

Confidentiality and Mandatory Reporting: A Clergy Dilemma?

by Rev. Dr. Marie M. Fortune

There is increasing controversy surrounding the issue of mandatory reporting by clergy of physical or sexual abuse of children and the privilege of confidentiality within the pastoral role. Some clergy perceive the expectation of mandatory reporting of child abuse by helping professionals to be in direct conflict with their pastoral role. When state law requires clergy (along with all other helping professionals) to report suspected child abuse, some clergy feel that they face a dilemma. Most states now include clergy among mandated reporters but some do not.¹

Two legitimate concerns expressed by some clergy are an unwillingness to have the state determine their role and function as a religious professional and an effort to protect their relationship with a congregant from incursion by the state. Both of these issues are raised in the context of the separation of church and state provided for in the U.S. Constitution and certainly deserve careful attention.

In states where clergy are relieved of the requirement of the law to report, some seem to feel that the conflict is resolved. They are unlikely to report even though they have the right to do so as does every citizen.

But the hesitancy by many clergy to utilize the reporting mechanism provided in their state to protect children from further abuse and their desire to be exempt from that which is required of other professionals suggests that the conflict is not just with the mandatory nature of the reporting requirements. The problem may best be stated in terms of a perceived conflict of the ethics of confidentiality and the ethics of reporting certain harmful behavior in order to protect children.

It is this perceived conflict of ethical demands which will be the focus of this article. Part of the conflict arises from the interpretation of confidentiality and its purpose particularly as it rests within the responsibility of the religious professional. The context for an analysis of these ethical demands is the understanding of confidentiality which comes to the religious professional from multiple sources: pastoral, legal and ethical.

Confidentiality

The purpose of confidentiality has been to provide a safe place for a congregant or client to share concerns, questions, or burdens without fear of disclosure. It provides a context of respect and trust within which help can hopefully be provided for an individual. It has meant that some people have come forward seeking help who might not otherwise have done so out of fear of punishment or embarrassment. Confidentiality has traditionally been the ethical responsibility

of the professional within a professional relationship and is generally assumed to be operative even if a specific request has not been made by the congregant or client. Sissela Bok suggests four reasons for confidentiality²:

1. An individual's autonomy over personal information
2. Respect for relationships between persons and for the intimacy which comes with information shared only in a particular relationship
3. An obligation of allegiance and support
4. The safety of a place to disclose information which, if undisclosed, would be detrimental to society as a whole (e.g. a person suffering from AIDS)

These four factors represent the *raison d'être* for confidentiality. Clearly not only ethical but practical values sustain a commitment to confidentiality.

For the pastor/priest/rabbi, unlike the secular helping professional, confidentiality rests in the context of spiritual issues and expectations as well. In Christian denominations, the expectations of confidentiality lie most specifically within the experience of confession. The responsibility of the pastor or priest ranges from a strict understanding to a more flexible one, i.e. from the letter to the spirit of the law. For example, for Anglican and Roman Catholic priests, the confessional occasion with a penitent is sacramental, i.e. whatever information is revealed is held in confidence by the seal of confession with no exceptions. The United Methodist Book of Discipline does not view confession as sacramental but states: "Ministers... are charged to maintain all confidences inviolate, including confessional confidences." The Lutheran Church in America protects the confidence of the parishioner and allows for the discretion of the pastor: "[. . .]no minister shall divulge any confidential disclosure given to him [sic] in the course of his [sic] care of souls or otherwise in his [sic] professional capacity, except with the express permission of the person who has confided in him [sic] or in order to prevent a crime." Even within Christian denominations, there is a range of interpretations of the expectations of confidentiality and it is not necessarily limited to the "confessional" occasion.

The law has traditionally respected "privileged communication" between clergy and penitent if four fundamental conditions are met: 1) a specific context of confidentiality and function as a professional, 2) necessity of maintaining confidentiality in order to maintain relationship, 3) a relationship which ought to be protected in the opinion of the community, 4) injury to the relationship resulting from disclosure would exceed benefit to the community to be gained by disclosure. The primary concern of the law here is that it cannot force a clergyperson to testify against a congregant in a legal proceeding.³

Yet all of these parameters which shape the ethical demand for confidentiality for the clergyperson must be considered in a larger context. Are there "reasons sufficient to override the force of all these premises, as when secrecy would allow violence to be done to innocent persons [. . .]"⁴ The law is unclear as to the clergyperson's duty to disclose intent to commit future crimes and to cause harm to another: Is the clergyperson who does not report the

probability that a crime will be committed and a person harmed legally liable for damage done to that person? What of the ethical obligation to protect the vulnerable?

