

filed an affidavit, now under seal, alleging that the "Citron tapes" are relevant. If believed, plaintiff's allegations demonstrate that at least some of the materials are relevant. In response, defendant Citron alleges that plaintiff's claims are not credible and the materials are thus not relevant.

This dispute may well go to the heart of the factual issues underlying plaintiff's claims. Disposition of this discovery dispute is not the proper time for a determination of plaintiff's credibility. Although defendant Citron may be correct in his assessment of plaintiff's veracity, such a determination must be made by means other than this discovery matter. At this time I must accept plaintiff's affidavit as true, and based on that affidavit, I conclude that the requests for discovery of the "Citron tapes" material either seek relevant information or are calculated to discover admissible evidence.

I note that a number of suggestions have been made that the court conduct an in camera review of all of the items in the court's possession to determine whether plaintiff's allegations are credible. Such an exercise would be futile. The truth of plaintiff's statements could be revealed only by an examination of the pictures and video-tapes to determine whether plaintiff or any other person identified in the plaintiff's affidavit is actually found therein. Only a person who knew what the individuals looked like at the time the pictures or tapes were made could possibly determine whether they are actually in the materials. The court has no such knowledge and would be unable to make such needed identifications. Thus, an in camera review would be futile; no such review will be made based on the information provided to the court at this juncture in the case.

Defendant Citron next argues that discovery of the "Citron tapes" could lead to public disclosure and cause embarrassment and humiliation to persons depicted in the materials. Defendant Citron's arguments are well taken. The nature and subject matter of the "Citron tapes" is particularly sensitive and public disclosure of the information contained therein could cause significant embarrassment. As noted above, Rule 26 allows the court to enter a protective order when discovery will cause embarrassment. However, defendant Citron's request that discovery of the "Citron tapes" be barred goes too far. While the materials may be embarrassing, they are a part of the very basis of this action. If plaintiff's allegations are true he cannot be barred from bringing his claims merely because they will cause embarrassment to others involved.

"Discovery rules are to be broadly and liberally construed in order to fulfill discovery's purposes of providing both parties with 'information essential to the proper litigation of all relevant facts. . . ." Weiss v. Amoco Oil Co., 142 F.R.D. 311, 313 (S.D. Iowa 1992), quoting In re Hawaii Corp., 88 F.R.D.

518, 524 (D. Hawaii 1980). Considering the particular facts of this case, I conclude a less restrictive alternative than a bar on discovery is available to defendant Citron. See 8 Wright & Miller, Federal Practice and Procedure § 2036 (1970) (federal rules allow the district court to exercise discretion to determine what restrictions on discovery are necessary in each particular case).

In Stamy v. Packer, 138 F.R.D. 412 (D.N.J. 1990), the court considered a request for a protective order from a defendant regarding the issue of defendant's sexual orientation. Noting that the disclosure of one's sexual orientation may cause embarrassment and "stigmatization," the court held that an appropriate balance between the parties' interests would be struck by allowing discovery on the issue of defendant's sexual orientation but prohibiting disclosure of such information found through discovery. Id. at 416-17. The court entered a protective order prohibiting the plaintiff from disclosing such information received through discovery. Id. at 420.

Realizing that such an order raised a First Amendment issue, the court stated that a "protective order limiting disclosure of information procured through the discovery process does not run afoul of the First Amendment." Id., at 417 n. 6, citing Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984); Cipollone v. Ligett Group, Inc., 785 F.2d 1108, 1119 (3d Cir. 1986), cert. denied, 484 U.S. 976 (1987); State of New York v. United States Metals Refining Co., 771 F.2d 796, 802-03 (3d Cir. 1985); Tavoulareas v. Washington Post Co., 724 F.2d 1010, 1029 (D.D.C. 1984). In Seattle Times, the Supreme Court stated that discovery rules allow a litigant to access materials otherwise unavailable to him. Seattle Times, 467 U.S. at 32. Because the rules allow for such liberal discovery, courts must have a concomitant power to regulate use of knowledge gained via the rules. Id. at 34. Summarizing its holding, the Court stated,

We therefore hold that where, as in this case, a protective order is entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources, it does not offend the First Amendment.

