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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAUL A. BONACCI, Plaintiff, vs. CITY OF OMAHA, et al., Defendants.	)	4:CV91-3037 MEMORANDUM AND ORDER ON MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS CITY OF OMAHA, ROBERT WADMAN, AND MICHAEL HOCH

Counts III and IV state the claims against the City of Omaha, former Police Chief Robert Wadman and Police Officer Michael Hoch. Count III alleges deprivation of civil rights of due process, equal protection, and unreasonable seizures; Count IV alleges conspiracy.

Three subparagraph of paragraph 49 of the second amended complaint, filing 139, describe the plaintiff's claim of due process violations:

> "a. The rights under the due process clause of the 14th Amendment the Fourth Amendment, and the 'self-incrimination clause' of the Fifth Amendment to be free of the objectively unreasonable, intentional and unjustified infliction of extreme emotional distress, deliberate and unjustified assaults, detentions, and coercive, heavy handed and outrageous custodial interrogations;
>
> . . . .
>
> d. The right under the Due Process Clause of the 14th Amendment to be free of deliberate police department policy to refuse to enforce laws prohibiting child prostitution and pornography, delinquency, drug abuse when youths such as Plaintiff were the targets of special police department attention;
>
> e. The right under the Due Process Clause of the 14th Amendment to be free of deliberate police department policy to prevent the Plaintiff from alternative means of escaping his circumstances of child prostitution, pornography, drug and sex abuse . . ."

The equal protection claim is stated in subparagraphs of paragraph 49 as follows:

> "b. The right under the Equal Protection Clause of the 14th Amendment to be

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free from arbitrary, discriminatory and unjustified mistreatment because Plaintiff was a member of a group of youths the police department wanted to stay under the control of Larry King and Alan Baer;

c. The right under the Equal Protection Clause of the 14th Amendment to receive from law enforcement officials their protection from child abuse, neglect and delinquency which Plaintiff suffered because he belonged to the group of children the Police Department wished to stay under the control of Larry King and Alan Baer;

. . . .

f. The right to be free under § 1985 of Title 42 of the United States from conspiracies against him that have the purpose of depriving the Plaintiff of his equal protection from the laws of the United States . . ."

In support of the motion these moving defendants have submitted filing 204, consisting of defendant's Exhibit A, an indictment in the ***State of Nebraska v. Paul A. Bonacci***, in the District Court of Douglas County, Nebraska, Docket 127, p. 193; and defendant's Exhibit B, comprising excerpts from the deposition of the plaintiff, Paul Bonacci. The plaintiff has submitted the declaration of plaintiff, Paul A. Bonacci, dated March 29, 1996.

Count IV recites the plaintiff's claims of conspiracy, pursuant to 42 U.S.C. § 1985(3) and § 1986. Second Amended Complaint ¶¶ 50-54.

Rule 56 of the Federal Rules of Civil Procedure in subparagraph (b) says:

"A party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof."

In subparagraph (c) the rule says:

". . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Subparagraph (e) includes the following:

"Supporting and opposing affidavits shall be made on personal knowledge, shall

set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. . . ."

In ***Anderson v. Liberty Lobby, Inc.***, 477 U.S. 242 at 250 (1986), the Court said:

"There is no requirement that the trial judge make findings of fact. The inquiry performed is the threshold inquiry of determining whether there is the need for a trial--whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party."

I. WHETHER THE PLAINTIFF'S TESTIMONY HAS CREDIBILITY

In an earlier memorandum on a motion for summary judgment by the defendant Alan Baer I reviewed the plaintiff's testimony by deposition, the only testimony offered that could be considered to have been in support of the plaintiff's position. The plaintiff's testimony was that he had been hypnotized sometime between November 18, 1989, and October 21, 1992, when he was incarcerated, which was at least three and one-half years after he claims to have been last sexually abused. He also testified that he was hypnotized once or perhaps twice after that. I make the same observations now as I did relative to Baer's motion.

The plaintiff's testimony by deposition includes this as to his having been hypnotized:

"Q. At some period of time when you were incarcerated, you were hypnotized; is that correct?

A. Yes.

Q. Tell me about that.

A. I believe the first time was one -- about the week after Dr. Mead had diagnosed me with MPD, he -- the next week he came in, he wanted to, wanted me to close my eyes, and when he did, he said -- I don't know, I can't remember what he said, but it brought out one of the other personalities.

And I didn't know that that's what he was trying to do, but -- and I guess he spoke to the personality for a while.

