IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

PAUL A. BONACCI,	)	
	)	
Plaintiff,	)	4:CV91-3037
	)	
v.	)	
	)	
THE CATHOLIC ARCHBISHOP OF OMAHA, et al.,	)	MEMORANDUM AND ORDER
	)	
Defendants.	)	

Having now conferred with court personnel and received the suggestions of counsel, the following procedures are adopted for the viewing of the materials described in the order of September 9, 1993.

IT IS ORDERED:

I. CUSTODY AND POSSESSION LIST; ACCESS;

1. The "Materials" shall remain under seal in the possession and custody of the Court until further order of the Court.

2. The clerk shall deliver to counsel for each party the listing of the items which constitute the "Materials," previously provided by the defendant City, but the clerk shall first expunge from the City's listing the name(s) of any person and any detail as to the contents of the documents or what is portrayed by the film, tape or photo, that would reveal the identity of any party or other person. For this purpose, the clerk may identify the items, or in appropriate cases, groups of items, by numbering them for purposes of subsequent identification; this amended list, herein called "Materials List" or "List" is used to identify items of the materials in these proceedings. The City's listing and the List, as amended, shall be subject to the non-disclosure provisions of the order of September 9, 1993.

3. Counsel of record for the parties,members and regular employees of counsel's firms thereof whose assistance had been certified by counsel in writing as required by counsel for the preparation of trial of this action (called "counsel's affiliates") and outside or independent expert witnesses and consultants who are certified by counsel in writing to have been retained for services in connection with this action (called "counsel's experts") shall be the only persons to whom access to the materials is permitted, subject to further order of the court. Access to said persons shall be permitted only in accordance with procedures established by the clerk and upon the following conditions:

(a) No person shall be permitted access to the "material" unless he or she shall have presented to the clerk an "Acknowledgment" in the form of a copy of the order of this Court entered September 9, 1993, with an endorsement thereon, signed by the person seeking access, as follows:

ACKNOWLEDGMENT

"Undersigned, representing him/herself to be counsel of record, affiliate of counsel or counsel's expert (strike two) declare and affirm that I have read the order of this court entered September 9, 1993, to a copy of which this endorsement is appended, that I understand the said order and its restrictions against disclosure of the materials described therein or information or knowledge derived from such materials, and that I expressly agree to be bound by the provisions of said order.

Dated_____, 199__.

_____
Signature

_____
Printed Name

Undersigned, _____, counsel of record for _____, a party _____ in the above-captioned action, certify that _____, being the person who executed the foregoing endorsement, is an "affiliate"/"expert" (strike one) of counsel as that term is defined in the order of this court dated _____, 1993, and the provisions of this paragraph 3 above.

Dated_____, 199__.

_____
Signature of Counsel of Record

_____
Printed Name

(b) Each person who shall request access to the "Materials" shall arrange the date and time with the clerk at least five working days in advance of the viewing, and shall give each other party not less than four working days notice of the date and time in the manner provided for service of notice of deposition on oral examination. The clerk shall be given a copy of such notice.

(c) Access to Material shall be had only in the office of the clerk or at some other location in the Robert V. Denney Federal Building and Courthouse as designated by the clerk. Equipment for viewing shall be that available at the clerk's office; however, if such equipment is not capable of being used for the materials, counsel shall obtain appropriate equipment at the expense of the party or parties who desire to view those materials. Access shall be limited to those times when clerk's office staff is available.

(d) The clerk shall make a record of each viewing of the materials, or other access thereto, which shall include: the date, beginning and ending times, and place of the view or access; the name of each person who viewed the "Materials" or part of them; a list of the items viewed by such person(s); and the name of each other person present at any time during such viewing.

(e) The clerk or his designee shall be continuously present at all viewing or examinations of the "Materials" by any person.

(f) In addition, a party to this action may receive a copy of the Materials List to be prepared by the clerk, provided that such party shall have executed and delivered to the clerk the "Acknowledgment" form provided at subparagraph (a) above; if such party is not an individual, the Acknowledgment shall be signed by an officer of such party, who shall be personally responsible for performance of the provisions of the Acknowledgment and the court's order therein referenced.