Id. at 37.

I conclude a protective order prohibiting the parties and counsel from disclosing to non-parties or their attorneys information gained from inspection of the "Citron tapes" is required in this action. Plaintiff has apparently recognized the danger involved if public disclosure of these materials is made; he has conceded that limitations on discovery of the "Citron

tapes" are appropriate.² Thus, I conclude that the most equitable balance of the parties' interests here is to allow plaintiff to inspect the "Citron tapes" subject to restrictions as set forth in the order below.

IT THEREFORE HEREBY IS ORDERED:

1. That portion of filing 79 limiting discovery to determining plaintiff's mental condition is withdrawn. Discovery may henceforth proceed on all issues allowed by Fed.R.Civ.P. 26.

2. Defendant City's motion, filing 98, is denied as moot. Defendant Citron's motion, filing 100, is granted in part. Discovery of the materials is allowed subject to the following:

a). All items transferred to this court pursuant to the order of the Douglas County District Court shall remain on this court's premises until further order.

b). The clerk shall prepare a list of the cataloging records of the documents. Parties and their counsel who sign an agreement to comply with this order, as described in paragraph 2f, shall be supplied with the list. Requests for inspection shall be made with reference to that list.

c). The parties are granted 10 days to confer regarding an acceptable method of supervision of the inspection. The parties shall contact the court no later than at the end of that time period with a consensus as to how the inspection of all parties will be supervised, or an indication that no agreement could be reached.³

² In his brief in support of the motion to modify filing 79, plaintiff proposes that his inspection of the "Citron tapes" take place on the court's premises, that the inspection be supervised, that plaintiff's "memoranda, listings, or cataloging of the material" be under seal, and that the other parties would have access to any written cataloging plaintiff made of the inspection.

³ The parties should be aware that if no agreement is reached, the court will appoint the clerk's office to oversee supervision of the inspection. Should the clerk's office be appointed, a strict and restrictive schedule will be designed and maintained to account for the difficulties presented when assigning a task which ordinarily would be completed by the parties. Because of the large amount of material to be inspected and the limited amount of available time to inspect that material, discovery will undoubtedly drag out over an immense length of time should the parties fail to agree to a supervision schedule.

d). No person receiving knowledge of the contents or subject matter of the materials held by this court as a result of any inspection of such materials, shall discuss, describe, disclose, or otherwise divulge such knowledge or information, either directly or indirectly, to any person, business or organization, except as provided in paragraph 2f hereof or as specifically ordered by the court, prior to such disclosure.

e). The materials held by this court and information and knowledge gained from inspection of those materials shall be treated as confidential, both during the pendency of, and subsequent to, the termination of this action. These materials and information and knowledge derived therefrom shall be used solely for the purpose of this litigation and not for any other purpose. None of the materials or information or knowledge gained therefrom shall be disclosed to anyone except in accordance with the terms of this order.

f). Disclosure of materials or information or knowledge derived therefrom shall be made only to attorneys of record for parties in the case, persons regularly employed by or associated with the law firms of the attorneys retained by the parties whose assistance is required by said attorneys in the preparation for, or the trial of, this case; and outside or independent expert witnesses and consultants retained by the parties in connection with this proceeding. The counsel for the party making disclosure to any of the aforementioned individuals shall first obtain the written agreement of any such individual to whom disclosure is made to be bound by the terms of this order. This requirement may be satisfied by obtaining a signed acknowledgment of any such individual at the end of a copy of this order that he or she has read the order, understands its provisions, and agrees to be bound by its provisions. Each party to this lawsuit shall maintain a list of the individuals to whom any material or knowledge or information derived therefrom is disclosed. Such list shall include the name of each such individual, his or her home address and telephone number, his or her business address and telephone number, and his or her job title.

