

Mediation - A Way to Pastoral Justice

Debra Warwick-Sabino and Geoffrey B Stearns The authors are both mediators who are experienced in cases of clergy sexual misconduct: Geoffrey B Stearns, a practicing attorney in Santa Barbara, and Debra Warwick-Sabino, Executive Director of the California Center for Pastoral Counseling, Sacramento. (916.484.4137 - dwsabino@gv.net) When victims of clergy sexual abuse proceed to litigation of their civil claims for damages, in many cases, there is a serious risk that all involved parties — the victim, family members, the congregation and the Church — will end up losing in one way or another. Victims, whose beliefs are shaken by the breach of trust and exploitation of clerical abuse, seem genuinely to desire the reassurance, empathy and assumption of accountability that a responsible clerical authority figure can provide. Victims also have understandable desires and needs to pursue legitimate claims for compensation for the emotional and spiritual injuries and other losses inflicted. If a victim is forced to enter into an adversarial and public process of litigation with the Church in order to redress these injuries and receive compensation for losses, the likelihood is great that the injuries will be compounded; and moreover, that new issues will be created; and the victim's loss of faith and trust in the Church will be heightened, and probably joined by a loss of belief in the concept of justice. Many victims have described initial silence from the Church as additional betrayal, sometimes even more emotionally painful than the original abuse. Yet, sometimes church attorneys will instruct clerical officials to say nothing because of liability concerns. On the other hand, a swift, pastoral response by the Church to a newly-reporting victim and his/her family members is not only morally and ethically indicated, it is also probably one of the most effective steps possible from the standpoint of avoiding costly, protracted and traumatic litigation. To the extent that religious institutions can contain the costs of processing and resolving victims' claims, they can devote more of their resources to the active, pastoral care of all the wounded parties and to the proper and effective management of offenders. What has been lacking up until now is a mechanism for religious leaders to respond quickly, effectively and pastorally to victims, without jeopardizing the legitimate legal and financial interests of the institution in its continuing need and duty to serve all of its constituents. Pastoral justice has been described as a process which has these primary elements: defining and naming the problem accurately; allowing an opportunity for the victim to be

heard; providing a caring and compassionate environment within which to address the victim's issues; maintaining the integrity of the Church as an institution; making appropriate restitution for the victim's losses and damage; vindicating, or setting the victim free from the abusive experience; and, holding the offender accountable. Litigation simply will rarely, if ever, achieve any of these goals. The civil courts are based on civil law and address emotional issues in terms of monetary restitution. There are several other issues that victims often want to address that cannot be presented or processed in litigation. For instance, victims may want to have a church service dedicated to healing their pain; they may want to make sure the Church will provide appropriate education on issues of abuse in Sunday schools for staff and students; or they may want their congregation to offer a support group. The litigation process pits the victim against the Church, making it unlikely for the victim to feel welcome as a congregant, or to experience any healing. As the parent of a victim/litigant recently stated in a letter to one of the authors: "The suits that I am familiar with involve a number of plaintiffs against a religious institution. These cases were settled out of court on an individual basis; none of the victims felt anything but slightly healed by the ordeal. Only a few of them were far enough along in their therapy or healing process to set aside any of the proceeds for professional therapy. None of them felt that they were treated equitably, and most said they settled just so they could get on with their lives." In this context, mediation stands out as far superior to litigation in addressing the legitimate interests of all concerned. The victim and the Church are not, and should not be made to relate to each other as adversaries. Mediation is a process of principled, assisted negotiation, predicated on legally safeguarded confidentiality and evidentiary privilege, eg, pursuant to California Evidence Code Section 1152.5. Neither the statements, observations or impressions of the mediators, or any of their notes or work product; nor any statements or documents of the parties can be used in any subsequent legal proceeding. Mediators are trained, professional neutrals, who, unlike arbitrators, have no decision-making power, but assist the parties in creating their own agreement. In cases of clerical sexual abuse, the conducting of the mediation by a gender-balanced, lawyer/pastoral counselor team, experienced in the issues and dynamics of sexual abuse in general, and religious sexual abuse in particular, is highly desirable. The authors have conducted over twenty-five mediation sessions involving issues of clergy misconduct. Half of those included the offender in the process; half were between the victim and the institution only. In general, both types of sessions were successful: the victim felt heard and cared for, the offender apologized, the Church removed the offender and sent him for treatment, and financial restitution for the victim was provided. In only one instance did the offender deny the charges. In that case, the Church still heard

the complaint and removed the minister (there was clear evidence of abuse) and offered financial help for the victims' therapy. Our mediation model is based on theological justice and the Native American version of mediation called "peacemaking." Its goal is to restore and sustain both individual and community health. The desired outcome is more "healing" than "settling". "At its core, Native American peacemaking is inherently spiritual; it speaks to the connectedness of all things; it focuses on unity, on harmony, on balancing the spiritual, intellectual, emotional, and physical dimensions of a community of people.... Peacemaking is capable of healing hurts and wounds. It brings peace through good feelings, not through fear. Peacemaking involves deep listening, not defending, arguing, forcing. It includes the widest circle of people concerned, each having a voice if they wish, not just the immediate parties and their representatives.... Peacemakers seek solutions relevant to each situation. They tell stories that impart the expected behaviors and beliefs by which people should live" (Mediation Quarterly, 10.4, Summer 1993, p 321). In our mediation we rely on stories that are part of the religious tradition involved. Each tradition has sacred stories that include a moral and ethical framework for behavior, as well as a calling to compassion and understanding for the vulnerable. We look to those stories to provide guidance in the mediation. Our sessions are not just about societal justice, but sacred justice, which involves speaking from the heart, giving advice and reminding people of their responsibilities to one another in order to help them reconnect with the higher spirits. Mediation can be participated in by as many interested or helpful persons as will maximize the potential for resolution, eg, the victim, family members, therapist, church pastoral agents and leaders. It can be utilized whether or not the victim has legal counsel or a legal advisor, and whether or not a legal action has been filed. It offers an opportunity for a frank, informal and collaborative exploration of the true issues (as opposed to those generated by the heat and tactical machinations of litigation), and an opportunity to fashion a resolution that will actually approach making the victim whole — helping him/her to feel heard, understood, and cared for; providing just compensation for injuries and losses; creating a sense of vindication through the Church's responding with integrity and accountability to the abusive episode; and allowing the victim some insight into the ways in which the Church intends to deal with the offender. And, importantly, mediation can be used at any point, but most effectively at the outset, as a timely and efficient mechanism for addressing claims before the parties polarize and become too entrenched in their positions. It is truly a much needed, and heretofore largely overlooked component of a genuine and comprehensive pastoral response in cases of clerical sexual abuse. DS, GS

