

February 22, 2007 - San Diego Bishop Robert Brom Uses the Threat of Bankruptcy to Push for a Settlement in Consolidated Clergy Child Abuse Cases:

How the Diocese Is Wrongly Trying to Triangulate A Simple Issue of Accountability

By MARCI HAMILTON, FindLaw Writ

On Sunday, February 18, Roman Catholic Bishop Robert Brom distributed leaflets to the San Diego faithful in the pews. In the leaflets, he tried to make the case that the San Diego Diocese could be forced into Chapter 11 bankruptcy because of the 143 consolidated clergy abuse cases against the diocese for the hierarchy's role in the cover up of child abuse. . The leaflets tried to cloud the simple issue that the plaintiffs' suits really raise -- whether the Diocese and its hierarchy will take responsibility for their wrongs to children.

If the bankruptcy were filed, this would be the fifth U.S. diocese to declare bankruptcy. However, in the other four jurisdictions - Tucson, AZ; Portland, OR; Spokane, WA; and Davenport, IA-- the declaration of intent to file came on the eve of trial. Here, however, the declaration has come weeks before the trials are scheduled to begin, on February 28. It is thus geared toward setting the tone and context of ongoing pre-trial settlement discussions (which Bishop Brom specifically mentions)- pressuring plaintiffs to settle lower in order to avoid the inevitable delays of a bankruptcy filing.

The Triangulation Strategy - and Why It's Deceptive

Here is how Bishop Brom summarized the problem:

"We are painfully aware that the victims of abuse have suffered, and we want to treat all of them fairly and equitably. At the same time, good stewardship demands that settlements not cripple the ability of the Church to accomplish its mission and ministries. Consequently, we must consider how best to fairly compensate the victims while at the same time not jeopardizing our overall mission. If this cannot be done through settlement negotiations, the diocese may be forced to file a Chapter 11 reorganization in bankruptcy court."

Once again the Catholic Church's hierarchy is trying to triangulate the problem. Note the Bishop's use of language: the victims "have suffered," but there is no admission of the hierarchy's role in causing their suffering. And the Church's responsibility, as Brom styles it, is "to treat [the victims] fairly and equitably" and "to fairly compensate the victims" - not to accept accountability for its own role, Brom thus describes the abuse victims as if they were someone else's victims who had somehow landed on the Diocese's doorstep, and now must be cared for out of the simple generosity of the diocese.

Brom should have taken full public responsibility for the hierarchy's active role in the creation of more child sex abuse victims. The key to understanding this, and the other pending cases in California and elsewhere, is that they are aimed at the hierarchy's illegal, immoral, and soulless cover up of the abuse and the harm that flows from the secrecy, not the abuse per se.

More insidiously, Brom pits the victims against the parishioners, as if they were somehow adversaries. Of course, this is far from true: The victims were children of past parishioners. And if they had not been brave enough to come forward, then current parishioners' children would continue to be at the same risk as they were. These are two groups joined in a commonality of interest, not two groups at loggerheads.

This triangulation strategy is particularly unpersuasive in the San Diego context. Remember this is San Diego, home to some of the most expensive real estate in the country, and the non-religious property holdings of the Diocese are extensive and valuable beyond most person's imaginations. If they were sold off to serve a fair settlement, it is simply not accurate to say, as Bishop Brom does, that the result would be to "cripple" the Diocese's "mission and ministries." Nor would parishes or schools be affected. Indeed, it is hard to believe anyone in the diocese would even notice the sale of a few of the "unusually diverse real estate holdings, including commercial projects, apartment buildings, condominium complexes and undeveloped land" mentioned in the San Diego Union-Tribune's scathing editorial of Feb. 20.

Would This Bankruptcy Filing Be In Good Faith, As Is Legally Required?

Would such a filing be in good faith, as required under bankruptcy law? There is good reason to think not.

In a previous column, I discussed the Portland Archdiocese's bankruptcy filing, and suggested that a bankruptcy filing that is meant solely to avoid tort liability, is not a proper use of the federal bankruptcy code. That is a perfect description here.

In San Diego, the Diocese does not need reorganization, so much as it wants reduced financial responsibility for the harm it participated in causing. It is transparent that the threat of bankruptcy is intended to force the settlement to move closer to the diocese's demands. This, then, is asset protection, pure and simple.

A bankruptcy threat has force - for several reasons. First, federal bankruptcy immediately stops the clock through the operation of the "automatic stay" of pending litigation. Thus, bankruptcy stalls any forward movement for victims who have already been suffering for years.

Second, no federal bankruptcy moves quickly; such a filing would guarantee more years for these plaintiffs in litigation. Many victims are fragile, and the threat of prolonging the litigation, which already has a four-year history, can be excruciating. These victims do not relish the public attention, though they take on the psychological burden in order to see justice done in some fashion..

For this reason, a bankruptcy filing by the Diocese not only should fail the legal "good faith" standard, but would also be morally reprehensible.

#### Why Parishioners Familiar with Bankruptcy Law Won't Buy Brom's Argument

Parishioners need to understand, too, that a Chapter 11 federal bankruptcy filing can be very expensive. It will require the diocese to add top-flight bankruptcy attorneys to its already large stable of attorneys, and to pay the attorneys fees of the creditors' lawyers as well (the plaintiffs would be "creditors" under a federal bankruptcy). The cost is going to "reorganize" the already financially healthy diocese.

Moreover, all a bankruptcy filing does is delay the inevitable. If Brom's argument to parishioners is that he has to file for bankruptcy to save money, parishioners need to know that whether he files for bankruptcy or not, he will eventually have to settle with the victims the hierarchy created.

In short, Brom can settle now and move on, or settle in the future and pay the steep cost of a federal bankruptcy. The San Diego diocese's vast holdings make it possible for Brom to choose either option and still come out at the end of the process in a strong financial position.

#### The Real Issue: Keeping the Truth from Inhabiting the Public Square

The leaflets' talk of finances, though, is really just a smokescreen, intended to divert the discussion away from what is most important for the public, the victims, and the parishioners -- the truth.

As noted above, the first trial is scheduled to start on Feb. 28. As a defendant, Brom, in all likelihood, would be called to the stand. In the courtroom, he -- like any other witness - would be forbidden from lying, and subject to cross-examination. When that happens, the hierarchy's closely held secrets and machinations will be revealed in the public square.

If the trials go forward, the actions that created the conditions for serial child abuse will become palpable and real, in all their ugly detail, for all to see. It is one thing to read of the stories in the newspaper, or to hear about them second-hand. It is another to hear them from the mouths of those who were in power and created the conditions for child predators to prey on children. The message will extend well beyond those leafleted last Sunday to the local and national community. Doubtless, the fear of that public spectacle is what moves the hierarchy to grab for any available delay, no matter the financial cost, the further toll taken on victims, or the moral bankruptcy of grasping for cover rather than sincere remorse.

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