4. No person other than the clerk, acting under the direction of the court, shall make any machine, photographic, or other copy, duplicate or replica of any item or any part of any item of the "Materials," provided, a paper printout of the contents of the computer disks may be created by the clerk, which printout shall be treated as part of the material subject to the order of court of September 9, 1993, and provisions hereof. Counsel, counsel's affiliates and counsel's experts may make notes relating to the material, which notes shall be subject to the provisions of this

order and the protective order entered September 9, 1993, to the same extent as the "Material." No tracings, drawings or verbatim copies of any document or other material shall be made.

Should counsel for a party deem it necessary that a copy of an item or items of the "Materials" be made for the purpose of further discovery or for use by an expert in preparation for expert testimony, such counsel may request such copy(ies) by appropriate motion to the court, which shall set forth the item or items requested to be copies, a statement of the basis upon which counsel contends that a copy of such item or items will lead to the discovery of admissible evidence or a statement of the nature of such experts' testimony and an explanation of why such copy is necessary, whichever may be applicable. Notice of such motion shall be given to each other party in the manner required by the local rules. Such motions shall be filed under seal and shall remain sealed until ordered otherwise. Responses to such motions shall be submitted to the undersigned magistrate judge within five working days of the service of the motions and shall address the propriety of keeping the motions and related filings sealed.

If leave is granted to copy any item or items of the Materials, counsel to whom leave is granted shall: (i) before the items are delivered to counsel, deliver to the clerk (and serve copies on all other parties) counsel's signed affirmation that he/she will protect such items against disclosure to any person other than those authorized by the order of the court granting leave to make copies; and (ii) protect the integrity of the item and any copies made; and (iii) prior to exhibiting a copy of any item to any such person, obtain from such person the written acknowledgment for compliance with the court's non-disclosure order of September 9, 1993, in the form prescribed at paragraph I.3(a) above, which shall be submitted to the clerk, and copies served on all other parties, within three days of the date such acknowledgment is executed, and prior to disclosure to such person.

5. No person shall write or mark upon any item of the "Materials" nor in any way alter or change any item. No item of the "Materials" shall be removed from the custody of the clerk. No other document, photo, video tape, film or other article shall be inserted in the "Materials" by any person.

The clerk is authorized to inspect any file, briefcase and/or items carried by counsel to or from the place of viewing, including notes and memoranda made while viewing, both before and after the viewing, and to deny access to any person carrying any item into the room in which the viewing will take place or to confiscate any item being removed if the viewing has taken place if the clerk has reasonable grounds to believe there will be or has been a violation of this provision or the order of September 9, 1993.

II. PROCEDURE FOR VIEWING

1. Initial Viewing. Plaintiff's motion having been granted, counsel for plaintiff shall have access to the "Materials" for the purpose of viewing and inspecting same on a date and at a time to be arranged with the clerk of the court, upon compliance with the provisions of this order. Plaintiff shall serve notice of the dates and time of the viewing and the place thereof as designated by the clerk, in accordance with the applicable rules for oral depositions. Counsel for any defendant shall be entitled to attend and view the materials, and shall notify the clerk of their intention to do so at least two days before the viewing.

(a) Within 30 days of the completion of the initial viewing, counsel for any viewing party shall serve upon counsel for other parties a Designation of each item of the "Materials," if any, identified according to the description in the Materials List, which the designating party proposes to offer in evidence at the trial of this action. The Designation shall include a detailed statement of the facts, including the name of any party to this action who is named, identified or photographed in the designated item, which the designating party contends are disclosed by each item of the "Materials" which are relied upon to demonstrate the relevance of that item, together with an explanation or argument of the basis for the claim of relevance. Such Designation shall be served by U.S. Mail addressed to other counsel, marked "Confidential, To Be Opened By Addressee Only," shall be filed under seal, and shall be subject to the non-disclosure provisions of the order of September 9, 1993.

(b) The other parties shall be allowed 10 days following service of the Designation and statement in which to serve preliminary objections and a supporting brief to any or all items identified as items which the designating party proposes to offer in evidence at trial. Such objections shall be limited to relevance matters of competence, foundation and other objections shall be reserved for later determination.

