

**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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
DISTRICT OF NEBRASKA
AT _____ M
MAY 13 1994-145
Norbert H. Ebel, Clerk
By _____ Deputy

PAUL A. BONACCI,

CV 91-3037

Plaintiff,

vs.

MOTION

THE CATHOLIC ARCHBISHOP OF
OMAHA, et. al,

Defendants.

Defendant Harold Andersen moves the Court for an order supplementing the Memorandum and Order entered in this action on November 19, 1993, which prescribed the procedure for viewing of the "Citron Materials" by setting a time limit for such viewing by plaintiff's counsel, and revising the progression Memorandum and Order entered November 19, 1993 to extend the deposition deadline to a date ninety (90) days, or other suitable period, following the close of the period allowed for viewing the Citron Materials, and to reschedule Trial and the final Pre-Trial Conference accordingly.

This defendant further moves the Court to order a time limit for viewing the "Citron Materials."

HAROLD ANDERSEN, Defendant



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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U. S. DISTRICT COURT
DISTRICT OF NEBRASKA
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NOBBERT H. EBEL
CLERK 20
CV 91-3037

PAUL A. BONACCI,)
)
Plaintiff,)
)
vs.)
)
THE CATHOLIC ARCHBISHOP OF)
OMAHA, et al.,)
)
Defendants.)

MOTION TO QUASH AND
FOR PROTECTIVE ORDER

COMES NOW the Custodian of Records of the Police Department of the City of Omaha, and Defendants Kenneth Bovasso and Michael Hoch, and move the court, pursuant to the provisions of Fed. R. Civ P. 26(c) and 45(c)(3), for an order quashing the subpoena duces tecum served upon them to appear and produce the property of Peter Citron held by the Omaha Police Department. In support of this motion, the Custodian of Records of the Police Department of the City of Omaha, and Defendants Kenneth Bovasso and Michael Hoch, show to the court that under date of April 23, 1993, they received a subpoena duces tecum, annexed hereto and identified as Exhibit "A", commanding them to appear and give evidence in the captioned cause. Said exhibit further commanded them to bring all memoranda and records of Peter Citron.

THE CITY OF OMAHA, NEBRASKA,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION TO QUASH AND FOR PROTECTIVE ORDER was sent by regular United States mail, postage prepaid, on this 27th day of April, 1993, to:

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would not comply with Plaintiff's subpoena.

In further support thereof, Plaintiff states that an expedited oral hearing is necessary since the "Citron tapes" and other materials may soon be lost or destroyed.

WHEREFORE Plaintiff requests that the Court enter appropriate Orders to allow Plaintiff to review and inspect the above described materials; that the Court schedule an expedited hearing thereon; and that the Court enter all other necessary and proper orders.

DECAMP LEGAL SERVICES, P.C.,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 3 day of SEPTEMBER, 1992 a copy of the foregoing was mailed first class postage prepaid; transmitted by facsimile machine; hand delivered to the attorneys of record or to the unrepresented parties at their last known mailing address.

John W. Decamp

* FAXed to James Fellows, City of Omaha

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,)
)
 Plaintiff,)
)
 v.)
)
 THE CATHOLIC ARCHBISHOP OF)
 OMAHA, et al.,)
)
 Defendants.)

4:CV91-3037 ROBERT H. EBEL
CLERK

STIPULATION

The Department of Correctional Services, a nonparty to this action, and the parties, by and through their respective counsel, hereby stipulate and agree as follows:

1. Counsel for the Defendants requested access to medical records maintained by the Department of Correctional Services pursuant to Neb. Rev. Stat. § 83-178 (Reissue 1981) and concerning the incarceration of the Plaintiff herein, Paul A. Bonacci.
2. Counsel for the Plaintiff has no objection to the release of such records.
3. The requested medical records here in question may contain material relevant to this action.
4. Neb. Rev. Stat. § 83-178 states in relevant part: "The content of the file shall be confidential and shall not be subject to public inspection except by court order and for good cause shown and shall not be accessible to any person committed to the department."

5. The Department of Correctional Services and the parties agree that this Court may enter an order, under the conditions contained in the proposed order, attached hereto, allowing the inspection of the medical records referred to in the proposed order.

Stipulated and dated this ____ day of December, 1992.

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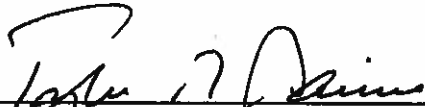
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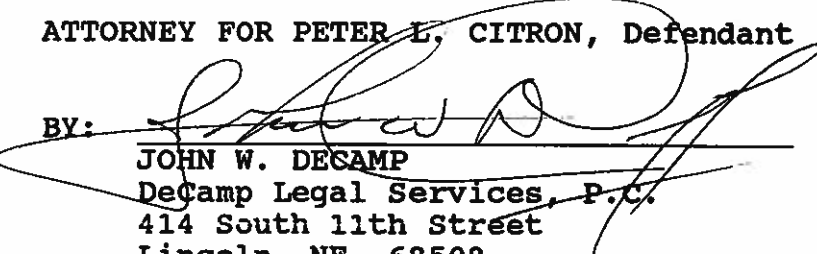
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