And then later on, I was hypnotized with, I think it was -- Detective Hoch was

there, and I think there was another lady, but I'm not sure.

Q. Do you have any particular recollection of those circumstances?

A. Not really. Detective Hoch wanted to find out how accurate some of the things that I had related to him were, how -- not whether they were the truth or not, but how much of them may have been added in, you know, stuff may have been added in by personalities that maybe don't deal completely with reality, you know, may have added stuff, like things that happened that didn't really happen, but to them, they did. And -- 'cause there was distortions and stuff, which I guess happens quite a bit with MPDs when they're first trying to go through the memories.

Q. And you have not been hypnotized since then --

A. No.

Q. -- that you're aware of?

A. Well, yes, and it was with Densen-Gerber, and that was in Lincoln."

Bonacci Deposition 1874:18-1876:5

"Q. You did an interview with Judith (phonetic) Densen-Gerber?

A. Yeah."

Id. 1876:16-18.

Q. I'm sorry, thank you. And you were hypnotized during part of that?

A. I think, yeah, at one point, I was put under hypnosis. I --

Q. Have you ever been told, Paul, that you give different responses under hypnosis than you do when you're in a nonhypnotic state?

A. No.

Q. Do you believe that you give different answers when you're under the influence of hypnosis?

A. Humm. I believe some of the stuff that was given under hypnosis may have been more, more accurate, because it takes out a lot of the, more of the distortions that happen by the different personalities all coming out at the same time. They can

specifically go to one personality. You know, they used to be able to do that, anyway, and get things -- ' cause it slows your mind down a little bit."

Id. 1877:1-20

"Q. And other than the incident you described where Dr. Mead -- or, not Dr. Mead, Dr. Densen-Gerber supposedly hypnotized you which was recorded on videotape, had you been actually hypnotized by the psychiatrists up till then?

A. By Dr. Mead, I know I was. Dr. Stoller, I remember very little of that meeting, though.

Q. What's your definition of hypnotized?"

Id. 2006:16-24

"THE WITNESS: I'm not sure.

BY MR. DeCAMP:

Q. So far as you understand, what does hypnotized mean?

A. When the psychiatrists or whatever kind of make you, like, ah, close your eyes, and then it's like all of a sudden -- you listen to whatever they're saying. All of a sudden, it seems like you just go somewhere else. That's the way it felt to me, like I went somewhere else, like I was --

Q. What exactly did Dr. Mead do that you understood was hypnotizing you?

A. Oh, basically, he had me close my eyes, and he would talk and count, and he, he told me that because of the MPD and stuff, that it wasn't really him hypnotizing me, that MPDs were able to do that all on their own without really too much help, they're very easy to hypnotize or something, I guess. And that's about all I , I know. I don't understand what he did.

Q. When he told you to close your eyes, was it then that the other personalities would come out?

A. No, it wasn't right then. He would talk for a little while and stuff, and then he would -- I don't, I don't know. It's like -- 'cause it's -- there's a point where I just -- I can't remember, ' cause it's like I lose track of what went on after that."

Id. 2007:1-2008:5.

That raises the flag of ***Sprynczynatyk v. General Motors Corp.***, 771 F.2d 1112 (8th Cir. 1985), which said at page 1122-23:

> "We adopt a rule which requires the district court, in cases where hypnosis has been used, to conduct pretrial hearings on the procedures used during the hypnotic session in question and assess the effect of hypnosis upon the reliability of the testimony before making a decision on admissibility. The proponent of the hypnotically enhanced testimony bears the burden of proof during this proceeding. In addition, we adopt a version of the [***State v. Hurd***, 86 N.J. 525, 432 A.2d 86 (1981)] safeguards to the extent that the district court should consider whether and to what degree the safeguards were followed when making its determination that the hypnotically enhanced testimony is sufficiently reliable. Other factors the district court should take into account are the appropriateness of using hypnosis for the kind of memory loss involved, and whether there is any evidence to corroborate the hypnotically enhanced testimony. The district court must then determine whether in view of all the circumstances, the proposed testimony is sufficiently reliable and whether its probative value outweighs its prejudicial effect, if any, to warrant admission. Ultimately the district court must decide whether the risk that the testimony reflects a distorted memory is so great that the probative value of the testimony is destroyed.
>
> By our ruling today we place this hypnosis evidentiary problem directly within the control of the district court. We think the better approach is for the district court and not the jury to make the preliminary determination of admissibility as is the case with other evidentiary questions. ***See*** FED.R.EVID. 104(a). It is our hope that this case-by-case method of determining the admissibility of hypnotically enhanced testimony will guard against the problems of hypnosis, especially undue suggestiveness and confabulation, but also allow for the inclusion of reliable refreshed memory which hypnosis can at times under certain circumstances produce. In sum, we hold that the district court should, before trial, scrutinize the circumstances surrounding the hypnosis session, consider whether the safeguards we have approved were followed and determine in light of all the circumstances if the proposed hypnotically enhanced testimony is sufficiently reliable and not overly prejudicial to be admitted."