Secrecy

It is useful in this discussion to make a distinction between confidentiality and secrecy. Secrecy is the absolute promise never under any circumstance to share any information which comes to a clergy person: this is the essence of sacramental confession. But a commitment to secrecy may also support maintaining the secret of the abuse of a child which likely means that the abuse continues. Confidentiality means to hold information in trust and to share it with others only in the interest of the person involved, i.e. with their permission, in order to seek consultation with another professional, or in order to protect others from harm by them. Confidentiality is intended as a means to assist an individual in getting help so as not to cause further harm to themselves or others. Confidentiality is not intended to protect abusers from being held accountable for their actions or to keep them from getting the help that they need. Shielding them from the consequences of their behavior likely will further endanger their victims and will deny them the repentance which they need.

Neither is confidentiality intended to protect professionals rather than those whom we serve. It should not be used as a shield to protect incompetent or negligent colleagues or to protect us from our professional obligations. Sissela Bok points clearly to this distortion of confidentiality:

“The word ‘confidentiality’ has by now become a means of covering up a multitude of questionable and often dangerous practices. When lawyers use it to justify keeping secret their client’s plans to construct housing so shoddy as to be life-threatening, or when government officials invoke it in concealing the risks of nuclear weapons, confidentiality no longer serves the purpose for which it was intended; it has become, rather, a means for deflecting legitimate public attention.”⁵

Thus, confidentiality may be invoked for all the wrong reasons and not truly in the interests of a particular congregant or of society.

Responsibility to Victims

But there is another set of ethical principles which enter into this discussion from a faith perspective. They have to do with one’s professional responsibility to victims of abuse. Within both Jewish and Christian traditions, there is the responsibility of the community to protect those in its midst who are vulnerable to harm. Thus, Hebrew scripture refers to the hospitality code in regard to the sojourner, the orphan, and the widow. These were the persons who were specifically vulnerable to exploitation and who did not have built-in supporters in family or community. Thus, it was the entire community’s responsibility to protect them in their powerlessness. In today’s society, it is surely the abused child who is most powerless to protect her/himself and who is in need of support from the wider community.

The other ethical principle which applies here is that of justice-making in response to harm done by one person to another. Christian scripture here is very specific: “Be on your guard! If another disciple sins, you must rebuke the offender, and if there is repentance, you must

forgive.” (Luke 17.3 NRSV). The one who sins and who harms another must be confronted so that he might seek repentance. Both Hebrew and Christian scriptures are clear that repentance has to do with change: “Cast away from you all the transgressions that you have committed against me, and get yourselves a new heart and a new spirit! . . . For I have no pleasure in the death of anyone, says the Lord God. Turn, then, and live.” (Ezekiel 18.31-32 NRSV) The Greek word used for repentance is *metanoia*, “to have another mind.” In this context of repentance, accountability and justice, then forgiveness and reconciliation may be possible. This should be the primary concern of the pastor/priest/rabbi.

It is critical also to keep in mind the context of sexual and physical child abuse as the reference point for this discussion. There are aspects of these criminal behaviors which must be considered:

- Batterers or incest offenders will re-offend unless they get specialized treatment.
- Offenders against children minimize, lie about, and deny their abusive behavior.
- Offenders cannot follow through on their good intentions or genuine remorse without help from the outside.
- Treatment of offenders is most effective when it is ordered and monitored by the courts.
- The secret of the child’s abuse must be broken in order to get help to the victim and offender.
- Clergypersons do not have all the skills and resources necessary to treat offenders or to assist victims.
- Quick forgiveness is likely to be “cheap grace” and is unlikely to lead to repentance.

The question which faces the pastor/priest/rabbi in his/her pastoral relationship to a congregant is, if that person has received information in the course of conversation with a congregant which reveals the probable abuse of a child and which indicates that the child is still in danger of being further abused, what is the faith leader’s obligation? This question arises regardless of legal requirements of mandatory reporting or exemption.

It is in this context that confidentiality must be understood: when faced with a conflict of ethical norms (confidentiality vs. protection of a child from abuse), how shall we judge which norm should supersede the other? Or can both be fulfilled in bringing forth repentance for an abuser?

In practice, the ethical and pastoral issues are posed somewhat differently. Seldom does an offender against children come forward voluntarily and “confess.” It is much more likely that a child or teenager who is being abused or a non-offending parent or other family member will come to a clergyperson seeking assistance. Hence, what is presented is not *confessional* on the part of an offender but a cry for help from a victim. Confidentiality is still a concern but not in the sense of the “confessional seal.” Instead it is a matter of respecting the victim’s control of the information which she/he shares.

