IN THE SUPREME COURT OF OHIO

DAVID ESRATI, *PRO SE*	*	On Appeal from the 2nd District Court of Appeals
113 Bonner Street		
Dayton OH 45410	*	
Plaintiff-Appellant, 937-228-4433x2		Appellate Case No. 29050
	*	Trial Ct. No. 2018-CV-560
vs.	*	Supreme Court Case # pending
DAYTON METRO Library et al	*	
Defendants-Appellees		

MEMORANDUM IN SUPPORT OF JURISDICTION
OF PLAINTIFF-APPELLANT DAVID ESRATI

EXPLANATION OF WHY THIS IS A CASE OF GREAT GENERAL INTEREST

If these decisions/actions are allowed to stand, judicial discretion and government misconduct will become codified acceptable precedent/tactics to delay and invalidate all public records requests by the will of elected officials who wish to protect themselves and their political allies from civil suits. The Federal 42 U.S.C. § 1983(*1) action that I filed and settled was severely handicapped by their actions to their advantage. The Ohio Public Records laws, which are already weak, will be forever emasculated.

The plaintiff also suggests that Montgomery County Ohio is operated like a criminal organization, where the local “monarchy” controls political speech, access to the ballot

and court outcomes through a series of backroom deals that put public officials, judges, prosecutors in positions above the law, lacking fear of challenges or punishment.

I. RELIEF SOUGHT

Removal and disbarment from office of the Montgomery Prosecutors and the Judges who refused to follow the law, penalties against the Library director, legal fees and fines of $100 a day for everyday they didn't deliver (the State law limit should be waived when the State intentionally bypasses it). A racketeering investigation in Dayton.

II. STATEMENT OF THE CASE AND FACTS

Esrati, a citizen journalist, publisher of Esrati.com entered the newly renovated Dayton Main Library on Saturday, August 19, 2017, to see the library and take photos for possible publication. He was accosted by a private security guard who erred in questioning his right to photograph in a public place. Esrati politely told him that it was a public place, a public space, and that there is no guarantee of privacy and to please leave him alone.

Esrati, approached by a supervisor and two other guards, who incorrectly told him that he did not have the right to photograph in a public place and would need to leave the building. He stated that it was against Ohio Revised Code, to which Esrati asked "which ORC" and began to videotape the encounter(*2) and leaving as instructed under guard.

The supervisor suggested Esrati may be a sex offender and upon exiting the public building to the public sidewalk, the guards continued to follow Esrati telling him he was still on "Library property" and had made multiple radio calls suggesting they were calling Dayton Police. They then banned Esrati from the library for 30 days.

Esrati promptly called the cell phone of the Library Director, Timothy Kambitsch and left a message. Hours later Kambitsch returned the Plaintiff's call and claimed Esrati had done something wrong. Esrati at this point formally requested the video surveillance files of his visit.

Library Emails, retrieved via PRR, clearly showed library officials had seen the video, reviewed the interaction, and knew the video evidence was damning.

Esrati retained counsel, made official 2nd and 3rd requests for the video which were denied. According to Clarissa J. Sampson a security contractor for the library in an affidavit which was attempted to be introduced later but ruled as "self-serving" by the trial judge:

> "The video footage was downloaded rather quickly but not released to Mr. Esrati. Other cases where I had to issue video footage took no more than 24-48 hours before the person who requested it had the footage in hand. I saw that the library tried to stonewall Mr. Esrati by delaying his receipt of said footage."

The Library asked for a settlement meeting on Oct 3rd 2017 where they blamed the guard who questioned Esrati, suggested the guard lied to his supervisor, and that the Plaintiff's ejection was in fact improper. They had access to the video and internal recordings of the guards' conversations. No settlement was reached.

Between the failure to settle and the mandamus filing on Feb 1, 2018, Plaintiff made a good will attempt to inform the appointed Library board of the implications of this case on November 15, 2017. He was cut-off :30 before the stated, but previously unenforced, 3-minute time limit by the board president(*3).