There is no evidence before me of the details of the hypnosis. There is no way that I can tell the effect, if any, of the hypnosis upon the reliability of the testimony of the plaintiff. I do not know what safeguards were utilized. The burden is upon the plaintiff and there has been no evidence presented on his behalf to the effect that his testimony was either unaffected or affected to such a small extent that the probative value of his testimony was not destroyed.

The plaintiff cites ***United States v. Reynolds***, 77 F.3d 253 (8th Cir. 1996), in connection with his argument that expert testimony is not necessary when expert evaluation of the credibility of the testimony is not called for or relevant. That statement is true enough, but does not apply, because in the present case without ***some*** evidence to the effect that Bonacci's testimony was

either unaffected or nominally affected I cannot reasonably determine the effect of his hypnosis, if any, upon the reliability of Bonacci's testimony. I do not know what safeguards were taken during the hypnotic session or sessions. I might be highly benefited by expert testimony on the subject; perhaps lay testimony on the subject would be helpful. There simply is none, unless it be the declaration of Bonacci that was attached to the plaintiff's brief.[1] In the plaintiff's declaration he says, "Dr. Mead however had little to do with refreshing any memories involving the police department." That is of little value to the plaintiff. The question is the reliability of the plaintiff's testimony, which includes both his deposition and his declaration, which were given after the occasions when he was hypnotized by Dr. Mead and again by Dr. Densen-Gerber and, possibly, by Dr. Stoller. With one, two or three sessions of hypnosis involved, with my having no information from any of those doctors as to the safeguards taken or the techniques used, and with the plaintiff's acknowledging that Dr. Mead brought out one of the other personalities[2] and acknowledging that personalities do contradict others, the unsupported testimony of Paul Bonacci after hypnotism is of doubtful reliability. It should be noted, also, that there were, according to Bonacci's testimony, dozens of persons involved in the matters he brings before the court as claims against these moving defendants, yet there has been not one word of evidence by any of those persons to support Bonacci's claims. That does not mean that the claims are all false, but it does mean that Bonacci's hypnotized testimony is highly problematic.

There are also other reasons to question the credibility of the plaintiff's testimony.

Bonacci was addicted to illegal drugs, according to his testimony, extending into 1984. He said:

> "Q. Well, going back to this little chronology of what you were involved with between the period of 1980 and '84, as I understand your testimony, at some -- during this period of time, you were acting as a drug runner at the behest of Larry King; is that correct?
>
> A. Yes.
>
> Q. And you took hundreds of trips which you've described in your earlier testimony.
>
> A. Yes.

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[1] NELR 7.1(a)(2) requires that evidentiary materials in support of motions be filed with the clerk and not be attached to a brief, because briefs are not filed. The declaration of the plaintiff was attached to a brief and has not been filed, but I shall cause it to be filed.

[2] The plaintiff is a victim of Multiple Personality Disorder (MPD).

Q. You were also involved in the scavenger hunts which you have described at length in your earlier testimony during the period of 1980 to '84 -- .

A. Yes.

Q. -- is that correct? You were also yourself using multiple drugs during this period.

A. Yeah. On and off, yeah.

Q. Well, you described a period earlier today when you had to take uppers every day.

A. Yeah.

Q. Is it fair to say that you were fairly consistently using some drug during most of the period between '80 and '84?

A. Yeah, mostly from about '83 till '84 was when I got stuck on it every day where I had to take uppers in the morning and then downers to put myself to sleep.

Q. So it was at its zenith during '83 to '84, but you also took drugs during the earlier period of time?

A. Yeah. That's why I don't remember my tenth grade.

(An off-the-record discussion was had between the Reporter and the witness.)

THE WITNESS: I say that's why I don't remember my tenth grade year in school and my grades prove it."

Id. 934:15-936:1

The last time the plaintiff says he remembers being sexually abused was in March of 1986. ***Id.*** 948:4-17.

