

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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4:CV91-3037 H. EBEL
CLERK

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

ORDER

Pursuant to a Stipulation of the Nebraska Department of Correctional Services and the parties hereto, and for good cause shown, it is hereby ordered that the medical records maintained by the Department of Correctional Services (DCS) concerning Paul A. Bonacci, be made available for inspection by Edward G. Warin, Attorney at Law, on behalf of the Defendants and John DeCamp, Attorney at Law, as counsel for the Plaintiff, under the following conditions:

1. That the inspection of the above file in question shall be conducted by counsel at the DCS institution which currently maintains said file.

2. That any copies of material from said file desired by counsel shall be identified by counsel to institutional personnel whose responsibility it shall be to create and deliver to counsel the requested copies within a reasonable time following the request.

3. That the reasonable cost of the copies requested by counsel shall be paid by counsel directly to the DCS institution creating and delivering said copies.

4. That counsel shall not make available to any person committed to DCS the content of the file here in question without further order of this Court.

DATED 1-7-93.

BY THE COURT:

David L. Pette
Judge

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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NORBERT H. EBEL
CLERK

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

CASE NO. CV 91-3037 CLERK

MOTION TO QUASH AND
MOTION FOR SANCTIONS

COMES NOW the defendant City of Omaha, and moves the Court, pursuant to the provisions of Rule 45(b) of the Federal Rules of Civil Procedure, for an order quashing the subpoena duces tecum served upon it to produce for inspection designated items. In support of this motion, the City of Omaha shows the Court that under date of September 1, 1992, it received a subpoena duces tecum, annexed hereto and identified as Exhibit "A", commanding it to produce for inspection: "All video tapes, photographs, recordings and all other electronic, photographic media seized by the Omaha Police Department in conjunction with the investigation and arrest of Peter Citron."

On May 15, 1992 this Court entered an order which holds in pertinent part: "All discovery in this matter is limited to determining the plaintiff's mental condition regarding the allegation that he suffers from multiple personality disorder, until the further order of the court." The materials sought to be inspected do not, by the broadest stretch of the imagination, fall within the exception to this order.

Defendant City of Omaha further moves the Court for sanctions pursuant to Federal Rule of Civil Procedure 11 for the reason that the subpoena was issued in violation of the Court's order of May 15, 1992 and is, therefore, not warranted by law.

CITY OF OMAHA, Defendant

By Wendy Hahn
JAMES E. FELLOWS
Deputy City Attorney
WENDY E. HAHN
Assistant City Attorney
804 Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, Nebraska 68183
Telephone: 402/444-5115

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION TO QUASH AND MOTION FOR SANCTIONS was sent by regular United States mail, postage prepaid, on this 2nd day of September, 1992, to:

John W. DeCamp
521 South 14th Street, #300
Lincoln, NE 68508

Lyle J. Koenig
147 North 4th
Hebron, NE 68370

Steven W. Seline
1650 Farnam Street
Omaha, NE 68102

Edward G. Warin
One Central Park Plaza, #1100
222 South 15th Street
Omaha, NE 68102

Tyler B. Gaines
10050 Regency Circle, Suite 200
Omaha, NE 68114

Wendy HAHN

7952B

United States District Court

DISTRICT OF
NEBRASKA

PAUL A. BONACCI
V.

SUBPOENA IN A CIVIL CASE

THE CATHOLIC ARCHBISHOP OF OMAHA, et. al.

CASE NUMBER: CV 91-3037

TO: OMAHA POLICE DEPARTMENT, PROPERTY CUSTODY DIVISION
Omaha, Nebraska

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All video tapes, seized by the Omaha Police Department in conjunction with the photographs, recordings and all other electronic, photocopied media investigation and arrest of Peter Citron.

PLACE	DATE AND TIME
Omaha Police Department Headquarters, 505 South 15th Street, Omaha, NE	September 2, 1992 at 1:30pm

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>John W. DeCamp</i>	28 Aug '92

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
John W. DeCamp, 414 S. 11th St., Lincoln, NE. (402) 477-3974

PROOF OF SERVICE

SERVED	DATE	PLACE
	8-31-92	Omaha Police Dept
SERVED ON (PRINT NAME)		MANNER OF SERVICE
John Saverty Police Officer		Personal
SERVED BY (PRINT NAME)		TITLE
Craig Jarembek, Jr.		

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expenses to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

CE Heaney, Attorney for the Catholic Archbishop of Omaha, 10306
Regency Parkway Drive, Omaha, NE 68114

Lyle Koenig, Attorney for Peter Citron, 147 N 4th Street, Hebron,
NE 68370

Ed Warin, Attorney for Alan Baer and J.L. Brandeis & Sons, Inc.,
2120 S. 72nd Omaha, NE 68124-2342

Steve Seline, Tory Bishop, Attorney for Alan Baer, 1650 Farnam,
Omaha, NE 68102

Tyler Gaines, Attorney for Harold Anderson, 10050 Regency Circle
#200, Omaha, NE 68114

Wendy Hahn, Attorney for Michael Hoch, Kenneth Bovasso, City of
Omaha and Robert Wadman, 1819 Farnam, Omaha, NE 68102

John Douglas, Attorney for Omaha Public School District, 8805
Indian Hills Drive #300, Omaha, NE 68114

Allen Daubman, Attorney for the Omaha World Hearld, One Pacific
Place #800, 1125 S 103rd, Omaha, NE 68124

David Peterson, Attorney for Omaha Public School District, 31500
Woodmen Tower, Omaha, NE 68102-2069

Don Stenberg, Attorney General, State Capitol, Lincoln,. NE 68509

United States District Court

DISTRICT OF
NEBRASKA

PAUL A. BONACCI
V.

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ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>James W. Kelly, Plaintiff</i>	DATE 28 Aug '92
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	

PROOF OF SERVICE

SERVED	DATE	PLACE
	SERVED ON (PRINT NAME)	
SERVED BY (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

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