The first judicial decision, on April 12, 2018, by Judge Erik Blaine, found in favor of the plaintiff, that the library must release the video, and that the library's multiple objections were not applicable in this case.

Instead of delivery of the records, the public officials, filed objections and defenses of their position on April 23, 2018, requesting me to pay them fees:

> WHEREFORE, having fully answered, Respondents respectfully request that Relator's Amended Writ of Mandamus be dismissed with prejudice and that Relator be ordered to pay Respondents' attorney fees and costs.

The government had immediately gone on the offensive, with unlimited resources, to further cost the plaintiff additional legal ignoring the judge's decision which cited the Ohio Supreme Court in the application of the Ohio Public Records Laws: *Patterson v. Ayers, 171 Ohio St. 369, 371, 171 N.E.2d 508 (1960).*

October 26, 2018, the government while still ignoring the judge's ruling to release the video, claimed the video is somehow protected. It is now over half-way through the plaintiff's 2-year window for filing a Federal 1983 case(*1).

As an appointed judge, Blaine loses his election for judgeship in November of 2018. This is the only time a judge can be challenged in Montgomery County politics. The case is now assigned to his successor Gerald Parker who claims he's unable to decide without reviewing the unedited video. April 1, 2019, Parker tells the Library they have 14 days to file an unedited copy of the video with the court. According to former video person Clarissa Sampson, this is longer than other requesting agencies normally wait for requested video.

July 29, 2019, a mere 21 days before the filing deadline for the Federal action, Parker rules, granting the plaintiff's motion. Parker again quotes *State ex rel. Patterson v. Ayers* and follows with:

> The Public Records Act requires that "[u]pon request * * * all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." (Emphasis added.) R.C. 149.43(B)(1).

The court also states:

> The Court conducted a detailed and meticulous review of the surveillance video and was unable to discern what items or services any given individual obtained or used from the video.

Without demonstrating how any "personal information" that could be gleaned from the surveillance video that couldn't be more accurately deciphered by Esrati's legal still photography at a much higher resolution, and without suggesting why any patron's personal information is relevant to Esrati's ejectment case (which is the issue at hand) Parker grants the library ***an additional 90 days*** to submit patron redactions of only some videos (not all as Esrati had requested) without stipulation as to format or metadata.

A disadvantaged Esrati files his 1983 case on the 2-year deadline in Federal court(*1). He is forced to file and negotiate, without seeing legal discovery that should have long since been delivered.

A final insult is the court's justification of not awarding plaintiff's considerable legal fees caused by unnecessary delays undertaken by the government, i.e., raising false flags, lying about capacity of their system and its capabilities.

STATEMENT OF FACT: Redaction is BUILT INTO THE LIBRARY'S SYSTEM, as is TIME CODE, and are routinely used to provide public records when the government is prosecuting others for illegal acts on or near the library.

The defendant delivered a substandard public record i.e. a time-stamped, multiple angles, that could then be matched up to the Plaintiff's photos metadata throughout his approximately one hour visit to the library.

Parker justifies his non-awarding of fees this way:

> The public benefit conferred by Esrati's request for the surveillance video is outweighed by The Library's reasonable efforts to protect the privacy of its patrons. Therefore, the Court finds that The Library was not unreasonable in believing that the legislative intent behind the exemptions specifically created for libraries and their patrons applied to the surveillance video requested by Esrati. Accordingly, the Court will not award attorney's fees under R.C.149.43(C)(3)(b-c).

August 29, 2019, Esrati, now pro se, after Parker's decision to not award attorney fees, files a notice of appeal to Parker's decision, 60 days before sees the video.

Despite the government granting itself 2 years and 2 weeks to produce video that should have been produced in less than the 10-day period of $100-per-day fines, the Plaintiff is held to a much higher legal standard on every filing.