More problematic than the addiction is the mental condition known as Multiple Personality Disorder (MPD). He testified that he had within him, all at the same time, many distinct personalities. Bonacci Deposition 6:5-8:20, Exhibits in Support of Motion for Summary Judgment (on Behalf of Alan Baer), filing 187. He testified in his deposition after being sworn under 14 different personalities distinct from the primary personalty, Paul Bonacci. ***Id.*** 9:1-10:23. He testified that the combination of multiple personalities and the drugs and events of his life on occasion cause him to confuse people or events. ***Id.*** 1154:3-12. When he was questioned about whether he was satisfied that a person he had identified with some particular material was the same Gary Kerr that is on television locally, he said:

"A. Not really. I mean because it's like -- I have tried to go through the memories and they're too vague for me to try to rely upon. There's -- there's enough doubt in my own mind to actually say it could have been, you know, it might not have been him. That's just going in my mind and stuff and knowing how in the past if I have gone through information and dismissed it . . ."

Id. 1657:6-13.

Bonacci says that his multiple personality disorder affected his testimony before the grand jury. In response to a question about changing his testimony in the grand jury after a break, he said:

"A. It's kind of hard to explain because during the break -- before the break the personalities that were out were completely unwilling because of threats and other things. After the break them personalities were no longer out because of inner arguments. So another personality came out and took over in the second part of it and corrected what the other personalities had done. At that time I did not have any co-consciousness or any awareness, so it was all depending on whether or not the personalities were listening and had the ability to come out and take charge."

Id. 1511:3-15.

His deposition also shows this:

"Q. But as I understand what you're telling us, what Paul Bonacci says may be contradicted by another personality; is that true?

A. I believe the only one that would ever try and contradict him, if he's still around, would be Wesley.

Q. Okay. And if I ask you a question about a date and you give me an answer and that answer is later contradicted by Wesley, how do we know which one is telling us the truth?

A. Probably because of the fact that Wesley is trying anything he can to sabotage my memories. He has been erasing memories that I've had, because the more I remember something, the more I'm starting to lose.

Q. And why is Wesley trying to do that?

A. Like I said, he wants nothing to do with any of this. He wants me to quite simply forget everything and go on with my life and just forget what everybody's done.

Q. And how do you know that that's the way Wesley feels?

A. Because before I thought he integrated, that's exactly what he said."

Id. 736:9-737:7.

One of the strange features of Mr. Bonacci's testimony occurred as follows:

"BY MS. HAHN:

Q. Let me ask you first, you have answered a series of questions under the persona of West Lee.

A. Yes.

Q. Are the answers that you have given to those questions within the last half an hour true and accurate answers?

A. Yes.

Q. Are they complete answers?

A. Yes.

Q. All right. Now I'm going to ask you, what triggered the arrival or development or birth of your personality West Lee in 1974?

A. I cannot give that information under direct orders.

Q. Orders by whom?

A. I cannot say:

MS. HAHN: Mr. DeCamp, would you please instruct your client that he has to answer these questions?

MR. DeCAMP: Yes. You're supposed to answer these questions. Does this have to do with Monarch?

THE WITNESS: Yes.

MR. DeCAMP: If I use the code, will that help, that I just obtained in the last hour? D-6 41 3782 Program XPY Eagle Alex Hope. Please go ahead and

answer all questions.

THE WITNESS: I was created by a government program.

BY MS. HAHN:

Q. Which government program?

A. Monarch.

Q. And what is Monarch?

A. Monarch is an operation that was created by the United States Government to create spies for other countries. They use children for the purpose that they're easily integrated into multiple personalities because they can dissociate.

Monarch is a program that is run by Michael Angelo Aquino who was an Army Reserve Colonel at Presidio. He is also the leader of the Temple of Set. He is also -- he also runs a child day-care center. He also is involved in human sacrifice.

Q. Is he employed by the United States?

A. Yes.

Q. At what facility?

A. Presidio, California.

Q. Is that in the San Francisco area, the Presidio --

A. Yes.

Q. -- Naval base?

A. Yes.

Q. Do you know what rank Michael Aquino holds?

A. He was a colonel.

Q. Is he currently employed there?

A. I am not aware of the current situation.

Q. Now, describe the program again, the Monarch program.

A. Monarch, as I said, was a program that used children to make multiple personalities for future use as spies and as a way to take over the United States Government."

Id. 1044:6-1046:23.

