


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.,

By: 
JOHN W. DECAMP #10951
414 S. 11th
LINCOLN, NEBRASKA 68508
(402)477-3974/4487 (FAX)

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.



* 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

93 JAN -5 AM 10:50 B

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.

BY: George D Green
GEORGE D. GREEN #16253
Nebraska Department of Correctional
Services
P.O. Box 94661
Lincoln, NE 68509-4661
(402) 471-2654

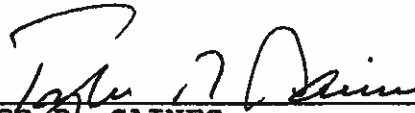
ATTORNEY FOR THE DEPARTMENT

BY: Edward G. Warin
EDWARD G. WARIN #14396
McGrath, North, Mullin &
Kratz, P.C.
1100 One Central Park Plaza
Omaha, NE 68102
(402) 341-3070

BY: Steve Seline
STEVE SELINE
Kutak Rock
1650 Farnam Street
Omaha, NE 68102
(402) 346-6000


ATTORNEYS FOR ALAN BAER, Defendant,

BY:


TYLER B. GAINES #11415
Gaines, Mullen, Pansing & Hogan
10050 Regency Circle, Suite 200
Omaha, NE 68114
(402) 397-5500

ATTORNEY FOR HAROLD ANDERSON, Defendant

BY:

 12-28-92
JAMES E. FELLOWS #11261
Deputy City Attorney
WENDY E. HAHN #17695
Assistant City Attorney
804 Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183
(402) 444-5115

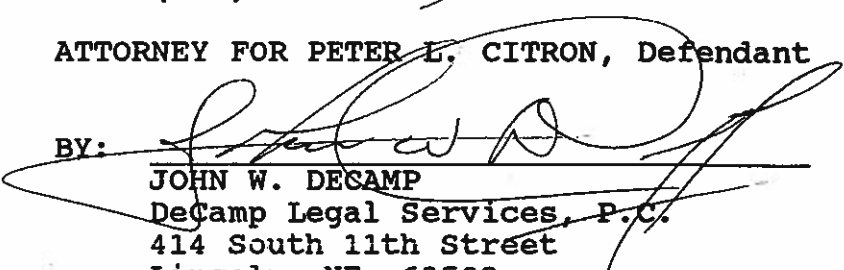
ATTORNEYS FOR CITY OF OMAHA, Defendant

BY:


LYLE JOSEPH KOENIG #12282
P. O. Box 48
Hebron, NE 68370
(402) 768-7402

ATTORNEY FOR PETER L. CITRON, Defendant

BY:


JOHN W. DECAMP
DeCamp Legal Services, P.C.
414 South 11th Street
Lincoln, NE 68508
(402) 477-3974

ATTORNEY FOR PAUL BONACCI, Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

93 JAN -7 PM 3:23 - 94

4: CV 91-2037 H. EBEL
CLERK *Jan*

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:



Judge

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA
92 SEP -3 AM 8:28
NORBERT H. EBEL *he*
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.)

CASE NO. CV 91-3037

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

Exhibit "A"

AO 88 (11/81) Subpoena in a Civil Case

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 investigation and arrest of Peter Citron.
Photographs, recordings and all other electronic, photographic media

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, Attorney Plaintiff</i>	28 Aug '92

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
John W. DeCamp, 414 S 11th St, Lincoln NE (402.402) 477-3974

AO 88 (11/91) Subpoena in a Civil Case

PROOF OF SERVICE

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

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

- (iii) 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 expense 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.

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 investigation and arrest of Peter Citron.

PLACE Omaha Police Department Headquarters, 505 South 15th Street, Omaha, NE	DATE AND TIME 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 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
		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.

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 conducts 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

- (iii) 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 expense 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.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

92 JUL -1 PM 3:26 - J2

PAUL A. BONACCI,)	4:CV91-3037
)	
Plaintiff,)	MEMORANDUM AND ORDER ON
)	MOTION OF DEFENDANT OMAHA
vs.)	PUBLIC SCHOOL DISTRICT FOR
)	SANCTIONS PURSUANT TO
LAWRENCE KING, et al.,)	RULE 11
)	
Defendants.)	

