the things RedLagoon Studio is famous for: leg spreads and close ups, shots from behind and some peeing shots. We also manage to improve picture quality significantly. All the models are 14 and younger and never shown at our sites before . . .

Sutherland Affidavit at ¶ 47.

Clearly, these sites were not geared toward generating intellectual discussions regarding the literary merits of Nabokov. Equally clearly, a person willing to plunk down over $100 to visit the "members only" sections of these websites was expecting some value

for his money. Maybe some subscribers paid, visited, then left; others, however, certainly would have paid, visited, and downloaded. Perhaps, as Doan argues, there will come a time when subscribers to websites like these merely visit without downloading; ironically, they may be driven to this tactic by fear of prosecutions like this one. But this court is not aware of any child pornography search warrant in this district in which a subscriber was *not* found to have downloaded contraband, a fact the government would be obliged to reveal if it were aware of such information.

In his post-hoc challenge to this warrant, Doan has not established that paid subscribers to child pornography sites in general (or to these two sites in specific) are not downloading contraband; instead, he points to the lack of evidence that they are. This is a fair observation that must be considered in a probable cause analysis, but it does not negate the reasonable inference that a subscriber who pays to join the inner sanctum of a site geared explicitly and exclusively to child pornography would attempt to get his money's worth by downloading some images. Such behavior certainly would fit within the profile advanced by Agent Sutherland in his affidavit.

Doan argues that Agent Sutherland's "expert opinion" on these matters is inaccurate and outdated because it attributes to Doan the characteristics of a pedophile without any evidence that he is one, and because it bases some observations regarding contraband retention on pre-Internet rules of thumb.

Doan's first point sets up a straw man: although Agent Sutherland uses the term "pedophile" in his affidavit, the salient paragraphs regarding the retention of child pornography use the term "individuals who collect depictions of minors engaged in sexually explicit conduct." *Compare* ¶ 56(A) *with* ¶ 56(D). I presume that neither Agent Sutherland nor Docken is qualified to diagnose pedophilia under the DSM-IV-TR, so I further presume that the term is being used more loosely as a synonym for men who collect child pornography. Using this more common-sense approach, it is fair to conclude that Agent Sutherland's observations about such people apply to Doan because Doan paid for subscriptions to two child pornography websites. True, there is a leap from being a site-visitor to being a collector; other, less inculpatory inferences reasonably could be drawn as well. But the existence of possibly innocent explanations for conduct, while part of the totality of circumstances review, does not by itself negate probable cause. *See United States v. Funches*, 327 F.3d at 587. I am satisfied that the inculpatory inference drawn in Agent Sutherland's affidavit and accepted by this court is fair and justified on the facts of this case.

So the last question is whether the 17 month gap between when Doan visited these sites and when Agent Sutherland obtained his warrant is so long that his probable cause became stale. Doan (and Docken) argue for staleness, contending that Agent Sutherland's hand-written statement in the margin of page 23 of his affidavit is too general and not applicable to him. I disagree. That handwritten statement is there because the court, after reviewing ¶¶ 56(A) through (G), asked Agent Sutherland if he could quantify his written

assertions. He could, and the marginal notation resulted. Terse though it may be, it is clear from context that this assertion applies to child pornography downloaded over the Internet and "aged more than eighteen months on the downloader's computer."

Doan challenges the foundation for and believability of this assertion, but he has not shown–and cannot show–that Agent Sutherland lied to the court. Indeed, this court's experience with similar search warrants establishes the reasonableness of Agent Sutherland's assertion: it is not uncommon in this district (and probably all districts) for computer searches to uncover child pornography that had been downloaded much earlier.[3] The Seventh Circuit has found probable cause to search based on child pornography evidence that was one year old, *see United States v. Newsom*, 402 F.3d 780, 783 (7th Cir. 2005) and noted with approval a child pornography warrant based in part on a two-year old magazine seizure,, *id* at 783, *citing United States v. Rabe*, 848 F.2d 994, 996 (9th Cir. 1988)(two year old seizure of magazines, corroborated by recent correspondence, supports probable cause).

Doan distinguishes *Nesom* on the ground that 12 months is less than 17 months and in *Nesom* there was at least *some* more recent information beyond Doan's maintenance of the same "hotmail" account. Both points are valid, but they are not enough to negate probable

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[3] I am not using this court's experience to bolster Agent Sutherland's warrant *post hoc*; I am using it to illustrate that there would have been no reason for this court to doubt the accuracy of Agent Sutherland's averment when he added it to his affidavit.

This segues to a slightly different point: because staleness challenges to child pornography search warrants are endemic, it would behoove the U.S. Attorney's Office to collate and chart the data on the age of contraband found in such searches. This would provide a more concrete foundation for such warrant requests in the future.

cause based on Agent Sutherland's report in his affidavit. Doan very much would like the opportunity to impeach Agent Sutherland on his averments, but, because he has not shown any deliberate or recklessness misstatements or omissions, he will not get the opportunity.