September 26, 2019, Plaintiff files 60-B. He claims abuse of discretion by the trial court as well as violations of his 14th Amendment rights to equal protection: i.e., why should only lawyers be capable of recovering compensation for their time in the pursuit of

public records via the Ohio Sunshine Laws, considering the public must not only fund the enforcement of the law, but in this case, also pay taxes to defend criminals in office?

The Government's response on October 15, 2019, was to ignore the part of the Sunshine Laws that require them to err toward open and instead wrapped themselves up in procedural requirements of a 60-B motion: further complicating and increasing costs of the case for a pro se plaintiff.

October 28, 2019, Plaintiff files a notice of non-compliance, stating that the defendants did not comply with the request and that 28 minutes of content was missing. Considering this is the first-time Plaintiff has seen the video, Plaintiff immediately questions the lack of time-code metadata. While the judge may not know anything about the operation of video equipment and its capabilities, the plaintiff is a video production professional and journalist who has compiled multiple other examples of government malfeasance utilizing security camera video. (*8)

Plaintiff's out-of-pocket expenses in trying to analyze and reconstruct a full timeline are also not reimbursable, despite plaintiff's normal rate of $125/hr for video editing.

On October 30, 2019, the defense claimed ignorance of time codes and lied about the system capabilities:

> It is unclear what exactly the Relator means by "time codes", but it is the assumption of the Respondents that Relator is referring to a running timer or time stamp, displayed on the security footage in order to demonstrate the real-time of the footage. The surveillance footage does not have such a running timer or time stamp.

Regardless of what the defense provided or what the court ordered, none of the tendered copies of the recording are compliant with the clearly made request for ALL of the footage of the plaintiff's visit.

November 11, 2019, Plaintiff requests the complete files again:

> The public request to the library for video was specific: "But, in the meantime, I'm reiterating my public records request for all surveillance video of the actions of your guards against me on Aug 19, 2017. This is to start when I enter the building - and end when I am off library property, This was requested months ago- and your rejection of the request on September 20, was neither legal or the correct course of action.

December 3, 2019, the Court grants the defense **another 90 days** to provide requested video:

> Respondents are instructed to provide the entire video to Relator within six (6) weeks of the date of this entry, on or before January 13, ***2019*** [emphasis added; sic: date should have been 2020].

A court date is finally established on January 22, 2020, for a hearing on January 30, 2020. The court orders all 56 angles to be delivered within an additional 30 days.

In the hearing on January 30, 2020, Defense lied stating that the security system is not capable of generating time code. The Plaintiff's expertise was overruled by the judge and ignored. The plaintiff began making public records requests on February 1, 2020, for other video supplied by the defendant to other requestors (government agencies). Due to Covid, replies were not timely.

February 27, 2020, Library provides 58, not 56 angles, it had “found” an additional 2 angles and again commit perjury stating their system doesn’t redact or time code.

March 13, 2020, still not having complete, time coded video evidence to argue a case, Plaintiff settles Federal 1983 case(*1) that he had to file pro se, since no attorneys (including his previous attorney) were willing to challenge the “monarchy” for fear of perpetual vindictive retribution by the local power brokers.

On September 25, 2020, the plaintiff files proof that the Library system can both redact video and deliver time code proving that the government lied in court.

October 16, 2020, Government files a comedic response to request for sanctions. Despite there being no time limit on filing for perjury, the Government argues that Plaintiff’s filing is time barred (never mind the pandemic changing every other court action timeline).

At this point, Plaintiff engages same tactics the Defense has used and does not provide defendant with copies of his video evidence. Their response is telling:

> Relator is alleging that by stating to the court that the security footage cannot be provided with time codes due to the extraction of the footage from the program, Respondents have made “factual contentions that are not warranted by the evidence.” R.C. 2323.51(A)(2)(iv). As evidence to support Relator’s allegations, Relator purports to have other security footage provided by Respondents to other entities that have both time codes and redaction capabilities. It should be noted that ***Respondents have not seen this footage from Relator and thus cannot respond with specificity to the footage itself.*** (emp. Added) However, even if

> the footage is as Relator states, for the following reasons it is not evidence of frivolous conduct by the Respondents.

