

October 2017

The National Diocesan Attorneys Association: The Business of the DAA, and Our Last Ten Years

Mark E. Chopko

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#)

Recommended Citation

Mark E. Chopko (1999) "The National Diocesan Attorneys Association: The Business of the DAA, and Our Last Ten Years," *The Catholic Lawyer*. Vol. 39 : No. 1 , Article 2.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol39/iss1/2>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

**AN INTERIM REPORT OF THE GENERAL
COUNSEL**

**THE NATIONAL DIOCESAN ATTORNEYS
ASSOCIATION: THE BUSINESS OF THE DAA,
AND OUR LAST TEN YEARS**

MARK E. CHOPKO*

Many things have stayed the same with the National Diocesan Attorneys Association, and many things are different. We have many stalwart supporters of the Association with us again, as we have had for the last thirty-three years. One hallmark of this organization is the mentoring of new members by the old. Some have grown up with the Association and remember its formative days, even its days of poor financial health. Although the health of the Association is strong and its prognosis for future growth and continued strength remains excellent, we have much work to do, on many topics that have dominated our agendas in years past.

Ten years ago, I promised that we could work together in mutual support and forbearance for the common good of our Church and our country. I promised you honesty and integrity in building relationships across this land of ours that would be mutually nourishing and strengthening. I promised that the times we shared together in this work would be challenging, occasionally contentious, and never dull. I think I have delivered on these promises.

I would like to outline where we have been and where we might go together. When I was asked to become General Counsel, then General Secretary Daniel Hoyer passed along the admonition of Conference President Bishop James Malone. On behalf of the United States Catholic Conference (USCC) Executive Committee, Bishop Malone asked me “to be prudent.” I agreed, not fully aware of what I was undertaking. I thought it meant to be circumspect and cautious. Instead, I have come to embrace

* General Counsel, United States Catholic Conference. Mr. Chopko’s article is based on his welcome address given at the Proceedings of the Thirty-Third National Meeting of Diocesan Attorneys.

prudence as a call to right action. “Prudence is the virtue that disposes practical reason to discern [the] true good in every circumstance and to choose the right means of achieving it.”¹ Proverbs remind us that “the prudent man looks where he is going.”² It is not timidity or fear, but a discernment of the works that need to be done, and a conscientious choice of the means to accomplish those goals. In this organization, “prudence” has not been about “me,” but about “us.”

One example of prudence was the debate over the Religious Freedom Restoration Act.³ In 1990, the Supreme Court turned the Free Exercise Clause inside out.⁴ Many in the religious community banded around the Act as a means to reverse that determination. I did not, believing that there was the potential for much mischief. Members of this Association called on me to reverse my position. Indeed, a prominent keynote speaker took me to task on this point.⁵ In the Senate Judiciary Committee, I was publicly attacked by members of the panel on which I was placed. When it came to my turn, Senator Edward Kennedy asked me if I felt alone in the debate.⁶ I responded honestly, that I did not much like the feeling, but I was not before the Committee for myself, but out of a solemn obligation to represent my clients, the Catholic Bishops of the United States. I owed them, and you, my best advice. Over the next few years, the same critical voices came reluctantly to see that my position had merit, even if they were not convinced. Eventually, the drafters themselves came forward with amendments on the very points they first said were non-negotiable.

Prudence was shown in those debates. I think we made the right choices, but with a great deal of effort and a long contest. That debate is illustrative of what these years have been like. There has been much work, but also much success, much friendship, and many renewed relationships. This is what the last ten years has been for me.

In 1987, at my first meeting, we celebrated “an end and a begin-

¹ UNITED STATES CATHOLIC CONFERENCE, CATECHISM OF THE CATHOLIC CHURCH ¶ 1806, at 444 (1994).

² *Proverbs* 14:15; see CATECHISM OF THE CATHOLIC CHURCH, *supra* note 1, at 144.

³ 42 U.S.C. §§ 2000bb-4 (1998).

