



406: Under the Microscope: Approaches to Nonprofit Crisis Management

Mark E. Chopko

General Counsel

United States Conference of Catholic Bishops

Richard I. Miller

General Counsel & Secretary

American Institute of CPAs

Faculty Biographies

Mark E. Chopko

Mark E. Chopko is the general counsel of the U.S. Conference of Catholic Bishops in Washington, DC. As chief civil lawyer for the association of the nation's more than 300 Roman Catholic Bishops, he directs a staff of six lawyers providing a full range of corporate legal services for the conference, its board and committees, and occasionally individual dioceses.

Prior to joining the conference as a litigation attorney, Mr. Chopko worked for more than seven years in the Office of General Counsel in the U.S. Nuclear Regulatory Commission. While finishing law school, he worked in Cornell Legal Aid.

Mr. Chopko has served his local Catholic parish and school in a number of volunteer posts, including as school board president and on the finance council. He also serves as a member of the advisory board for the DePaul Center for Church-State Studies and on the Religious Liberty Committee of the National Council of Churches. Recently he was elected to an honorary membership in the Church Law Society of the Czech Republic as recognition of the support given to the work of Catholic lawyers in that country.

Mr. Chopko graduated from the University of Scranton and Cornell Law School.

Richard I. Miller

Richard I. Miller is general counsel and secretary at the American Institute of Certified Public Accountants (AICPA). In this position, he is responsible for providing legal counsel on all AICPA-related professional and corporate issues.

Prior to joining the Institute, Mr. Miller was senior in-house legal counsel for the international accounting and consulting firm of KPMG Peat Marwick. Prior to that, he served as general counsel and chief legal officer of the international accounting and consulting firm of KMG Main Hurdman. Mr. Miller began his career defending accountants' liability cases as an associate at the New York law firm of Cahill Gordon & Reindel.

Mr. Miller is a frequent speaker on issues involving accountants' liability matters. He has authored, among other things, a chapter of the book, *Accountants' Liability: The Need for Fairness* entitled "Alternative Forms of Organization: Guidelines For CPAs," a chapter of the book, *Multidisciplinary Practices and Partnerships: Lawyers, Consultants and Clients* entitled "A Few Lessons From the Accounting Profession," co-authored a monograph entitled "The SEC's Revised Auditor Independence Rules: What Happened, Why and What Does it Mean?," co-authored an article appearing in *Fordham Law Review* entitled, "Financial Reporting and Risk Management in the 21st Century," and co-authored an article in the *Journal of Accountancy* entitled "Regulations Under the Sarbanes-Oxley Act." He has also been listed in *Accounting Today* as one of their Top 100 Most Influential People of 2002.

Mr. Miller is a *cum laude* graduate of the Fordham University School of Law and was a member of its *Law Review*.

Under the Microscope
Approaches to Non Profit Crisis Management

by

Mark E. Chopko
General Counsel
United States Conference of Catholic Bishops
Washington, DC 20017

Session 406 – ACCA Annual Meeting – October 2003

I. Introduction

- A. Prior events in dioceses around the USA since mid-1980's alerted Bishops (and everyone else) to problem of abuse of children in religious communities.
1. Examples – Louisiana (1985), Massachusetts (1992), New Mexico (1993) Texas (1995).
 2. Efforts – At each of these events, responses included advising dioceses on writing and implementing policies, removing offenders from community, cooperating with authorities, dealing openly (as possible) with the public, etc.
 3. Public efforts began in 1992 –
 - a. Five Principles (attached)
 - b. Appointment of Special Committee
 - c. Annual public reports.
 4. Except for important developments (jury verdict, Bishop resignation), story became local.

B. Firestorm in 2002

1. Re- reporting of events surrounding a serial sex offender in records from personnel and other files. Media granted access to formerly sealed records and discovery material.
2. Direct implication of diocesan leadership in reassignment of known sex offender

II. Public and Media Reaction

A. Underestimated anger and frustration within our own communities.

1. Never told our own story – that assignments were made based on “best” medical advice and reflected considerations that were no longer operative.
2. Instead – said “no one in ministry” which turned out not to be accurate.

B. Calls for public authorities to be involved in assuring safety of children within ministries.

C. First week was a blur as news went from bad to worse to awful to bleak (Cf. ACCA Docket -- “Responding to Environmental Disasters”, July/ August 2003 and references cited).

III. A Word about Structure and the Law

- A. The “Roman Catholic Church” is not a legal entity but a community of faith. It has placed responsibility according to church law and tradition in Bishops who preside over specific territories. A Bishop in one territory (diocese) has complete authority to govern and no other Bishop, Archbishop, or Cardinal may interfere – only the Pope and only for good reason.