g). The disclosure of materials or knowledge or information derived therefrom to any individual or entity other than those individuals or entities specified in paragraph 2f of this order shall be by agreement of all of the parties to this lawsuit only, or by order of the court.

h). No copies shall be made of any of the materials; except that a paper printout of the contents of the computer disks may be created by the clerk, or as otherwise practicable with the consent of all parties.

i). Any person to whom materials or knowledge or information derived therefrom is disclosed may use such materials, knowledge or information only for the purposes of this litigation and is prohibited from disclosing any information derived therefrom to any other person, except as permitted by order of this court.

j). Sixty days following the final termination of this action, all of these materials, including those items, if any, used as exhibits during trial, shall be destroyed, unless prior to such time, any party files an appropriate motion seeking other disposition.

k). Discovery of these materials is conditioned on the above restrictions. Any violation of the restrictions may result in appropriate sanctions, including, but not limited to those available to the court pursuant to Fed.R.Civ.P. 37, the contempt powers of this court, and the inherent powers of this court to discipline its officers.

3. The parties are given until September 20, 1993 to submit to the court their joint, or if necessary, separate proposals for supervision of the inspection of the materials now in possession of the court.

Dated September 9, 1993

BY THE COURT


United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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PAUL A. BONACCI,)
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 Plaintiff,)
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 vs.)
)
 THE CATHOLIC ARCHBISHOP OF)
 OMAHA, et al.,)
)
 Defendants.)
)

**JOINT MOTION FOR AMENDMENT
OF AMENDED ORDER OF PROGRESSION**

COME NOW Defendants PETER CITRON, ALAN BAER, ROBERT WADMAN, MICHAEL HOCH, KENNETH BOVASSO and THE CITY OF OMAHA, by and through their undersigned counsel, and move the Court for an Order amending the Court's Amended Order of Progression. In support of said Motion, the parties would show to the Court as follows:

1. That on February 1, 1991, Plaintiff filed his Complaint and Demand for Jury Trial.
2. That on February 4, 1991, Plaintiff filed his First Amended Complaint and Demand for Jury Trial.
3. That on February 28, 1991, Defendants City of Omaha, Michael Hoch and Kenneth Bovasso filed an Answer to Plaintiff's Amended Complaint.
4. That on March 15, 1991, Defendant Harold Anderson filed an Answer to Plaintiff's First Amended Complaint.

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5. That on April 2, 1991, Defendant Peter L. Citron filed a Motion to Dismiss Plaintiff's Amended Complaint, together with supporting Brief.
6. That on April 2, 1991, Defendant Alan Baer filed an Answer and Affirmative Defenses to Plaintiff's First Amended Complaint.
7. That on April 2, 1991, Defendant J.L. Brandeis & Sons, Inc. filed a Motion to Dismiss Plaintiff's First Amended Complaint, together with supporting Brief.
8. That on July 18, 1991, the Court entered a Memorandum and Order denying inter alia the Motions to Dismiss of Peter Citron and J.L. Brandeis & Sons, Inc.
9. That on July 29, 1991, Defendant J.L. Brandeis & Sons, Inc. filed an Answer and Affirmative Defenses to Plaintiff's First Amended Complaint.
10. That on July 31, 1991, Defendant Peter L. Citron filed an Answer and Affirmative Defenses.
11. That on April 30, 1992, the Court entered an Order setting a preliminary pretrial conference for May 14, 1992.
12. That on May 15, 1992, the Court entered an Order regarding discovery and progression of the case.
13. That on September 3, 1992, Defendant City of Omaha filed a Motion to Quash and Motion for Sanctions, together with supporting Brief.
14. That on September 3, 1992, Plaintiff filed a Motion to Allow Additional Discovery with Supporting Affidavit and Request for Oral Argument on Motion, to allow Plaintiff's counsel to inspect and examine the "Peter Citron tapes."
15. That on October 9, 1992, the Court entered a Memorandum and Order deferring ruling on Defendant City of Omaha's Motion to Quash and for Sanctions and

on Plaintiff's Motion for Additional Discovery for a period of 10 days to permit compliance with Local Rule 201.