The testimony of the plaintiff in many respects is bizarre. Multiple personality disorder is a cruel mental condition. Its effects are stunning. Although the plaintiff believes that his personalities are probably wholly integrated, there is no psychiatric testimony before me that assesses his present condition or what impact the multiple personalities and their differing recollections have had on the plaintiff's ability to recall and testify accurately the awful events that have prompted this lawsuit. In no way do I say that those events or some of them never happened. My concern is what to do with the evidence that is before me as it impacts a motion for a summary judgment. The Eighth Circuit Court of Appeals has already spoken with respect to hypnosis and that, alone, may make Mr. Bonacci's testimony outside the realm of usefulness in opposing this motion. Piled on that is the matter of the addiction, which by the plaintiff's own testimony has harmed his ability to remember, and the multiple personality disorder, which tricks him, covers for him, and disputes him. Without expert testimony to help evaluate the ability of Paul Bonacci, whether partially or wholly integrated, to tell the truth in a reasonably accurate way, I cannot say that the testimony is sufficient to show any support for the claims against these moving defendants.

I am troubled, as I was about the claims against Alan Baer, that all claims against the City of Omaha, former Police Chief Robert Wadman, and Police Officer Michael Hoch be disposed of in summary fashion. I do not know whether there is expert testimony available regarding the possible effect of hypnosis, drug addiction and multiple personality disorder, but there is none that has been presented to me. There is not even evidence by any nonexpert that corroborates anything alleged in the complaint against these defendants. Under such circumstances, a dismissal of all claims against these defendants is necessary.

On former occasions I have been critical of the quality of the representation of the plaintiff by his counsel. That is not so relative to this motion. Counsel responded. Even though the response has not saved the plaintiff from a summary judgment, I am appreciative of the effort.

I find that the plaintiff's evidence is so unreliable that it would not allow a reasonable factfinder to return a verdict for the plaintiff against these moving defendants and, therefore, that summary judgment is in order.

II. IF THE TESTIMONY OF THE PLAINTIFF COULD BE ACCEPTED, THERE STILL WOULD BE NO ISSUE OF MATERIAL FACT WITH RESPECT TO THE CLAIMS AGAINST THESE MOVING DEFENDANTS

In the event it later is determined that the plaintiff's testimony should have been deemed of enough reliability to enable it to be weighed in the balance on this motion, I am persuaded that there is no genuine issue of material fact with respect to the claims against these defendants.

The claims against these moving defendants are set out in Counts III and IV.

Count III asserts that the Omaha Police Department established the "practice" of allowing prostitution for pay for certain homosexuals in the Omaha area. As a result, it charges, Alan Baer, Larry King and Peter Citron and others "were able to solicit young males for prostitution . . . to keep the young males within the homosexual services for pay circles . . ." (¶ 25). It alleges that the plaintiff "frequently saw uniformed Omaha Police Department officers present at the sex parties . . . . These officers appeared to allow the illegal activity to continue. . . ." (¶ 28). As a result, it is alleged that the plaintiff experienced "severe emotional distress . . ." (¶ 30). The Omaha Police Department maintained a policy "of keeping him and other children silent about the illegal activities of Alan Baer, Larry King and Harold Andersen." (¶ 31). It asserts that Wadman, Hoch and Bovasso "failed to act to protect Plaintiff . . ." (¶ 40). It alleges that in November 1989, Hoch and Bovasso subjected the plaintiff to "long hours of brutal interrogation involving threats, intimidation, physical and mental abuse and other outrageous conduct." (¶ 45). Violation is alleged, therefore, of the right under the Fourteenth Amendment's due process clause to be free of emotional distress, assaults, detentions and custodial interrogations and violation of the equal protection clause of the Fourteenth Amendment to be free from mistreatment because the plaintiff was "a member of a group of youths the police department wanted to stay under the control of Larry King and Alan Baer." (¶ 49b). It also alleges the violation of the right under the equal protection clause of the Fourteenth Amendment to receive "protection from child abuse, neglect and delinquency which Plaintiff suffered because he belonged to the group of children the Police Department wished to stay under the control of Larry King and Alan Baer." (¶ 49c).

Additionally, it alleges violation of the due process clause of the Fourteenth Amendment "to be free of deliberate police department policy to refuse to enforce laws prohibiting child prostitution and pornography, delinquency, drug abuse . . ." (¶ 49d). It also alleges violation of the due process clause of the Fourteenth Amendment "to be free of deliberate police department policy to prevent the Plaintiff from alternative means of escaping his circumstances of child prostitution, pornography, drug and sex abuse." (¶ 49e). It also alleges the claim under Section 1985 of Title 42 "from conspiracies against him that have the purpose of depriving [him] of his equal protection from the laws of the United States." (¶ 49f). That claim also is asserted under 42 U.S.C. § 1986 "to have those conspirators who were aware of the conspiracy alleged herein to take necessary steps to thwart the aims of the conspiracy." (¶ 49g).