- B. The “conference” does not exercise governance – it is analogous to a professional association (ACCA)
 - 1. Conference exercises consultative and advisory role for “members” who are Bishops (only).
 - 2. In responding to inquiries about what actions had been taken nationally, “association” action highlighted inadequacies in member implementation.

 - C. Common Law
 - 1. At English common law, the Anglican Communion was not a suable entity but dioceses and Vicars were because they had civil status.
 - 2. Extended to all religions in Edict of Toleration (1690).

 - D. Constitutional Law
 - 1. Religious institutions have constitutionally protected rights of self-governance and states must defer to structure and organization adopted. Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Serbian Eastern Orthodox Cathedral v. Milivojevich, 426 U.S. 696 (1976).
 - 2. Includes the right to be free of excessive interference in internal affairs, Lemon v. Kurtzman, 402 U.S. 602 (1971), and excessive regulation, Surinach v. Pesquera, 604 F. 2d 73 (1st Cir. 1979).
- IV. Similarities but Mostly Differences with other Scandals.
- A. Location – earlier scandals were localized even if lasted years and attracted national media attention; this scandal is everywhere at once.
 - B. Duration – it has been a long 19 months and will last longer. That is expected based on prior incidents.

- C. Focus – Rather than abuse itself being the trigger, the action is the failure of diocesan leadership, seemingly everywhere. National focus to localized and individual stories.
1. Very few attempts at explanation that, media notwithstanding, people were not in danger.
 2. Appearance of widespread presence of predators in ministry, not true, but not countered.
 3. No complete information about who was in ministry and why.
- D. Timeline – Place for action was annual meeting but schedule was 6 months after crisis of 2002 began.
1. Media strategy to show actions in process, moving towards meeting.
 2. Much discussion about removal from ministry and public accounting and openness. Draft action plans publicly circulated.
- E. Results - Earlier scandals produced diocesan reforms and greater, more visible national attention “to assist Bishops and dioceses”. In 2002 the crisis produced a Charter for the Protection of Children and Young People and changes to church law for the United States called “Essential Norms” (www.usccb.org – restoring trust).
1. National Office to assist and to audit compliance.
 2. National Review Board – to monitor progress and publish reports.
 3. Accountability and consistency.
- V. Public Media Attention
- A. Initial efforts to deal with scandal that started in Boston as a diocesan or regional) New England) issue unsuccessful.
1. Archbishop– national figure and friend of Presidents.

2. Media engineered spillover
 - a. National dailies poached stories in other markets from local newspaper “metro” reporters
 - b. Use of technology – mass email sent by intern is faster, more invasive, and more pernicious than individual reporter calls.
- B Bishops as Spokesmen - Earlier scandal indicated that people want to hear from their leaders, not their assistants, and certainly not their lawyers (ACCA Docket, “Responding to Media Inquiries, “ July/August 2003 and references cited).
- C. Answering questions but staying on message – We have been working at this for a time and most got it right. But we are judged by our worst cases, not our best.
- D. Impact – Almost impossible to have “our” story told without “balance” requiring critical voices.
- E. Use of professionals – Expand and make affirmative use of resources and personnel.
 1. Every “member” works on own media approach based on local needs.
 2. Occasionally surprises happen in local markets that have national carryover (appointment of new Bishop).
 3. Occasionally surprises happen in national market that have local carryover (resignation of Governor Keating).
- F. Negative attention, done deliberately to affect public opinion and potential jury pool – e.g.– release of previously, “sealed as confidential” diocesan records on CNN (see below).

VI Mission Impacts

- A. Pressure on Governance – The Wall Street Journal and others spent much time and ink trying to describe complex corporate relationships, suggesting that the structure was planned to hide assets.
1. Contrary to more than a century of organizing.
 2. Efforts to conform new and existing structures to church law treated with suspicion (reorganization of Baker diocese).
- B. Despite literally thousands of separate (civil and ecclesial) structures, fear that effective collaboration will propel efforts to find a giant conspiracy or some other amalgamation.
1. Such attempts would run into both corporate and constitutional law.
 2. “No good deed goes unpunished” – attempts to exploit collaborative efforts to fix national problem that has hundreds of local aspects.
- C. Pressure on Accountability
1. Assurance that gifts will not be used to pay lawyers or claimants.
 - a. Scandal atmosphere led to disclosure of a few financial problems.
 - b. Steps to provide greater openness on financial matters, expanding on pre-existing church law.
 2. Regulators – State and Federal- raise questions about source of funds for settlements.
 - a. Charities have two main sources of “income” – donations and fixed assets property. To settle uninsured claims, charities

must cut services and/or sell assets, or use or borrow unrestricted funds.

b. Potential settlement value of all claims is very large – settlement in Louisville, Kentucky of \$25 million dollars for approximately 250 claims. National implications are great.

c. Aggressive attorneys-general have not rushed to aid these religious charities to protect assets from sale or diversion to claimants.