MORDELT, EBEL
CLERK *hu*

Ruling on this motion has been delayed in deference to the appeal to the United States Court of Appeals. The mandate of that court now has come down, affirming my decision to dismiss the claims against the Omaha Public School District and resolving the pending motion is therefore appropriate.

Rule 11 of the Federal Rules of Civil Procedure declares:

"The signature of an attorney . . . constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

On February 1, 1991, John DeCamp, counsel for the plaintiff, signed a complaint in this case, asserting in paragraph 28 that:

"During 1986 Plaintiff Paul A. Bonacii reported to his counselors at Northwest High School, a high school operated by the Omaha Public School District, that he had been and was continuing to be victimized by prominent members of the Omaha community as a child sex slave. Plaintiff related to his counselors many incidents of child sexual abuse and other violent criminal activity. The Defendant School District carelessly, negligently, recklessly and intentionally failed to take proper

corrective actions to protect Plaintiff from suffering further abuse, violence, and threats to his safety."

Judgment was requested from the school district in the amount of \$10 million. On August 26, 1990, about six months before the filing of the complaint, Paul Bonacci executed a document before John DeCamp, as notary public, titled, "INFORMATION IN RESPONSE TO PRESS QUESTIONS TO JOHN DECAMP & PAUL BONACCI," in which it was stated:

"ON OR ABOUT APRIL 21, 1986, MR. BONACCI WAS A STUDENT AT NORTHWEST HIGH SCHOOL; THAT EVENTS OCCURRED THEN WHICH CAUSED MR. BONACCI AT THAT TIME, APRIL 1986, TO TELL ESSENTIALLY THE SAME STORY AS IS BEING TOLD TODAY WITH RESPECT TO THE SO CALLED FRANKLIN PERSONALITIES AND CHILD ABUSE, ETC., THAT SAID STORY WAS TOLD TO THE STUDENT'S BONACCI'S SCHOOL COUNSELORS AND ULTIMATELY, AT THE COUNSELORS' INSTIGATION, TO THE OMAHA POLICE, AND ULTIMATELY TO DOCTORS AT THE NEBRASKA PSYCHIATRIC INSTITUTE. . ."

(Exhibit 2 attached to Motion for Summary Judgment, filing 57).

I granted the motion for summary judgment on behalf of the Omaha Public School District on the ground that the evidence before me failed to show any factual or legal ground for liability of that defendant. That ruling now has been upheld by the United States Court of Appeals for the Eighth Circuit and the defendant Omaha Public School District has moved for sanctions under Rule 11, claiming that when DeCamp signed the complaint he could not help but know, because of the Bonacci affidavit, that the charges against the school district were not well ground in fact or warranted by existing law or a good faith argument for the application of law.

The days of filing a lawsuit against a defendant, including a deep-pocket defendant, in the hope of discovering thereafter some evidence and law that will support a claim have come and gone. Rule 11 abolishes that notion and affirmatively places upon counsel the obligation to make reasonable inquiry before the signing of the paper and the development of a belief thereafter that the claim is well grounded and warranted. Failure to meet that duty invites a mandatory sanction.

Because John DeCamp has not responded to the motion for sanctions, I cannot tell exactly what investigation he made before he signed the complaint. It is apparent that six months before he signed the complaint he had an affidavit, probably prepared by him, which said that Bonacci had told his story to the school counselors "and ultimately, at the counselors' instigation, to the Omaha Police and ultimately to doctors at the Nebraska psychiatric Institute." What "ultimately" means or meant, I am not sure. It

was the affidavit of Diane Zipay of July 29, 1991, a Community Counselor for the Omaha Public Schools, that established that the transmission of information to the Omaha Police Division and to the Nebraska Psychiatric Institute occurred immediately after she was informed that Paul Bonacci was a victim of sex abuse and that she personally drove Paul Bonacci to the Nebraska Psychiatric Institute for treatment. The affidavit of Paul Bonacci contains none of the details of the immediacy of the action taken by Diane Zipay or of any action that was taken by her or anyone else on behalf of the school, other than the telling of the story "at the counselor's instigation" to the police and the doctors. Room remains, as far as the Bonacci affidavit is concerned, for considerable detail with respect to possible slowness of reporting. While it is a close call, I conclude that I cannot say that John DeCamp did not form a belief after reasonable inquiry that the claim was well grounded in fact.