16. That on October 26, 1992, Defendant City of Omaha filed a Motion to Withdraw its Motion to Quash and Motion for Sanctions.

17. That on October 27, 1992, the Court entered an Order granting the withdrawal of Defendant City of Omaha's Motions to Quash and for Sanctions.

18. That on December 16, 1992, the Court entered its Order Setting Schedule for Progression of Jury Case.

19. That on April 21, 1993, Plaintiff filed a Notice of Oral Deposition of the Property Custodian of the Omaha Police Department and Michael Hoch and Kenneth Bovasso of the Omaha Police Department.

20. That on April 28, 1993, the Custodian of Records of the Omaha Police Department, and Defendants Kenneth Bovasso and Michael Hoch filed a Motion to Quash and for Protective Order.

21. That on April 28, 1993, Defendant Peter Citron filed a Motion to Quash the subpoena duces tecum served on Property Custodian of Omaha Police Department, together with supporting Brief.

22. That on April 28, 1993, the Court entered an Order deferring ruling on Motions to Quash and giving the parties 10 days to provide a listing of the materials, to provide written arguments concerning relevance of material sought and to provide the Court with views on whether the previous limitation on scope of permissible discovery should be lifted.

23. That on April 29, 1993, a conference call took place regarding the Citron materials among Judge Piester and Messrs. Warin, Sipple, Koenig, DeCamp and Ms. Hahn.

24. That on May 4, 1993, Defendants City of Omaha, Michael Hoch and Ken Bovasso filed a Motion to Dismiss Conspiracy Claims Brought Pursuant to 42 U.S.C. §1985(3), together with supporting Brief.

25. That on May 5, 1993, Defendant Peter Citron executed an Affidavit regarding examination of materials in possession of Omaha Police Department.

26. That on May 10, 1993, Defendant Peter Citron filed a Motion for Leave to Adopt by Reference Pre-Trial Motions and Memoranda of Co-Counsel, together with supporting Brief.

27. That on May 11, 1993, Defendant Peter Citron filed an Additional Brief in Support of Peter Citron's Motion to Quash.

28. That on May 13, 1993, Plaintiff filed a Motion to File Supplemental Brief and Affidavit Opposing City of Omaha and Peter Citron's Motions to Quash Deposition Notices and Subpoena.

29. That on May 13, 1993, Plaintiff filed an Additional Brief in Support of Plaintiff's Discovery Motions, together with Affidavit of Plaintiff.

30. That on May 15, 1993, Defendant Peter Citron submitted an informal letter brief in response to Plaintiff's Memorandum Brief Opposing Motions to Quash Subpoena and Deposition Notices, Additional Brief and Mr. Bonacci's Affidavit.

31. That on May 17, 1993, Plaintiff submitted a letter to the Court in reply to Defendant Citron's informal letter brief.

32. That on May 27, 1993, the Court entered a Memorandum and Order that Plaintiff's Affidavit shall be filed under seal; that the supplemental and reply briefs regarding pending motions to quash were deemed submitted; and giving Defendants City of Omaha, Hoch and Bovasso twenty days to apply to the District Court of Douglas

County, Nebraska, for authority to release the materials and setting a briefing schedule in the event the application is granted or denied.

33. That on June 23, 1993, Defendant City of Omaha filed a Motion to Transfer Custody of Property to the direction of the United States District Court for the District of Nebraska.

34. That on June 25, 1993, the Court entered an Order transferring "Citron Materials" to custody of Magistrate Judge David Piester.

35. That on August 4, 1993, Plaintiff filed a Motion to Modify Protective Order with regard to "Citron Tapes", together with supporting Brief.

