

Published on *National Catholic Reporter* (<https://www.ncronline.org>)

May 8, 2012 at 12:13pm

SNAP order could 'chill' abuse cases, advocates say

by Joshua J. McElwee



Therese Albrecht, Barbara Blaine and Barbara Dorris, members of the Survivors Network of those Abused by Priests, hold portraits of themselves as youths at a protest in 2010 outside St. Mary's Catholic Cathedral in Edinburgh, Scotland. (CNS/Reuters/Dylan Martinez)

KANSAS CITY, Mo. -- A Missouri judge's decision to go forward in seeking a wide range of documents from the leading advocacy group for clergy sex abuse victims could have far-reaching consequences for survivors' support organizations, say victims' advocates and lawyers.

Among those consequences, the experts tell *NCR*, could be a "chilling effect" on victims willing to come forward to report abuse and a bogging down of criminal and civil cases across the country trying to bring abusers from both the church and wider society to account.

Experts' worries stem from Jackson County, Mo., Circuit Court Judge Ann Mesle's most recent order to the Survivors Network of those Abused by Priests in a case concerning a Kansas City priest accused of abuse. The case, in which SNAP is not a party, made headlines in January when it became the first in which one of the group's leaders was ordered to provide testimony.

Following back-and-forth filings from SNAP lawyers and those defending Kansas City-St. Joseph, Mo., diocesan priest Fr. Michael Tierney, Mesle ordered the group in late April to make available 23 years of internal files and correspondence to the priest's lawyers.

Victims' advocates and lawyers contacted by *NCR* outlined worries about the latest move in the case, in which Mesle ordered SNAP to make available to defense lawyers almost all files the group has pertaining to "sexual and other misconduct of priests" in the Kansas City diocese.

One lawyer who has served as counsel for victims in a number of such cases, Marci Hamilton, said the potential legal precedents set by the case could effectively mean groups that help victims are "no longer going to be able to."

"What we're talking about is the end of one of the few sources of comfort in our society for victims," said Hamilton, a professor at New York's Benjamin N. Cardozo School of Law.

Another lawyer responsible for working with more than 250 attorneys nationwide who devote time to representing victims said the order could have "tremendous" impacts.

"Those of us working with victims throughout the country are very concerned about the judge's decision and its implications because it has a tremendous chilling effect on the ability of grass-roots organizations made of up of volunteers to help victims," said Jeffrey Dion, deputy executive director for The National Center for Victims of Crime.

Mesle's order, first handed down at a contentious four-hour hearing April 20, was formally filed April 25. It reaffirms a previous document request order issued to SNAP last fall, narrowing slightly the scope of requested files.

Along with the document request, Mesle also ordered David Clohessy, SNAP's director and the subject of the January deposition, to undergo a second deposition. In making that order April 20, Mesle said Clohessy refused to answer many of the questions in the January deposition and said it "needs to be continued and finished."

Among eight categories of files requested from the group are all correspondence with members of the press that mention either Tierney or the diocese; all documents that refer to priests currently or formerly associated with the diocese; and all correspondence with members of the public "that discusses or relates to repressed memory in conjunction with cases involving" the Kansas City diocese.

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While SNAP is expected to appeal Mesle's order, the head of one prominent victims' support organization said he is concerned the case could signify a "terrible, terrible judicial precedent."

"If this does actually come to fruition, I think it represents a terrible, terrible judicial precedent for survivors all across the spectrum," said Chris Anderson, the executive director of Male Survivor, a national nonprofit organization that provides resources for men who have survived sexual abuse.

"If every survivor is afraid that, just by reaching out to an organization, that they could be at risk to be exposed, it's going to have such a chilling effect on our ability to connect and have contact with survivors and get them the help that they need," he said.

Tierney's defense lawyers have argued that SNAP could be inappropriately coaching victims it helps regarding issues of repressed memory. While the alleged abuse in the Kansas City case occurred about 40 years ago, the victim has said his memory regarding the event only returned in recent years, within the timeframe of Missouri's statute of limitations for abuse lawsuits.

At the April 20 hearing, Brian Madden, one of the lawyers defending Tierney, said he and his colleagues needed access to the documents in order to "test the credibility of the allegations of abuse as well as the allegations of repressed memory."

A filing made on behalf of Tierney in November sheds some light on their reasoning in that vein. In that filing, the lawyers seemed to allege Clohessy could be coaching victims about when they recovered their memories in order to evade statutes of limitations for lawsuits.