With respect to the law DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989), established, before the signing of the complaint, that the due process clause of the Constitution of the United States imposes no duty on a state to provide members of the general public with adequate protective services. A reasonable assumption would be that that rule applied to public school districts. The court in the DeShaney opinion, however, acknowledged that "in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals." Id. 198. The Court said that:

"[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs--e.g. food, clothing, shelter, medical care, and reasonable safety--it transgresses the substantive limits on state action set by the Eighth Amendment and Due Process Clause. . . ."

Although the idea that a public school fits that principle was not accepted by me or the court of appeals, I cannot say that there was no good faith argument for the extension, modification, or reversal of existing law to that effect. Similarly, although it is true that Neb. Rev. Stat. §§ 28-710 and 711 require school employees to inform law enforcement officers of suspected or known cases of child sexual abuse and that there is no other statutory law, apparently, that imposes any further duty on school officials to protect, I cannot say that the possibility of Nebraska common law placing a further duty on public school officials would be an unwarranted position to take.

IT THEREFORE IS ORDERED that the motion of Omaha Public School District for sanctions pursuant to Rule 11, filing 68, is denied.

Dated July 1, 1992.

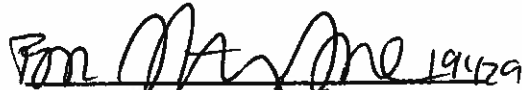
BY THE COURT


Warren R. Arbon
United States Senior District Judge

GREETINGS!

PLEASE TAKE NOTICE that on the 10th of December, 1991, Plaintiff served a copy of his sworn answers to Defendant ALAN BAER's First Set of Interrogatories.

DECAMP LEGAL SERVICES, P.C.,



JOHN W. DECAMP #10951
521 S. 14TH #300
LINCOLN, NEB. 68508
(402) 477-3974

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this notice was mailed first class postage prepaid to the attorneys above on this date, the 10 day of Dec, 1991.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COURT 68

PAUL A. BONACCI,)
)
 Plaintiff,)
)
 -vs-)
)
 THE CATHOLIC ARCHBISHOP OF OMAHA)
 a non-profit corporation,)
 LAWRENCE KING, PETER CITRON,)
 ALAN BAER, HAROLD ANDERSON,)
 ROBERT WADMAN, MICHAEL HOCH,)
 KENNETH BOVASSO, NEBRASKA)
 PSYCHOLOGICAL ASSOCIATES, f/k/a)
 Nebraska Psychiatric Institute,)
 a non-profit corporation; THE)
 CITY OF OMAHA, a municipal cor-)
 poration; THE OMAHA PUBLIC)
 SCHOOL DISTRICT, OMAHA WORLD)
 HERALD COMPANY, a corporation;)
 J. L. BRANDEIS, INC. AND SONS,)
 INC., a corporation; THE)
 DOUGLAS COUNTY GRAND JURY,)
 MICHAEL FLANNAGAN, an individual)
 and SAMUEL VAN PELT, an)
 individual,)
)
 Defendants.)

CIVIL NO: 91-3037 91 NOV 26 PM 4:10

CLERK CS

MOTION OF DEFENDANT
OMAHA PUBLIC SCHOOL DISTRICT
FOR SANCTIONS PURSUANT TO
RULE 11

COMES NOW the defendant, Omaha Public School District, and pursuant to Rule 11 of the Rules of Civil Procedure moves the Court for an Order directing plaintiff's attorney to pay to the Omaha Public School District and its insurance carrier, Aetna Casualty & Surety Company, the amount of their reasonable expenses and attorney fees incurred because of the filing of the Complaint against the Omaha Public School District.