36. That on September 9, 1993, the Court entered a Memorandum and Order regarding Motions to Quash and Citron Materials.

37. That on September 29, 1993, Defendant Robert C. Wadman filed an Answer to Plaintiff's Amended Complaint.

38. That on September 29, 1993, the Court entered a Memorandum and Order denying Defendants City of Omaha's, Hoch's and Bovasso's Motion to Dismiss Conspiracy Claim.

39. That on October 7, 1993, Defendants Wadman, Bovasso and Hoch filed a Motion to Dismiss, together with supporting Brief.

40. That on November 19, 1993, the Court entered a Memorandum and Order amending the December 16, 1992, Order of Progression.

41. That on November 19, 1993, the Court entered a Memorandum and Order regarding the Citron Materials.

42. That on November 23, 1993, the Clerk of Court submitted rules regarding viewing of the Citron Materials.

43. That on November 24, 1993, the Court entered an Order granting Defendant Citron's Motion for Leave to Adopt by Reference Pretrial Motions and Memorandum of Co-Counsel.

44. That on December 1, 1993, Plaintiff filed a Notice of Plaintiff's Inspecting "Citron Tapes" and Notice of Plaintiff's Intent to Personally Attend "Citron Tapes" Inspection.

45. That on December 6, 1993, Defendant Peter Citron filed an Objection to Plaintiff Viewing Material.

46. That on December 7, 1993, the Court entered an Order stating that Plaintiff shall not be permitted to view the materials.

47. That on December 8, 1993, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for December 14, 1993.

48. That on December 14, 1993, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for December 22, 1993.

49. That on December 31, 1993, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for January 13, 1994.

50. That on January 6, 1994, the Court entered an Order granting the Plaintiff until January 18, 1994, to respond to Defendant City of Omaha's Motion to Dismiss.

51. That on January 11, 1994, the Court entered an Order changing the date of the pretrial conference from August 10, 1994 to August 3, 1994.

52. That on January 17, 1994, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for January 20, 1994.

53. That on January 18, 1994, Plaintiff filed Brief Opposing City of Omaha Defendants' Motion to Dismiss.

54. That on February 8, 1994, the Court entered a Memorandum and Order staying Defendants' Motion to Dismiss; granting Plaintiff 10 days to file a second amended complaint; and granting Defendants 10 days from filing of amended complaint to amend motion to dismiss and supporting brief.

55. That on February 8, 1994, the Court entered an Order denying Defendant Citron's Motion for Leave to Adopt by Reference Pre-trial Motions and Memoranda of Counsel for Defendants City of Omaha, Hoch and Bovasso.

56. That on February 9, 1994, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" and Designation of Additional Expert to View Materials.

57. That on February 10, 1994, the Court entered an Order withdrawing Defendant Citron's Motion to Join Motions of Defendants Wadman, Hoch and Bovasso.

58. That on February 17, 1994, Plaintiff filed Second Amended Complaint and Demand for Jury Trial.

59. That on March 3, 1994, Defendants City of Omaha, Michael Hoch, Kenneth Bovasso and Robert Wadman filed their Answer to Plaintiff's Second Amended Complaint.

60. That on April 7, 1994, Defendant Baer filed Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint.

61. That on April 28, 1994, Defendant Peter Citron filed his Answer and Affirmative Defenses to Second Amended Complaint.

62. That on May 12, 1994, Defendant Harold Anderson filed a Motion for an order setting a time limit for Plaintiff's viewing of "Citron Materials" and revising Progression Order to extend deposition deadline.