The bottom line is that this warrant was valid. As the government acknowledges, this wasn't the world's tightest or best written warrant, but it didn't have to be: it only had to establish probable cause. It did so, and there is no basis to grant Doan's motion to suppress.

III. The Good Faith Doctrine

There is no denying that the search warrant for Doan's computer is a wobbler. It would not be surprising or illogical if at some point the Court of Appeals for the Seventh Circuit were to determine that visiting a child pornography website does not allow the inference that the visitor downloaded contraband, or if it were to determine that absent a drum-tight foundational showing, the government could not search computers for child pornography based on activity more than a year old. If so, then lower courts, prosecutors, agents, and defense attorneys all will be guided by the new law.

But this doesn't help Doan because it hasn't happened yet, and perhaps it never will. Given the current state of the law, it was not error for the government to rely on the warrant that this court issued, even if the court issued it in error. Further, even if the information in Docken's affidavit were found to be more accurate than the information contained in

Agent Sutherland's affidavit, this cannot help Doan because there is no showing that Agent Sutherland acted deliberately or recklessly. In short, this warrant, even if issued improperly, would be rescued the safety net of the good faith doctrine established in *United States v. Leon,* 468 U.S. 897 (1984).

In *Franks v. Delaware*, *supra*, the Court held that it would not automatically quash a search warrant to punish the police even if they had included intentionally false information; the question was whether the falsehoods were material to the probable cause determination. 438 U.S. at 171-72.[4] In *Leon* itself, the Court employed broad language to describe the application of the good faith doctrine to allegedly deficient warrants. *See* 468 U.S. at 924-25; *see also United States v. Koerth*, 312 F.3d 862, 868 (7th Cir. 2002)(observing in dicta that the good fath doctrine may be used when a defendant "establish[es] the invalidity of the search warrant"). This would make sense, given the chary application of the exclusionary rule in this circuit. *See United States v. Espinoza*, 256 F.3d 718, 728 (7th Cir. 2001)(because the exclusionary rule exacts an enormous price from our society and our system of justice, courts should not apply it except when necessary). Accordingly, if it were necessary to reach the issue, this court should apply the good faith doctrine to the challenged warrant in this case.

[4] A warrant that *is* quashed under *Franks* cannot be rescued by the good faith doctrine. *See United States v. Garey*, 329 F.3d 573, 577 (7th Cir. 2003).

In *Leon* the Court stated that

> In a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.
>
> * * *
>
> We have . . . concluded that the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination. Deference to the magistrate, however, is not boundless.

Having so stated, the Court then held that

> In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.

Id. at 926.

Such determinations must be made on a case-by-case basis with suppression ordered "only in those unusual cases in which exclusion will further the purpose of the exclusionary rule." 468 U.S. at 918. When the officer's reliance on the warrant is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule because it is

> painfully apparent that the officer is acting as a reasonable officer would and should act in similar circumstances. . . . This is particularly true . . . when an officer acting with objective good faith has obtained a search warrant from a judge . . . and acted within its scope. . . . Once the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law. Penalizing the officer for the [court's] error rather than his own cannot logically contribute to the deterrence of Fourth Amendment violations.

Id. at 920-21, internal quotations omitted.

The Court noted the types of circumstances that would tend to show a lack of objective good faith reliance on a warrant, including reliance on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or reliance on a warrant so facially deficient that the officer could not reasonably presume it to be valid. *Id*. at 923. The Court observed that "when officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time." *Id*. at 924. *See also Arizona v. Evans*, 514 U.S. 1, 11-12 (1995)(reaffirming the Supreme Court's reluctance to suppress evidence obtained in good faith but in violation of a defendant's Fourth Amendment rights).

Here, Doan's argument against the application of the good faith doctrine hinged on his *Franks* challenge to the warrant, which I have found wanting. As demonstrated by the handwritten statement on page 23 of the affidavit, this court did not abandon its neutral role, because it challenged the government to provide additional information before the court would sign the warrant. Agent Sutherland was able to do so; in light of his having met the court's requirement of amplifying his affidavit with more information than *he* had thought was necessary, clearly it was reasonable for him to rely upon the warrant issued thereafter.

Further, as demonstrated by the judicial contretemps over the "Candyman" warrants, despite the dispute about how much evidence is enough in these situations, the majority position is that paying to join a child pornography website provides probable cause to believe

that the subscriber is downloading child pornography. Even if this circuit later were to reach a different conclusion, both this court and Agent Sutherland were operating in good faith at the time the warrant was issued and executed. Therefore, Doan is not entitled to suppression.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Duane Doan's motion to suppress evidence.

Entered this 13th day of March, 2006.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge

March 13, 2006

Paul W. Connell
Assistant United States Attorney
P.O. Box 1585
Madison, WI 53701-1585

Robert Zitowsky
Attorney at Law
131 West Wilson St., Ste. 501
Madison, WI 53703

Re: United States v. Duane Doan
Case No. 05-CR-179-S

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before March 20, 2006, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by March 20, 2006, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

Susan K. Vogel
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable John C. Shabaz, District Judge