Subsequent Viewing. After the initial viewing by plaintiff's counsel and electing counsel for defendants and viewing of designated items of material as provided by paragraph 1 above, neither counsel nor counsel' affiliates shall be permitted further viewing except upon a showing of good cause, except that each party may have a further viewing of designated items for the benefit and use of counsel's experts or consultants. The court may impose a reasonable charge to compensate the clerk for the cost of supervision of such viewing. Repeat viewings by a person previously designated as a counsel's expert shall require a further

showing of good cause and shall be subject to imposition of a fee as above provided.

III. COOPERATION

Counsel shall, consistent with the responsibility to represent their respective clients, cooperate to the end that the integrity of the materials shall be preserved, the opportunities for disclosure shall be reduced to a minimum, and unnecessary and undue burden and expense not be imposed upon the court, the clerk or counsel. Counsel shall refrain from frivolous designation of items as relevant, and from frivolous objections. All designations of items and objections to designations shall be signed by counsel and considered "other papers," as provided by Fed.R.Civ.P. Rule 11, and any party may move for sanctions under said rule if a designation or objection to an item is not well grounded in fact or warranted by existing law or a good-faith argument in accordance with Fed.R.Civ.P Rule 11.

IV. The following items shall be retained by the clerk, but need not be made a part of the court file, unless they become relevant to the resolution of a motion before the court:

"certifications" under para. I.3.
"acknowledgments" under para. I.3.(a)
"notice" under para. I.3(b)
"records" under para. I.3.(d)
"affirmations" under para. I.4.(3)
"acknowledgment" under para. I.4.(3)
"plaintiff's notice" under para. II.1.
"defendant's notice" under para. II.1.
"designation" under para. II.(a)
"objection" under para. II.(a)

Dated November 19, 1993.

BY THE COURT

David L. Piester
United States Magistrate Judge

FILED 118
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

93 OCT -8 PM 12:52

NORBERT H. EBEL
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAUL A. BONACCI, Plaintiff, vs. THE CATHOLIC ARCHBISHOP OF OMAHA, et al., Defendants.	)	CV 91-3037 MOTION TO DISMISS

COME NOW defendants Wadman, Bovasso and Hoch and move the Court for an order dismissing them from this lawsuit based upon their entitlement, as a matter of law, to qualified immunity.

ROBERT WADMAN, KENNETH BOVASSO, and MICHAEL HOCH, Defendants,

By Wendy Hoch

WENDY E. HAHN, No. 17695
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 DISMISS was sent by regular United States mail, postage prepaid, on this 7th day of October, 1993, to:

John W. DeCamp
DeCamp Legal Services, P.C.
414 So. 11th Street
Lincoln, NE 68508

Lyle Koenig
Attorney at Law
147 N. 4th Street
P.O. Box 48
Hebron, NE 68370

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAUL A. BONACCI, Plaintiff, vs. THE CATHOLIC ARCHBISHOP OF OMAHA, et al., Defendants.	4:CV91-3037 MEMORANDUM AND ORDER ON DEFENDANTS' MOTION TO DISMISS CONSPIRACY CLAIM PURSUANT TO 42 U.S.C. § 1985(3)

Pursuant to Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure, defendants Omaha Police Department and Detectives Hoch and Bovasso have filed a motion to dismiss the § 1985(3) conspiracy claim against them. Filing 102. The defendants claim that the plaintiff's conspiracy claim is comprised merely of conclusional statements and fails to specify facts which show a meeting of minds between the alleged conspirators. The plaintiff asserts that he has alleged sufficient facts to withstand a motion to dismiss.

"[A] motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief." Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). In resolving motions to dismiss, I "must take the well-pleaded allegations of the complaint as true, and construe the complaint, and the reasonable inferences arising therefrom, most favorably to the pleader." Id. Upon review of the record, the defendants' motion to dismiss shall be denied.

Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). The Supreme Court has declared that "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a 'short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).[1]

After reviewing the amended complaint, filing 4, I find that the plaintiff's allegation of conspiracy is sufficient to withstand

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[1] Under Rule 9(b) greater particularity in pleading is required in all averments of fraud or mistake; however, conspiracy claims under § 1985 actions are not listed. Cf. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 113 S.Ct. 1160, 1163 (1993)(refusing to adopt heightened pleading requirement for § 1983 claims against municipalities).

a motion to dismiss. Read together, counts four (deprivation of civil rights) and five (conspiracy to deprive civil rights) allege a conspiracy between the Omaha Police Department, including defendants Hoch and Bovasso, and several prominent homosexual members of the Omaha community of allowing prostitution for pay, contrary to law. According to the complaint, this conspiratorial policy enabled well-placed homosexuals to solicit young males for prostitution, to perform homosexual acts upon them, and to prevent the young males from leaving the prostitution circle by using police force and intimidation upon them.

The plaintiff has not alleged a so-called "meeting of the minds" between the Omaha Police Department, Detectives Hoch and Bovasso, and several prominent Omaha homosexuals. However, Bonacci was hardly in a position to adduce or allege firsthand knowledge of the requisite meeting of the minds. Bonacci has, however, alleged sufficient facts to give rise to an inference that such a meeting of the minds may have existed. Cf. White v. Walsh, 649 F.2d 560, 562 (8th Cir. 1981) (holding that district court erred by dismissing complaint alleging conspiracy against defendants because plaintiff not in a position to allege firsthand knowledge of the necessary meeting of the minds).

I further find that the Supreme Court's reasoning in the recently decided case of Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 113 S. Ct. 1160 (1993) is appliable to the instant case. Although Leatherman's holding--that federal courts cannot impose a heightened pleading requirement for claims of municipal liability--is limited on its face to section 1983 claims, the reasoning appears equally applicable to conspiracy claims under § 1985. It is very difficult, if not impossible, to reconcile a particularity requirement for conspiracy claims with Rule 8(a)'s allowance for general notice pleading. Accordingly, I must deny the defendants' motion to dismiss the conspiracy claim.

IT IS THEREFORE ORDERED that the defendants' motion to dismiss, filing 102, is denied.

Dated September 29, 1993.

BY THE COURT

Warren K. Urbom
United States Senior District Judge

IN THE UNITED STATES DISTRI
FOR THE DISTRICT OF NEB

PAUL A. BONACCI,	)	
	)	
Plaintiff,	)	4:CV91-
	)	
v.	)	MEMORAN
	)	
THE CATHOLIC ARCHBISHOP OF OMAHA, et al.,	)	
	)	
	)	
Defendant.	)	

Pending before the court are two motions to quash subpoenas issued to the defendants Hoch and Bovasso and the custodian of records of the Omaha Police Division requesting production of materials which have become known to the parties as the "Citron tapes." The materials, which include videotapes, photographs, magazines, computer disks and other materials, were seized by police officers during the execution of a search of Defendant Citron's residence. The materials were in the custody of the records division at the time the subpoenas were issued. They are now in the custody of this court, under seal.

After the motions to quash had been filed, I noted that the disposition of materials held by Nebraska law enforcement agencies is governed by state law. I stated:

> Neb. Rev. Stat. § 29-818 requires that property seized in a search be "safely kept" by the officer seizing it, and that the court in which the criminal proceeding is pending has exclusive jurisdiction for the disposition of such property. The following statute, however, Neb. Rev. Stat. § 29-819 provides that:
>
> > Where seized property is no longer required as evidence in the prosecution of any complaint or information the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

Filing 107 at 2.

Acting on these statutes, counsel for defendants Hoch, Bovasso and the City of Omaha prepared a motion and order for Douglas County District Judge Joseph S. Troia transferring all materials seized from defendant Citron which remained in the

custody of the city to this court. Judge Troia stated that the materials were no longer required as evidence for any matter before the state courts. The "Citron tapes" have now been transferred to this court and cataloged by the clerk.

Although my order of May 26, 1993 gave the deponents an opportunity to submit additional information about the people depicted in the materials and the relevance of the materials to the issues in this case, only supplemental briefs were submitted. I also found in that order that commercially-produced materials are not relevant, and there has been no challenge to that finding. However, after further consideration of the plaintiff's sealed affidavit, and the difficulty of distinguishing commercially-created materials from noncommercially-created materials, I conclude the better course for discovery purposes is to permit protected discovery of all the materials.