63. That on May 16, 1994, the Court entered a Memorandum and Order denying Defendants Wadman, Bovasso and Hoch's Motion to Dismiss on Basis of Qualified Immunity.
64. That on May 16, 1994, Defendant Alan Baer filed a Motion for Extension of Progression Order setting a time limit for Plaintiff's viewing of "Citron Materials" and to extend deposition deadline.
65. That on May 16, 1994, Plaintiff filed Notice of Records Deposition and Subpoena Duces Tecum of Douglas County Attorney's Office for May 27, 1994.
66. That on May 19, 1994, Defendant Peter Citron filed Motion for an Extension of Progression Order setting a limit for Plaintiff's viewing of "Citron Materials" and to extend deposition deadline.
67. That on July 6, 1994, the Court entered a Memorandum and Order granting Defendants' Motions for Continuance and Motions to limit Plaintiff's viewing of "Citron Materials" giving him until August 31, 1994, to complete the initial viewing.
68. That on July 6, 1994, the Court entered its Amended Order Setting Schedule for Progression of Case.
69. That on September 30, 1994, Plaintiff filed Designation of "Citron Materials."
70. That on October 7, 1994, Defendants City of Omaha, Wadman, Hoch and Bovasso filed Objection to Plaintiff's Designation of Citron Materials.
71. That on October 10, 1994, Defendant Harold Anderson filed Motion to Strike Plaintiff's Designation of Citron Materials.
72. That on October 11, 1994, Defendant Alan Baer filed Motion to Strike Plaintiff's Designation of "Citron Materials."

73. That on October 16, 1994, Plaintiff filed a Motion to dismiss Defendant Harold Anderson from the lawsuit.

74. That on October 31, 1994, the Court entered an Order dismissing Defendant Harold Anderson from the lawsuit.

75. That on December 5, 1994, the Court entered a Memorandum and Order granting the Defendants' various Motions to Strike.

76. That given the current status of discovery in this case, there is no realistic possibility that the parties can complete the remaining discovery prior to the deadline established in the Amended Order of Progression dated July 6, 1994. The Defendants are in the process of completing the Plaintiff's deposition and it is hoped that this phase of discovery can be accomplished by February 1, 1995. Once the Plaintiff's deposition is completed, the Defendants estimate that it will take a minimum of nine months to complete the remaining discovery based on the prior discovery responses given by the Plaintiff.

77. That in addition to extending the deadline for the completion of depositions, the Defendants would respectfully request that the Court modify the other scheduling deadlines established in the Court's Order of July 6, 1994. In that connection the Defendants would advise the Court that several Defendants are contemplating filing Motions for Summary Judgment seeking either a complete dismissal of all claims or, at a minimum, dismissal of some of the various claims and theories of recovery asserted by the Plaintiff.

78. That the Defendants are fully aware of the fact that this case has been on file for a considerable period of time. However, the Defendants would point out that there were approximately 16 Defendants when this lawsuit was originally filed and there

are now approximately seven Defendants. Accordingly, albeit tediously, gradual progress is being made. Defendants would also call to the Court's attention the rather unusual nature of the claims asserted in this case and the considerable time consumed with respect to the issues surrounding the "Citron Materials."

79. That this request is not made for purposes of delay but rather in an effort to preserve judicial resources and in an effort to narrow some of the issues and claims presented by this litigation.

80. That pursuant to NELR 7.1(a)(1), the Defendants are not submitting a Memorandum in support of this Motion as this Motion raises no substantial issue of law and the relief sought is within the Court's discretion.

WHEREFORE, these Defendants respectfully request that the Court enter an Order amending its current Amended Order of Progression dated July 6, 1994, extending the deposition deadline until December 8, 1995, and modifying all other deadlines correspondingly.

DATED this 23rd day of January, 1995.

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ROBERT WADMAN, MICHAEL HOCH,
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OF OMAHA, Defendants

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon:

Mr. John W. DeCamp
Mr. Stan Sipple
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Lincoln, NE 68508

Mr. Lawrence E. King
Pris. I.D. 12834-047
FCI Sandstone
Kettle River Road
Sandstone, MN 55072

by United States First Class Mail, postage prepaid, on this 23rd day of January, 1995.