They lie again:

> Due to the technical aspects of the system used by the Respondents, the video footage must be extracted from the system in order to redact the footage and blur patron faces as ordered by the Court. The resulting footage is extracted without time stamps.

Then they make up facts, in direct conflict of evidence I submitted:

> At best, Relator's footage demonstrates other instances where a time code was possible. But it does not contradict the statements from Respondents that time codes were not possible in this instance. Relator has failed to demonstrate that the factual contentions by Respondents were not warranted by the evidence.

The defense then issues an opinion:

> The Respondents have not acted in egregious, overzealous, unjustifiable, or frivolous manner. They have not filed claims that are baseless or pursued causes of actions that were outside the law. They have not harassed the Relator, made unnecessary filings, or acted outside the scope of expected behavior by a party to litigation. Instead, the Respondents have given an honest answer to a question from this Court about the capabilities of the security footage system and then followed-through on this Court's orders in this case. This is not frivolous conduct as anticipated and as to be punished by this statute.

This could have been resolved by the court allowing a hearing with an expert to clarify the capabilities of the multi-million dollar video security system.

Their arguments about their compliance with a factually incompetent judges' orders would only be giving further credit to a judge who had no inclination to abide by the requirements of Ohio Public Records law, namely: timely access to security footage necessary to file a Federal 1983 action.

Plaintiff then filed a self-made transcript. The court immediately rejected it saying it wasn't in an "approved format" just as the plaintiff rejects their homebrew video files. This shows laws are only applicable to the plaintiff. Proof that the "Court approved transcript" was flawed at the key moment are irrelevant. This is part of a clearly demonstratable trail of actions that support the plaintiff's argument that the "Monarchy of Montgomery County" is capable of, and does, bend and break the law to protect itself. Judges are guaranteed lifetime office and offer protection for those who put them there. The prosecutor uses prosecutorial discretion to punish opponents. Legal representation is nearly impossible to hire locally, for fear of vindictive payback by a criminal organization which administers its own form of political justice in the county.

December 30, 2020, an extremely frustrated Plaintiff files for damages, supplies an affidavit from Ms. Sampson as to average delivery time of video surveillance files, and asks for justice:

> And according to ORC 2317.48 Action for discovery which was what this Mandamus action effectively was, "the complaint shall be fully and directly answered under oath by the defendant. Upon the final disposition of the action, the costs of the action shall be taxed in the manner the court deems equitable." They were not…. I contend that the award of $1000 statutory fine as the maximum allowable payment is immaterial when the State used its power to

> delay as a legal strategy and as an abuse of power. I contend that the award of $1000 statutory fine as the maximum allowable payment is immaterial when the State used its power to delay as a legal strategy and as an abuse of power…The defendant clearly knew that they had broken the law and used the infinite power of the State to delay delivery of the requested video is both contempt of court, obstruction of justice and mocks the reason we have Sunshine Laws…I'm asking for damages to my reputation, waste of my time, and as the victim of a state-run criminal organization, the Montgomery County Prosecutors office. These delays and lies in court amount to a conspiracy between the Prosecutors Office, the Library, and this Court to damage my integrity and cause personal financial hardship. If there is to be justice there can't be two separate standards for delivering video, one to the state and another to the public. In conclusion, this court's action to date has proved that the State can be a bully, skirt the law, use the taxpayers' infinite resources to ignore their responsibilities and that having a law license in the hire of the state is a get out of jail free card. If I lied in court the way Mr. Peterson did, I'd be in jail. It is within the ORC that public officials who violate the law can be removed from office. Is it unreasonable for the plaintiff to demand sanctions on Mr. Peterson, Mr. Kambitsch, and the Dayton Metro Library for their abuse of power? Why should they not suffer personally for their criminal actions?