Defendant Omaha Public School District attaches hereto and incorporates herein the Affidavit of Neal R. Krause, Secretary of the Board of Education of the Douglas County School District 001 sued as "The Omaha Public School District" reflecting it has paid fees and expenses through October 31, 1991 of \$9,984.42 and the Affidavit of Lisa Purcell, claims representative of Aetna Casualty & Surety Company, the liability insurance carrier for the Omaha Public School District, reflecting that it has incurred expenses

and attorney fees through October 8, 1991 in the amount of \$1,137.95 in defense of this case.

In support of this Motion, defendant Omaha Public School District shows the Court that the factual basis alleged against it appears in Count III, paragraph 28, on page 15 of the Complaint which states:

"That during 1986 plaintiff Paul A. Bonacci reported to his counselors at Northwest High School, a high school operated by the Omaha Public School District, that he had been and was continuing to be victimized by prominent members of the Omaha community as a child sex slave. Plaintiff related to his counselors many incidents of child sexual abuse and other violent criminal activity. The defendant School District carelessly, negligently, recklessly and intentionally failed to take proper corrective actions to protect plaintiff from suffering further abuse, violence and threats to his safety."

This Complaint was filed on February 4, 1991.

The Affidavit of plaintiff Paul A. Bonacci, attached to the Motion for Summary Judgment of Omaha Public School District (filing 57, Exhibit 1) states at the bottom of the first page:

"...THAT ON OR ABOUT APRIL 21, 1986, MR. BONACCI WAS A STUDENT AT NORTHWEST HIGH SCHOOL; THAT EVENTS OCCURRED THEN WHICH CAUSED MR. BONACCI AT THAT TIME, APRIL, 1986, TO TELL ESSENTIALLY THE SAME STORY AS BEING TOLD TODAY WITH RESPECT TO THE SO-CALLED FRANKLIN PERSONALITIES OF CHILD ABUSE, ETC., THAT SAID STORY WAS TOLD TO THE STUDENT'S (BONACCI'S) SCHOOL COUNSELORS, AND ULTIMATELY, AT THE COUNSELOR'S INSTIGATION, TO THE OMAHA POLICE, AND ULTIMATELY TO THE DOCTORS AT THE NEBRASKA PSYCHIATRIC INSTITUTE...."

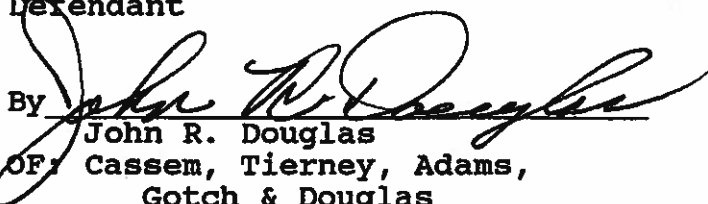
This Affidavit was executed by Mr. Bonacci and notarized by Mr. DeCamp on August 26, 1990.

On July 18, 1991 this Court entered a Memorandum and Order dismissing all plaintiff's civil rights claims against the Omaha Public School District (filing 53). On November 5, 1991 this Court entered a Memorandum and Order granting defendant Omaha Public School District's Motion for Summary Judgment on any negligent claims for alleged violation of defendant's statutory duty to report suspected child sexual abuse.

Rule 11 of the Federal Rules of Civil Procedure requires that a complaint be well grounded in fact. The Affidavit of Paul A. Bonacci prepared and notarized by John DeCamp on August 26, 1990 contains factual statements which establish that this defendant fulfilled its legal duty to the plaintiff and that the factual allegations of the Complaint prepared, signed and filed by John DeCamp on February 4, 1991 are false.

WHEREFORE, the Omaha Public School District prays for an Order awarding it and its insurance carrier the fees and expenses incurred in defending this matter pursuant to Rule 11 of the Federal Rules of Civil Procedure.