A Case in Point

A 14-year-old girl stopped by her pastor's office after school one day. The pastor had been aware that the girl had become more and more withdrawn but she was still attending meetings of the youth group. The pastor had told her that if there was anything which she wanted to talk about, he was always available. She was now ready to talk. In very hesitant and stumbling sentences, she told her pastor that her father made her uncomfortable and frightened sometimes, that he made her do things she didn't really like. Her pastor asked her if he made her do sexual things. She said he did. This information was very troubling for the pastor on several levels: he had a close relationship with the teenager's father who was previous chairperson of the parish council. He knew him to be a respected and competent professional who was likable and easy to work with. But he also knew that the father was not at ease in relationships on a deeper level. And the pastor knew enough about incestuous abuse to know that it was very possible that the teenager was being abused and that it was very hard for her to come to him with this information.

Weighing all of these factors, the pastor then explained to her that he was very glad that she had come to him and that he would help her. He told her that her father should not be frightening her like this and that he needed help. The pastor also said that in order to protect her and to get help for her father that she would also need to talk with someone else, a worker from the children's protection service. The teenager became agitated and hesitant. She asked the pastor not to tell anyone else, that she could get into big trouble, that she thought she could trust him not to tell, that if her dad finds out he will kill her. She said that she just wanted the pastor to make it stop.

The pastor acknowledged her fear of others knowing and continued to explain to her why it was so important that other people who could help be told. They talked for a long time and finally the teenager began to understand that getting her father to stop abusing her meant that other people had to help too. She called the children's protection service from the pastor's office. He remained with her while she was interviewed by the worker. She went to stay with a family from the church for two weeks while the CPS investigated the situation and prepared to prosecute the father. The father called the pastor and in a rage threatened to see that the pastor was fired. He threatened legal action against the pastor for interfering in his family affairs. The father was convicted and was ordered into treatment. Having completed a two year program, the family is considering reuniting. The father has returned to the church and now expresses appreciation to the pastor for confronting his behavior which he now sees was destroying his family.

The pastor maintained his pastoral relationship, though sometimes strained, with the teenager, the father, and the other family members throughout this period of disclosure and treatment. About three months into the treatment process, with the permission of the teenager, the mother and the father, the pastor shared this situation with the elders of the church so that they could be supportive to this family. During the next year the teenager talked with her youth group about her experience so that they could understand what she had been going through. They

were very supportive and helpful to her. Subsequently, two more teenagers in similar situations came forward to seek the help of the pastor. The secret of the incestuous abuse had been broken but the trust of the pastor in his role was maintained. Healing began for the teenage girl. Repentance became a real possibility for the father.

This composite story illustrates the conflict of obligations which many faith leaders feel when faced with information about abuse within a family and also the possibilities of utilizing the available systems to have the most positive and lasting impact on a destructive situation. These situations are never easy or straightforward. They are always complex and time consuming. But the pastor can play a vital role in supporting the efforts of those who have been harmed to break through the secrecy and get help. Clearly there are many opportunities for judgment calls and there is seldom a single clear and unambiguous option. But what is important is clarity of purpose: to protect the one who is victimized by the actions of another and to hold the offender accountable. Confidentiality then becomes a means to accomplishing this end rather than a means to sustain the secret of the abuse.

“The premises supporting confidentiality are strong, but they cannot support practices of secrecy – whether by individual clients, institutions, or professionals – that undermine and contradict the very respect for persons and for human bonds that confidentiality was meant to protect.”⁶ The utilization of reporting of child abuse should be viewed in this context rather than as a challenge to the principle of pastoral confidentiality. It can be a means to assisting a clergyperson to fulfill his/her responsibility to the persons whom he/she serves. Hence the expectations of mandatory reporting and the expectations of pastoral confidentiality may not be as contradictory as they at first appear.

Regardless of statutory mandates for reporting child abuse, we urge faith leaders to report suspicions of child abuse to law enforcement. It is not our job to investigate nor do we have the skills to do so. It is our job to get available resources to victims of child abuse to protect them and if possible, prevent further harm. To do this, we need the expertise of others beyond our faith community.

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This article was updated in 2014 by Marie Fortune.

¹ See https://www.childwelfare.gov/systemwide/laws_policies/statutes/clergymandated.pdf

² Bok, Sissela, “The Limits of Confidentiality,” *The Hastings Center Report*, February, 1983. pp. 24-25.

³ Summary of notes provided by Seth Dawson, Prosecuting Attorney of Snohomish County, May, 1984.

⁴ *Ibid*, Bok. pp. 26.

⁵ *Ibid*, Bok. pp. 30.

⁶ *Ibid*, Bok. pp. 31.