"SNAP, through Mr. Clohessy, could be routinely advising plaintiff and others to claim repressed memory to evade the statute of limitations," the filing states.

SNAP has denied such allegations. During her arguments to Mesle on April 20, Rebecca Randles, the attorney representing the plaintiff in the case, said the plaintiff has had "absolutely no contact with SNAP." That means, Randles said, SNAP's files are not relevant to the case.

Responding to Randles, Mesle said while it might be true that SNAP has not had contact with the plaintiff, the defendants should have the opportunity to know what might be in SNAP's files that would hamper their defense.

One concern SNAP has expressed about the opening of their files is it could mean information from victims who have contacted the group but not filed lawsuits would be available. In a spring interview, Clohessy told *NCR* that "the overwhelming majority" of victims the group has dealt with "never consider or take legal action or go public."

Dion, who has served with the National Center for Victims of Crime for 14 years, said while he would understand if defense lawyers needed a psychological expert to talk about "how memories are repressed and the process of psychological disassociation," the request for SNAP's files is "overly burdensome and extremely unreasonable for [a group] that's not even a party to the case."

Hamilton, who has served as counsel for victims in a number of clergy sex abuse cases, also disagreed with Tierney's lawyers, saying their arguments amount to a "tangent" in the case.

"There are all sorts of facts that corroborate a repressed memory and how a victim comes to understand what happened," she said. "But this is a witch hunt in which they are trying to go after an organization that has a tangential relationship to the actual case."

Tierney's lawyers' insistence on the repressed memory issues, Hamilton said, indicates the lawyers are trying to object to the theory of repressed memory itself, not just to its application in this case.

"Their main objection is ... actually to the theory of repressed memory," she said. "But it's the law of Missouri. And so if they don't like repressed memory as a theory, they should be trying to get the state legislature of Missouri to do something instead."

Dion also said the wide request of documents from SNAP might indicate the beginnings of a new strategy among church lawyers in their attempts to pre-empt lawsuits accusing priests of abuse.

Referring to the fact that several bishops' conferences at the state level have publicly opposed measures that would change state laws regarding the statutes of limitations in abuse cases, he said this move by Tierney's lawyers could be part of a broader realization by the church that "the best way that they can protect themselves from lawsuits is if they can keep them from being brought in the first place" by "scaring" groups who would encourage victims to pursue the cases in court.

Several times in his arguments April 20, Madden also addressed concerns that the priest's lawyers were trying to out the names of victims who wish to remain anonymous. Madden said "nothing could be further from the truth," pointing to a request defense lawyers filed with the court known as a protective order, asking that all documents obtained from SNAP be placed under seal.

SNAP lawyers did not oppose that order, which Mesle approved April 25. The order specifies that any documents from the group that defense lawyers gain access to will be marked confidential and kept in the possession of one of SNAP's lawyers. A log of all access to the documents will be kept.

"There's no outing of abuse victims going on here," Madden told Mesle on April 20. "Just so it's clear, we are not seeking to out victims of clergy sexual abuse."

Beyond Tierney's lawyers, attorneys representing clients in other abuse cases might also be granted access to SNAP's files as they filed "cross-notice" for Clohessy's deposition, indicating they believe either his testimony or the documents provided could have evidence pertaining to their cases.

Lawyers defending priests in at least six other abuse lawsuits filed such notice. According to the protective order, those lawyers could be granted access to the SNAP documents, so long as the judges in their cases agree to allow that access.

Despite the precautions to protect the identity of victims in SNAP's files, Anderson said the order could still destroy the trust that exists between survivors and those they choose to tell about their abuse. The fact that someone else will learn the survivors' story, he said, is like "victimizing them a second time."

A survivor of abuse himself, Anderson said giving access to the documents is akin to "taking the bond of trust that exists between the victim and the person they choose to share their story with and destroying it."

"It is a victims' right, after they have had so much stripped away from them ... at the very least, they still possess the right to tell their story in the way, at the time they choose to tell their story," he said.

Anderson also said he is concerned about the financial impact of the order. Noting that his organization

has a "very small" budget, he said the financial considerations following Mesle's order are "going to keep me awake at night."

Anderson said he's concerned the judge's order could be used in the future to justify subpoenas for testimony from his group.

While Mesle's order "makes me angry personally," he said, "it terrifies me as the director of a victims' rights organization."

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

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- **SNAP fires back at lawyers requesting documents**, April 17
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