THE OMAHA PUBLIC SCHOOL DISTRICT,
Defendant

By 
John R. Douglas
OF: Cassem, Tierney, Adams,
Gotch & Douglas
Suite 300
8805 Indian Hills Drive
Omaha, Nebraska 68114
(402) 390-0300

and

David M. Pedersen
OF: Baird, Holm, McEachen,
Pedersen, Hamman & Strasheim
1500 Woodmen Tower
Omaha, Nebraska 68102
(402) 344-0500

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

91 NOV -5 PM 3:21

PAUL A. BONACCI,)
) 4:CV91-3037
Plaintiff,)
) MEMORANDUM AND ORDER ON
vs.) DEFENDANT OMAHA PUBLIC
) SCHOOL DISTRICT'S
THE CATHOLIC ARCHBISHOP OF) MOTION FOR SUMMARY
OMAHA, et al.,) JUDGMENT
)
Defendants.)

NORBERT H. EBEL 9
CLERK

This case is before the court on a motion for summary judgment by defendant Omaha Public School District. The facts and allegations involved in this action have been fully set out in an earlier memorandum and order, filing 53, and shall not be repeated here. Although section 1983 claims against this defendant were previously dismissed, state tort claims remain based upon the defendant's statutory duty to report suspected child sexual abuse. The defendant now contends that affidavits of the plaintiff and a school counselor show there is no genuine issue of material fact in dispute and that summary judgment is appropriate.

Rule 56(c) permits the entry of summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is properly granted when, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party, it is clear that no genuine issue of material fact remains and the case may be decided as a matter of law. Buller v. Buechler, 706 F.2d 844, 846 (8th Cir. 1983). If the moving party meets the initial burden of establishing the nonexistence of a genuine issue, the burden shifts to the nonmoving party to produce evidence of the existence of a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

The complaint alleges that Bonacci informed school officials of his coerced participation in a "sex ring" in April, 1986, and that the school district is liable for its employees' failure to protect the plaintiff from further abuse. Pursuant to Neb. Rev. Stat. §§ 28-710 to 711, school employees are required to inform law enforcement officers of suspected or known cases of child sexual abuse. However, I do not find statutory law that imposes any further duty to protect on school officials.

According to Bonacci's sworn statement, his involvement in the sex ring was "told to the student's (Bonacci's) school counselors and ultimately, at the counselors' instigation, to the Omaha Police, and ultimately to doctors at the Nebraska Psychiatric

Institute." (Filing 57, Exhibit 2). The testimony of the school counselor, to whom the story was related by Bonacci, is entirely consistent with Bonacci's statement. The affidavit testimony of Diane Zipay states:

"In April, 1986, while a Community Counselor for the Omaha Public Schools, I contacted Paul Bonacci at the request of Northwest High School to discuss his excessive absenteeism and failing academic status. A conference was scheduled at Northwest High School with Paul Bonacci, Mrs. McCoy (Paul Bonacci's mother), Frank Bell (Assistant Principal of Northwest High School) and myself. Prior to the conference, I received a phone call from a person who said she was the mother of Paul Bonacci's girlfriend. The woman informed me that Paul Bonacci was a victim of sex abuse. When Paul Bonacci and his mother arrived at the conference, I spoke with Paul Bonacci privately and shared with him the information the caller had given. Paul Bonacci informed me that he had been sexually abused. I immediately called the Omaha Police Division and reported the suspected abuse. Officer Robert Wolf, a police investigator, was sent to Northwest High School to investigate the alleged abuse. Mrs. McCoy then agreed to help Paul Bonacci seek treatment. Paul Bonacci refused to go to the hospital with the mother. However, I personally drove Paul Bonacci to the Nebraska Psychiatric Institute. Mrs. McCoy followed in order to complete the necessary paperwork. Paul Bonacci was admitted to the Nebraska Psychiatric Institute for approximately 27 days during which time he completed course work on an individualized study basis."

(Filing 57, Exhibit 2).

Because the sworn statements show that the school officials acted in accordance with their statutory duty, there are no remaining issues as to this defendant. Therefore, I shall grant judgment in favor of the defendant.

IT IS HEREBY ORDERED that the motion of Omaha Public School District's motion for summary judgment, filing 57, is granted.

Dated November 5, 1991.

BY THE COURT


United States Senior District Judge