The motion to quash filed by Hoch, Bovasso and the City of Omaha is based on one argument: according to state law, the items must be kept by the police department until otherwise ordered by a court of competent jurisdiction. (Filing 99). This argument has been mooted by Judge Troia's order transferring the items to this court's jurisdiction. Therefore, I shall deny this motion to quash.

The motion to quash filed by defendant Citron makes three supporting arguments: (1) the items sought are beyond the scope of discovery permitted by the protective order in filing 79; (2) the items are privileged, and (3) production of the documents is "unreasonable and oppressive."[1]

In filing 107 I indicated I would lift the limitation on discovery and allow "discovery on any subject permitted by Fed.R.Civ.P. 26"; however I failed to include an order to that effect. I shall now make that order. Once again, as in filing 107, the first argument in defendant Citron's motion to quash is unavailing.

Defendant Citron's second argument alleges the materials are

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[1] The motion to quash states:

> The requested production is unreasonable and oppressive because it is not reasonably calculated to lead to the discovery of admissible evidence, and is designed to place into the public domain documentation and information heretofore held confidential by the City of Omaha, and which will be embarrassing, humiliating, and oppressive to Mr. Citron if placed in the public domain.

Filing 100 at 2.

privileged. Defendant Citron filed three briefs supporting the motion to quash. He failed to argue privilege in any of those briefs. Local rule 7.1 provides that the failure to argue a claim in a brief may be grounds for treating the claim as abandoned. NELR 7.1(a)(1). I am unable to conceive of any possible privilege which may apply to the materials at issue in the motion to quash. Defendant Citron having failed to discuss this issue in any of the three briefs submitted on the motion to quash, I shall consider this claim abandoned.

Defendant Citron's final argument may be broken down into two parts. His brief alleges that the "items sought will be embarrassing and humiliating, and for that reason oppressive." Further, he claims the subpoenas seek material that is neither relevant nor calculated to lead to the discovery of admissible evidence. Thus, the two arguments raised for denying discovery are that: (1) the materials are not relevant and will not lead to admissible evidence; and (2) allowing discovery will be embarrassing and humiliating to defendant Citron and other individuals, whether or not parties to this action, who are depicted in the "Citron tapes."

Fed.R.Civ.P. 26 generally limits discovery to material which "is relevant to the subject matter involved in the pending action" or reasonably calculated to lead to the discovery of admissible evidence. Fed.R.Civ.P. 26(b). Rule 26 further provides that

> for good cause shown, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including any one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Fed.R.Civ.P. 26(c) (emphasis added).

Responding to the first portion of the argument, plaintiff

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]

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[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.

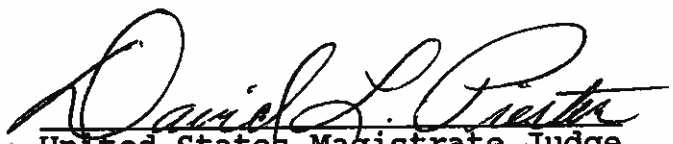
j). Sixty days following the final termination of this action, all of these materials, including those items, if any, used as exhibits during trial, shall be destroyed, unless prior to such time, any party files an appropriate motion seeking other disposition.

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

95 JUN 23 AM 7:58

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PAUL A. BONACCI,	)	4:CV91-3037
	)	
Plaintiff,	)	
	)	
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.

PETER CITRON, Defendant

By: _____

LYLE JOSEPH KOENIG, #12282
P.O. Box 67188
Lincoln, NE 68506-7188
(402) 434-5696

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ALAN BAER, Defendant

By: _____

EDWARD G. WARIN, #14396
McGrath, North, Mullin & Kratz, P.C.
1400 One Central Park Plaza
222 South 15th Street
Omaha, NE 68102
(402) 341-3070

ROBERT WADMAN, MICHAEL HOCH, KENNETH BOVASSO and THE CITY OF OMAHA, Defendants

By: _____

WENDY E. HAHN, #17695
Assistant City Attorney
804 Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183
(402) 444-5115

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
DeCamp Legal Services, P.C.
414 South 11th Street
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.

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