January 12, 2021, the prosecutor, paid for the with the plaintiff's tax dollars, sworn to abide by the Sunshine Laws, files:

> Relator's Motion is improper as it seeks to exceed the scope of Relator's action in *mandamus* and due to the current case posture.

October 22, 2021, Court of Appeals files a decision that suggests it is the plaintiff's responsibility to prove in a court hearing that never happened, that this constant abuse of power by the prosecutor acting as the defense attorney for the library, was engaged in "frivolous behavior." This case is no longer about the Sunshine Laws.

The Plaintiff clearly demonstrated that the defendant did not comply with the Ohio Sunshine Laws: to turn over documents in a timely manner. That the appeals court is suggesting that legal deadlines, or legal procedure is a legitimate tool for a government defendant to break the law, makes their entire argument suspect that they too, are part of a "culture of corruption" that allow laws to be routinely broken in Montgomery County.

The Library never provided either the requested footage in time for the 2 year time limit of the Federal Action which they knew they would lose, nor were they held accountable for hiding evidence from witless judges who don't seem to understand the basic functionality of security camera systems. If these elected officials are allowed to get away with suggesting that withholding basic public record metadata in evidence is legal, our whole system of law is at risk.

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No 1.

The Prosecutor is now working in the defense of government, yet is still bound by both the Ohio Open Meetings laws and Rule 3.8 - Special Responsibilities of a Prosecutor

> (d) fail to make timely disclosure to the defense of all evidence or information known to the prosecutor… [1] A prosecutor has the responsibility of a minister of

> justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that … is accorded justice and that …is decided upon the basis of sufficient evidence. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4. …EC 7-13 recognizes the distinctive role of prosecutors: The responsibility of a public prosecutor differs from that of the usual advocate; his [her] duty is to seek justice.... This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he [she] also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all;

Proposition of Law No 2.

The Ohio Sunshine laws have no protections for citizens from vindictive discretionary courts which can totally sidestep all enforcement and reimbursement.

Proposition of Law No 3.

The Plaintiff is a major thorn in the side to all parties, with his publication of Esrati.com, a citizen journalism project that has been challenging the establishment since 2005.

Plaintiff claims that Montgomery County has a monarchy of elected judges, politicians, political parties and trade unions that have created what the FBI called a “Culture of Corruption” where the chosen few, circle the wagons to vindictively punish those who question their authority.

In Dayton, Ohio, Judges are awarded lifetime jobs by the party bosses, with the promise of never being challenged. To keep their jobs, Judges may make decisions to support the will of the party boss. There is no other explanation for not awarding legal fees other than retribution against the plaintiff. I submit the following examples to the Court to justify my claims of corrupt persecution/failure to enforce laws(*13 – examples A-H)

IV. CONCLUSION

The damages by the delays of the Defendant, Dayton Metro Library, with the aid of the Montgomery County Prosecutor's office and Judges, cannot be properly assessed. I had a firm 2 year filing deadline on my 1st amendment complaint in Federal Court. When I filed, I still had not received the video; when I settled, I still did not have the video; and now, as I file today, I still do not have the video.

The appellate court says "Esrati must demonstrate that the trial court's denial of sanctions was unreasonable, arbitrary, or unconscionable" and continues "Esrati must demonstrate that Dayton Library's conduct regarding the surveillance video was frivolous."

I hope this Court realizes, that no amount of evidence is satisfactory for justice in Montgomery County because it's rigged.

Respectfully submitted,

/s/ David Esrati
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CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent email, 6 Dec, 2020, to the following:

MATHIAS H. HECK, JR. by NATHANIEL S. PETERSON, Atty. Reg. No. 0095312, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, 301 West Third Street, 5th Floor, Dayton, Ohio 45422

/s/ David Esrati, pro se

David Esrati