(i) Settling claims is a cost of doing business.

(ii) AG involvement is a “mixed blessing”.

3. Internal processes pushed to provide complete disclosure of costs of scandal and litigation as well as efforts to move in new direction.

a. Use of independent audits to measure compliance, diocese by diocese

b. Public reports naming names.

4. Need to protect important ongoing church operations – churches, schools, cemeteries. Cutbacks largely in pastoral services and staff.

a. Economy is principal culprit – many report level or increased giving.

b. People expect church to be church.

C. Litigation – Widespread use of mediation to resolve claims quickly and economically. Sound pastoral approach. “We do not choose litigation as the preferred way to resolve claims but if it is chosen for us, we must defend ourselves as is our right”.

1. Civil Claims - 1000 + new cases filed between June 2002 and June 2003.
 - a. Old cases – most (12 in 13) more than 10 years, majority in 1960's -1970's.
 - (i) Statutes of limitations still apply even with major efforts to lift civil statutes.
 - (ii) Smaller number of “new” cases shows impact of post 1992 policies.
 - b. Toxic media environment treats every allegation as true even through a percentage (10-15%) false or unverifiable.
 - c. Jury pool is poisoned and legislatures pressured to “do something”.
 - (i) Modifying reporting statutes will not assist existing cases. Already committed to report all cases involving children. Many adults do not want police reports.
 - (ii) Indefinite extensions of statutes of limitations require defending the un-defensible (all witnesses dead, no record of anything, 60 + year time lag).
2. Criminal – So far, and likely to continue, the exception not the rule.
 - a. Possibility of indictment used to intimidate or coerce confessions – public backlash at prosecutors for not being aggressive.
 - b. Most “remedial” demands already reflected in the Charter (2002) (see above).
 - c. Resources – see ACCA Docket, “Grand Jury Investigations,” July/August 2003 and references cited.

3. Exotic – RICO and other conspiracy claims are media attention grabbers but utterly without merit or the law. “Legal Showboating”.
4. Real effects on legislature confronted with the fact of dozens of old cases dismissed on statutes of limitations, and similar results of the litigation. Plaintiffs bar wins by losing.
 - a. Efforts to protect formerly settled law on governmental encroachment on religion tarnished as a cover-up.
 - b. Coincides with efforts since 1990 to expand envelope of government regulation of religion.
 - c. Convenient excuse to ignore religious arguments.
 - d. Generally state- level lobbying outside scandal continues to good effect.
(Commonweal, “The Bishops and Politics, May 23, 2003)
5. “Do not let litigation stand in the way of pastoral action”.

VII. What's Next?

A. Preserve institutions with religious mission serving the public.

1. There are limits to the assets of non-profits if they would continue to serve the public.
2. Large uninsured settlements in effect punish the innocent – donors and beneficiaries.
3. Need for educational campaign –positive impact only genuine change (much riding on independent audits).

B. Litigate if one must, mediate if one can.

1. Occasionally a court victory or unexpected turn of public opinion sobers parties.

2. Responsible for continued efforts at healing and reconciliation no matter how toxic the atmosphere.
- C. Impact of leadership changes – new Bishops can create new opportunities and direction. The people want this scandal resolved.
 - D. Will a church go bankrupt? The International Society for Krishna Consciousness filed for Chapter 11 protection because of hundreds of child abuse complaints.
 - E. Telling our story – truth, simplicity, and hope. Most corporate crises have same twists. Answers do not come in complex structures or approaches. Honest vulnerability, something counter – intuitive to most lawyers, appeals to people in significant way.

“My lawyer tells me to follow my heart.”

FIVE PRINCIPLES

In a statement issued by the Conference President in June 1992, endorsed by the membership in November 1992, the Conference of Catholic Bishops restated five guidelines that the conference staff had used to deal with claims. They are set forth here.

1. Respond promptly to all allegations of abuse where there is reasonable belief that abuse has occurred.
2. If such an allegation is supported by sufficient evidence, relieve the alleged offender promptly of his ministerial duties and refer him for appropriate medical evaluation and intervention.
3. Comply with the obligations of the civil law as regards reporting of the incident and cooperating with the investigation.
4. Reach out to the victims and their families and communicate sincere commitment to their spiritual and emotional well-being.
5. Within the confines of respect for privacy of the individuals involved, deal as openly as possible with members of the community.