NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (https://www.ncronline.org)

SNAP leader: Testimony was 'fishing expedition'

Joshua J. McElwee | Jan. 3, 2012

David Clohessy is seen in a 2007 file photo. (CNS photo/David Maung)

David Clohessy, the director of the Survivors Network of those Abused by Priests (SNAP), says his court-ordered testimony Monday in the case of a priest accused of sexual misconduct amounted to an "extraordinary fishing expedition" to try and get at the contents of "private communications" between him and sex abuse victims and whistle-blowers.

The testimony, which Clohessy said lasted about six hours and took place in a St. Louis, Mo., hotel, came after the Missouri Supreme Court refused to consider an appeal to stop the deposition.

The deposition, requested by lawyers defending Kansas City, Mo., diocesan priest Fr. Michael Tierney, was first reported late last week [1]. Lawyers requested that Clohessy testify and turn over 23 years' worth of internal documents, correspondence and emails.

Victims' advocates said the deposition, the first of its kind for SNAP, would have wide-ranging impact on the ability of victims of clergy sex abuse to identify their accusers and tell their stories without revealing their names in public.

Speaking to *NCR* by phone Tuesday, Clohessy said while he couldn't talk about specifics of his testimony, "one consistent theme" of the questioning was that lawyers defending accused priests "want to get the contents of private communications between us and victims, witnesses, whistle-blowers, our members and our supporters."

Referencing that he was questioned by five separate lawyers -- one representing the Kansas City diocese, another Tierney, and three others representing other local priests accused of sexual misconduct -- Clohessy said there was "almost no mention or questions" about the specific lawsuit against Tierney among the "200-plus questions about SNAP members and supporters and donors and operations."

Clohessy also said while Jackson County, Mo., Circuit Court Judge Ann Mesle had ordered him to hand over a wide range of documents from SNAP's files, he refused, citing constitutional protections of free speech and Missouri state law protecting the confidentiality of rape crisis centers.

"We've produced hundreds of pages of records that we consider not confidential," he said. "But we refused to turn over hundreds or perhaps thousands more that we believe are private because of our constitutionally guaranteed freedoms of speech and association and by Missouri's rape shield law, and other protections."

Asked whether he thought his organization's refusal to hand over certain documents contradicted its calls for transparency from diocesan offices regarding allegations of sex abuse, Clohessy said he believed there "are two standards of transparency."

"Our view is that agencies that counsel and help sex crimes victims should never be transparent about the people who call them desperately in pain and seeking guidance," Clohessy said.

"We believe that there are two standards of transparency," he said. "One for institutions that have enabled thousands of pedophiles to assault tens of thousands of kids and conceal the crimes. And another standard for organizations that enable kids to be safer and expose heinous crimes."

Recalling a question from one of the lawyers defending an accused priest against SNAP's position that bishops should suspend priests the minute they are sued for abuse, Clohessy said the lawyer asked if that meant SNAP should be shut down immediately if it is sued for defamation or libel.

Clohessy said he firmly responded, "No."

"One claim," he said, "affects the reputation temporarily of one adult. The other claim threatens the physical and emotional and psychological well-being permanently of perhaps dozens of innocent kids. And to try and equate them is beyond disingenuous. It's just stupid."

Meanwhile, one canon and civil lawyer well known for his work on issues of clergy sexual misconduct told *NCR* by email that he thought the request for Clohessy's deposition in this case was "not terribly unusual."

"The courts are open to everyone," said Nicholas Cafardi, dean emeritus of Duquesne University School of Law in Pittsburgh.

"If there is something wrong with Tierney's discovery request, the lawyer for the subpoenaed party can make that case to the judge. If the judge agrees, fine; if not, that's what appeals are for."

"I am sure that Clohessy and SNAP would prefer not to be embroiled in this case, but if they don't belong there, all they have to do is convince the judge of that," said Cafardi, who was also a member of the original National Review Board established by the U.S. bishops in 2002 to evaluate claims of sex abuse. "It really is that simple."

Tierney's lawyers first made the request for a deposition in November. They subpoenaed Clohessy, requesting him to testify regarding his knowledge of a lawsuit filed against Tierney on behalf of an abuse victim in September 2010.

Court filings indicate the subpoena came after defense lawyers were concerned that a party in the suit may have violated an August 2011 gag order from Mesle by revealing some information to SNAP that was included in one of the group's press releases.

The lawsuit, filed on behalf of an anonymous man, alleges that in 1971, Tierney invited the then-13-year-old to Tierney's mother's house to help Tierney move boxes. Once there, the victim alleges in the suit, Tierney wrestled with him and touched him sexually.

Clohessy was ordered to turn over all documents and correspondence, including emails, from SNAP's files

referring to Tierney or the Kansas City-St. Joseph diocese. He was also ordered to submit all documents containing references to either Tierney or the diocese from:

- press releases or press release drafts;
- correspondence with members of the press;
- correspondence with the lawyer representing the alleged abuse victim;
- correspondence with members of the public.

The request for Clohessy to release correspondence with members of the press led the Missouri Press Association, which lists about 260 newspapers from across the state as its members, to write an amicus brief supporting Clohessy's arguments that his deposition and submission of documents were unconstitutional.

Citing nine separate state and U.S. Supreme Court cases that outline the rights of the press, the brief said Mesle's order would "eviscerate the free-press guarantee" by seeking "to discover the process by which the news is assembled and disseminated."

While Clohessy said he wasn't sure what the next move might be in the case, or what repercussions he might face because of his refusal to answer some questions, he said the effect on his organization has "already been devastating."

"We're spending tens of thousands on legal costs we never budgeted," he said. "More importantly, we've been cripplingly sidetracked from protecting kids and exposing predators and comforting victims."

[Joshua J. McElwee is an *NCR* staff writer. His e-mail address is jmcelwee@ncronline.org.]

Source URL (retrieved on *03/01/2017 - 15:54*): https://www.ncronline.org/news/accountability/snap-leader-testimony-was-fishing-expedition

Links:
[1] http://ncronline.org/node/28237/