Count IV asserts that the moving defendants, among others, were in a conspiracy "to continually threaten, abuse, and punish Plaintiff as specifically described in Count III above." (¶ 51). Thus, the two counts may be considered together, because they both assert the conspiracy that is the sole subject of Count IV.

A. DUE PROCESS

1. Evidence Regarding the Defendant Robert Wadman

The plaintiff says he last remembers being abused in March of 1986. Bonacci Deposition 948:4-8, filing 205. He first was able to identify Robert Wadman as Robert Wadman in about 1990, when somebody showed him a picture of Robert Wadman. ***Id.*** 1123:1-25. Sometime later somebody identified that picture as Robert Wadman. ***Id.*** 1124:22-25. In the five times that Bonacci saw Wadman, other than once at church, once at Adventureland, and once in a bathroom, Bonacci did not "remember seeing him actually doing anything, but the fact that what was going on that was illegal was right in front of everybody." ***Id.*** 1131:6-12. On the occasion when he saw him in a bathroom Bonacci was "so stoned and drunk, [he wasn't] really sure it was him. . . . ***Id.*** 1130:18-25. These incidents happened between 1983 and late 1985, when Bonacci was around 15 years old. ***Id.*** 1132:6-13. Bonacci's memory of Wadman "is really vague because of the fact of the drugs and stuff, but I know that he was there because there are certain things that he said. . . . ***Id.*** 1160:2-5. Bonacci never really had any direct contact with Mr. Wadman. ***Id.*** 1162:8-10. He just saw Wadman places. ***Id.*** 1162:11-12.

Bonacci never saw Wadman talk to Peter Citron or Larry King or Alan Baer or Michael Hoch or Officer Bovasso or have any information of any other type of communication between Wadman and any of the other defendants, except that he saw someone he thought was Robert Wadman having a conversation with Alan Baer in 1984 but heard none of the contents of the conversation. ***Id.*** 1900:22-1903:7. Bonacci has never been in a room where Robert Wadman gave orders or instructions to members of the Omaha Police Department and nobody ever told him that that happened. ***Id.*** 1931:13-1932:4. He has no information of any conversation between any of the moving defendants. ***Id.*** 1904:3-1905:17..

2. Evidence Regarding Defendant Michael Hoch

Bonacci first met Michael Hoch in 1989 in November. Bonacci Deposition 1112:19-25, filing 205. By then, Bonacci had not participated in or been the subject of any sexual abuse by anybody for a couple of years prior to that. ***Id.*** 1113:1-6. It is the manner in which Hoch dealt with him with respect to questioning and investigation of Bonacci's claims that Bonacci says was the basis of violation of his constitutional rights. ***Id.*** 1115:2-7. Hoch lived near Peter Citron and "kept telling me to take stuff back about people." ***Id.*** 1115:11-12. Hoch threatened that if Bonacci told "this stuff to the grand jury, you'll be going to prison for a long time." ***Id.*** 961:10-20.

3. Evidence regarding the Defendant City of Omaha

On April 21, 1986, Bonacci reluctantly reported to two police officers, who had been called to Northwest High School by a school counselor, that he had been abused by a number of adult males. Bonacci Deposition 1168:8-16, filing 205. Bonacci did not get an opportunity then to tell his story. He broke down, because he was terrified. ***Id.*** 1141:5-22. He does not actually know whether there was any investigation that was undertaken of his complaints. ***Id.*** 1139:15-22. Bonacci admits that "in '86, I was told that some of the guys that had abused me and stuff had gone to prison . . ." ***Id.*** 1923:2-4.

As for the claim that there was a policy of protecting wrongdoers by being lenient with boys such as Bonacci, the plaintiff acknowledges that he does not know whether there was such a policy:

> "All I know is, like I said, I made -- I made phone calls to somebody, and everytime they said that they would call or get hold of someone and they would have that situation taken care of.
>
> I don't think there was actually a policy that was written down or said by the chief and stuff, but like you said maybe there was someone that somebody knew within the Police Department that had authority that could just do that."

Id. 1696:22-1697:5.

The declaration of Bonacci, that was attached to the plaintiff's brief, supplements the deposition to some extent, but portions of it are pure speculation. For example, at paragraph 6 he says:

> "In my opinion the police who were regulars working or cooperating with Baer left us alone because we were 'Baer Boys' and because we were young, under age male prostitutes."

and at paragraph 3 he says:.

