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SNAP subpoenas harm key ally for victims

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David Clohessy (AP Photo/Derik Holtmann)

Bartek Obloj's story defies description.

Before reaching his 14th birthday, Obloj hanged himself in 2007, leaving a note that his parish priest had molested him. (See: **Polish church faces demands to confront sex abuse.** [1])

The accused priest, Fr. Stanislaw Kaszowski, was moved to a new parish -- but not before personally celebrating Obloj's funeral Mass. Kaszowski continues in ministry and refuses to testify in court.

We grope for a reaction that matches the horror.

Despite assurances that most cases of abuse are in the past and that reporting procedures have been strengthened, the clergy sex abuse scandal continues. That is why the work of groups like the Survivors Network for those Abused by Priests (SNAP) is invaluable. And that work is now under threat.

If SNAP leaders are compelled to testify in cases of clergy accused of sexually abusing minors and are forced to turn over confidential correspondence from victims, whistleblowers and media [2], the advocacy group will be irreparably harmed and victims of clergy sexual abuse will have lost a key ally in their fight for justice.

The subpoenas are wrong on a number of counts.

First, the extraordinary breadth of material the subpoenas order SNAP to release is a kind of legal carte blanche that courts should protect against. Lawyers defending accused priests seek documents and correspondence dating back to the organization's founding 23 years ago -- including emails, press releases, drafts of press releases, and any correspondence with members of the press, lawyers and the public, if that correspondence mentions the dioceses, the bishops, the defendants or the accusers.

The lawyers also seek any document that makes mention of "repressed memory." That opens the possibility that the identity of someone who has never gone public with their story but had written to SNAP at some point mentioning the phrase "repressed memory" would now be revealed. The judge in one of the cases has made one concession to victims' right to privacy by requiring SNAP to provide the court -- not opposing legal counsel -- with a log showing dates and times of contact with victims.

While the subpoena might lead the public to believe that SNAP's primary mission is lining up plaintiffs to sue the church, the reality is quite different. According to SNAP's director, David Clohessy, "the overwhelming majority" of victims the group has dealt with "never consider or take legal action or go public."

Second, more than a half dozen lawyers representing accused priests in other cases filed "cross notices" in the first subpoena, which involves a case of a Kansas City, Mo., priest. Some of these lawyers sat in on the deposition, and all can get copies of the deposition transcripts. Few of the questions directed at Clohessy during some six hours of questioning had anything to do with the case at hand.

SNAP is not a party to either lawsuit and had already told the judge in the Kansas City case it had never had contact with the plaintiff bringing the suit. While we don't agree with all of SNAP's tactics, it is the lone organization with the credibility to keep pressure on the church and to provide a haven for abuse victims. This certainly looks like a fishing expedition aimed at dismantling the organization, and lawyers keep climbing on board.

SNAP tried to have the first subpoena quashed, but the state appeals court rejected the appeal and Missouri's Supreme Court declined to hear it.

The Missouri Press Association filed an amicus brief, saying the Kansas City court order would "eviscerate the free-press guarantee" of the First Amendment by seeking "to discover the process by which the news is assembled and disseminated." The court order, the brief said, would "chill speech by both media outlets and potential sources and significantly affect the quality of investigative reporting."

If anyone doubts the power that a well-informed media can bring to bear on clergy sex abuse, just remember that it was 10 years ago this month that reporting by The Boston Globe opened a new chapter in the long arc of this tragic story, which NCR began reporting 17 years before the Globe stories broke. It is important to remember that no advance in dealing with the sex abuse crisis -- not the Dallas Charter or the Office for Child and Youth Protection, nor national and diocesan review boards, nor education programs or new standards for removing clergy from ministry -- occurred voluntarily.

It has been the partnership of advocates and media that moved responses to clergy sex abuse out of backrooms and into courtrooms. Only in those settings have dioceses given up documents and changed policies to protect children. Without that bond of confidence, SNAP and the media cannot do their jobs.

SNAP's opponents have argued that because the organization has demanded transparency from dioceses by opening their archives and files, SNAP should be equally transparent and open with its documents. This argument mistakenly assumes that SNAP and a diocese are equivalent structures. SNAP admittedly is an unusual organization that developed in reaction to a crisis that few could have foreseen. It believes it is protected under Missouri laws aimed at maintaining the privacy of victims of sexual assault. We are all subject to the law, but the courts should take into consideration SNAP's unique function and afford it the widest protection possible.

A second amicus brief in the Kansas City case was filed by 10 victims' advocacy groups, including the Foundation to Abolish Child Sexual Abuse, the Kid Safe Foundation and the National Child Protection Training Center. That brief argues that the subpoena amounts to a "violation of the anonymity and confidentiality" of SNAP members and volunteers and is "plainly unconstitutional."

Citing the 1958 U.S. Supreme Court case NAACP v. State of Alabama, the brief likens the order to hand over SNAP documents to public identification of NAACP members in Alabama that "exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility."

"Similarly," the brief states, "if the discovery is permitted survivors and witnesses of sexual abuse will no longer feel comfortable approaching SNAP in confidence."

Law professor and expert on child protection Marci Hamilton called this use of the subpoena "one of the uglier moves I've seen by any organization in these cases so far." The "end result," she said, would be "a huge chilling effect on helping child sex abuse victims at every stage."

Accused priests and dioceses have the right to defend themselves in our court system, but these subpoenas go beyond building an adequate defense. They are in the same lineage of hardball legal tactics that have been used for years to intimidate abuse victims and their advocates.

Finally, SNAP is a modestly funded organization, run on a shoestring and mostly by volunteers. As a 501(3)c nonprofit, SNAP's financials are readily available to any and all. Its total operating budget is only about $350,000 a year. If SNAP has to fight to maintain confidentiality, it could very easily be put out of business.

The story of Bartek Obloj in Poland demonstrates anew SNAP's importance here. We know from too many stories of suicides and destroyed lives that it was only because of the diligence of outside watchdogs and whistleblowers that abuse in this country was taken seriously. It was only because of their work that our church was forced, grudgingly, to change.

Editor's Note: For more *NCR* coverage of SNAP's subpoenas, see:

- **SNAP director may be forced to testify in abuse case** **[2]**, Dec. 29
- **SNAP leader: Testimony was 'fishing expedition'** [3], Jan. 3
- **SNAP receives second subpoena request for documents** [4], Jan. 5
- **SNAP, Catholic League leaders talk abuse scandal on radio show** **[5]**, Jan. 6

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