> "Whenever I was on the Run with the group of underaged boys there, the police who were the regular patrolmen there would leave us alone. The regular officers who were cooperating with Baer would instead harass and try to run off the men on the Run. Police told us to cooperate with Baer and them or we would be in trouble."

4. Analysis

None of the testimony, whether by deposition or by declaration, shows that the City of

Omaha had any kind of policy alleged in the second amended complaint of violating any constitutional right of the plaintiff. In the absence of such evidence there can be no liability on the part of the municipality. ***See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit***, 507 U.S. 163 (1993). Bonacci's testimony that "police" told the boys Bonacci was with to cooperate with Baer and them or the boys would be in trouble is not evidence of any kind of policy of the City of Omaha. His testimony that "police officers" would force him to have sex with them is not evidence of any official policy of the City of Omaha. The fact that Bonacci "had occasional contact with persons threatening [him] on Alan Baer's behalf" is not evidence of any official policy of the City of Omaha. Evidence that Bonacci would avoid arrest by indicating that Alan Baer or Larry King was involved does not show an official policy of the City of Omaha. The fact that he was released after he had been arrested when he told Robert Wadman that he knew Alan Baer does not show an official policy of the City of Omaha. The fact that police officers promised to follow up interviewing Bonacci, but did not, does not show an official policy of the City of Omaha.

Furthermore, the defendant City of Omaha accurately argues that plaintiff has testified that the last time he was abused was in April 1986 and that any relevant policy would have to predate April 1986. The plaintiff, however, was never in the custody or control of the City during that time period.

The due process claims against these defendants for failing to protect the plaintiff are not supported by the evidence. The duty of any of them to protect Bonacci is limited to one of two circumstances: when the state limits his ability to care for himself in a custodial or other setting and when the state exposes him to danger that he would not have faced otherwise. ***Kennedy v. Schafer***, 71 F.3d 292, 294 (8th Cir. 1995). The evidence, sympathetically but objectively read, does not support either of these in this case. The plaintiff argues that the police officers cooperated with Bonacci's abusers or allowed him to continue his prostitution activities and thereby fostered and helped "trap the Plaintiff in the dangerous world of child prostitution." Plaintiff's Brief, last page. The evidence does not support that argument. It is the defendants who are sued, not "the police." Whatever some unnamed police person may have done is not attributable to these defendants, because nothing in the evidence ties the defendants to them--that is, it is not shown by any of the testimony that either the defendant Wadman or the defendant Hoch are the ones who "helped trap the Plaintiff" or "cooperated with his abusers or allowed him to continue his prostitution activities." Plaintiff's brief, last two pages.

The plaintiff appears to be making two due process claims against the defendant Hoch. In 1989-90 criminal charges were brought against the plaintiff. He now alleges that Officer Hoch told the judge at the preliminary hearing that Bonacci had made some statements at the time of his arrest. Bonacci Deposition 967:12-23, 969:1-20, filing 205. Bonacci does not know and is unable to describe the contents or the subject matter of Hoch's comments, but thinks that he would not have been held in jail if Hoch had not made reference to a statement. How that is a denial of a constitutional right of due process has not been explained. Bonacci did later enter a guilty plea to three counts of sexual assault on a child. *Id.* 1322:1-1323:4; 1713:2-1716:12. The

second claim relates to an investigation by Officer Hoch of claims made by the plaintiff against a number of Omaha citizens, alleging an involvement in child abuse and other crimes. The plaintiff alleges that Hoch told the plaintiff that if he did not take back what he had said about Peter Citron and Larry King and told these things to a grand jury, the grand jury would indict him for perjury. He says he felt threatened by Hoch's request that he take back what he had said about Peter Citron and Larry King. He also charges that Hoch did not make a good effort to understand multiple personality disorder. ***Id.*** 1113:7-1120:4; 970:17-971:7.

Bonacci testified that Officer Hoch spent many hours with him at the Omaha Correctional Facility to obtain information with which to investigate Bonacci's claims of child abusers and molesters. ***Id.*** 971:23-972:12. Officer Hoch drove him around Omaha to identify locations of illegal activity and Bonacci knew that police officers had contacted several of his friends. ***Id.*** 976:7-12.

On June 26, 1990, about four months after Hoch last spoke with plaintiff the plaintiff did testify before the grand jury. He was indicted for perjury. Defendants' Exhibit A, Indictment, filing 204.[3] The evidence does not suggest that he somehow has been damaged by Hoch's saying that if he testified, he would be indicted for perjury. It can be taken for granted that Hoch did not control the grand jury.

The evidence does not show a failure on the part of the defendants to provide due process of law.

There evidently is also a claim that the "police" are responsible for loss of some pages of the plaintiff's diary. The declaration at paragraph 11 says:

> "Police searched my grandmother's home and seized my personal belongings. The police took a diary of mine. When I saw it again several pages had been removed. In the diary I indicated meetings with child abusers and attendance at sex parties."

That statement does not point at any of the defendants and, if it had, it would not have constituted a constitutional violation, but, at most, a claim under state law for conversion or negligence. ***See also,*** Deposition of Bonacci, p. 431, filing 205.

B. EQUAL PROTECTION

The plaintiff's equal protection claim asserts that he is in a class of persons of abused and

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[3] No evidence of the indictment's being dismissed has been presented to me, but I am confident that it was dismissed. The plaintiff's brief says that it was dismissed by the Douglas County prosecutors in 1991.

neglected children. As to the defendants Hoch and Wadman, the only kind of conspiracy that can be considered to have been claimed in Counts III and IV under 42 U.S.C. § 1985 is in subparagraph (3). As to it, the Court in ***Bray v. Alexandria Women's Health Clinic***, 506 U.S. 263 (1993), said:

> "Our precedents establish that in order to prove a private conspiracy in violation of the first clause of § 1985 (3), a plaintiff must show, *inter alia,* (1) that 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action,' ***Griffin v. Breckenridge***, 403 U.S. 88, 102 (1971), and (2) that the conspiracy 'aimed at interfering with rights' that are 'protected against private, as well as official, encroachment,' ***Carpenters v. Scott***, 463 U.S. 825, 833 (1983). . . ."

Id. at 267-68.

The Court in ***Bray*** also said:

> "Our discussion in ***Carpenters*** [***supra***] makes clear that it does not suffice for application of § 1985(3) that a protected right be incidentally affected. A conspiracy is not 'for the purpose' of denying equal protection simply because it has an effect upon a protected right. The right must be '*aimed at,*' 463 U.S., at 833 (emphasis added); its impairment must be a conscious objective of the enterprise. Just as the 'invidiously discriminatory animus' requirement, discussed above, requires that the defendant have taken his action 'at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group,' ***Feeney,*** 442 U.S., at 279, so also the 'intent to deprive of a right' requirement demands that the defendant do more than merely be aware of a deprivation of right that he causes, and more than merely acceptance; he must act at least in part for the very purpose of producing it. . . . "

Id. at 275-76.

What "invidiously discriminatory animus" that is "class based" is not identified in Count IV. Count III, to which Count IV references, points to a group of young males for prostitution as the "class" involved. I have no reason to think that a group of young male prostitutes are within the term "otherwise class based" mentioned in ***Bray***. It may be a group of victims, as pleaded, but that does not bring it within the purview of Section 1985.

It is fair to say that the United States Supreme Court has denied protection to all non-racial classes it has addressed. The Court of Appeals for the Eighth Circuit, on the other hand, has extended protection to classes other than those racially based, but thus far each such case has involved a conspiracy to strip of equal protection of the laws a member of a traditionally disadvantaged class. For example, ***see Action v. Gannon,*** 450 F.2d 1227 (8th Cir. 1971); ***Conroy v. Conroy***, 575 F.2d 175 (8th Cir. 1978); and ***Shortbull v. Looking Elk***, 677 F.2d 645 (8th Cir.) ***cert. denied*** 459 U.S. 907, 103 S.Ct. 211 (1982). Persons who are young male

prostitutes, even those held into the group against their will by threats and physical force, are not traditionally disadvantaged persons. Victims, yes; traditionally disadvantaged, no.

Whatever interpretation of Section 1985(3) is given, there is no evidence of a conspiracy to which the defendants Wadman or Hoch was tied. Without evidence of a conspiracy involving these defendants, or one of them, there can be no cause of action against them under Count IV, which is limited to conspiracy, or under that part of Count III that asserts conspiracy.

IT THEREFORE IS ORDERED that (1) the declaration of plaintiff Paul A. Bonacci, shall be filed by the clerk, and (2) the defendants' motion for summary judgment, filed on behalf of the defendants City of Omaha, Robert Wadman, and Michael Hoch, filing 203, is granted as to all claims.

Dated June 11, 1997.

BY THE COURT

United States Senior District Judge