⁴ See *Employment Div. v. Smith*, 494 U.S. 872 (1990) (eliminating the requirement that the government justify the burdens on religious exercise imposed by laws neutral toward religion).

⁵ Judge John T. Noonan, Jr. of the 9th Circuit Court of Appeals raised the question in his 1991 keynote whether we sought a “Catholic only policy.” John T. Noonan, Keynote Address at Proceedings of the Twenty-Seventh National Meeting of Diocesan Attorneys 28 (May 19 – May 21, 1991) (transcript available in Office of General Counsel, United States Catholic Conference, Washington, D.C.). His talk was formally published. See *The End of Free Exercise?*, 42 DEPAUL L. REV. 567 (1992).

⁶ See Hearings on S. 2969, Before the Senate Judiciary Comm., 102d Cong., 2d Sess. (Sept. 18, 1992).

ning.”⁷ I said I would emphasize Regional Meetings as a way of providing greater support for diocesan attorneys, of seeking to provide an accessible database of legal resources, of attacking areas of recurring concern (even if they were not “national” problems), and of providing dependable uniform advice on matters where national leadership was needed. Today, our regions are strong, but regional meetings are not universal. We have (and have had) a database, but it is not user-friendly and as up-to-date or complete as I would like. We have attacked problems of recurring concern and of national perspective. But sometimes it seems that “the hurrier we go, the behinder we get” [Pennsylvania Dutch Maxim]. In short, we have been very successful, but not nearly as completely as we deserve to be. We have much to celebrate, but much work to do still.

Sometimes in our work we must be voices in the wilderness. I often refer to myself at meetings as the “resident cynic.” Inevitably, it is the nature of my job that I am the one who must ask, “Has anyone thought how we might lose this case?” The Church lawyer is the one who must add caution to the mix of pastoral concerns. There is no better example than dealing with clergy misconduct. In 1984, when I started in the USCC legal office, there was a phone message waiting for me on my desk from a colleague, Tom Rayer. It said something about a certain problem of a certain clergy in Lafayette, Louisiana, but with the thought that this somehow might take on national dimensions. Of course, we all know what the last thirteen years have been for our Church as the criminal misdeeds of a very small number of individual clerics laid waste the good will of our Church with scandal. As lawyers in the Association, we have done much to restore trust, but we have much to do. In my view, we restore trust and renew faith and help bring our Church together by allowing our bishops to follow their best pastoral instincts.⁸ We cannot do that when we are preoccupied with the bottom line and advising “no comment.” We Association members are responsible for giving our bishops the freedom to follow their best pastoral instincts without fear.

Some days it seems as if we cannot get ahead. In 1988, I issued the first of the USCC political activity memoranda under my signature, as my predecessors did before me.⁹ The law is clear, and I intend to continue to

⁷ Mark E. Chopko, Opening Remarks at Proceedings of the Twenty-Third National Meeting of Diocesan Attorneys 3 (April 1987) (transcript available in Office of General Counsel, United States Catholic Conference, Washington, D.C.) (quoting John F. Kennedy, Inaugural Address (Jan. 20, 1961)).

⁸ Mark Chopko, *Restoring Trust and Faith*, 14 HUMAN RIGHTS Q. 22 (Fall 1992) (ABA Section on Individual Rights and Responsibilities).

⁹ See, e.g., Mark E. Chopko, *Political Campaign Activities and Tax Exempt Groups*, 18 ORIGINS 181 (Sept. 1, 1988); Mark E. Chopko, *Guidelines for Political Activities by Tax Exempt Catholic Organizations*, 25 ORIGINS 643 (Mar. 14, 1996).

advise the Bishops with similar clarity and direction. I have challenged my critics before to say, plainly, whether they think I am simply making the law up! No one has taken me up on that challenge. Our job as lawyers is never to forget that we must say what the law is, and that our clients must assume the prudential responsibility to act according to their best judgment. We lawyers do not serve the bishops by pretending the law is what it is not, or even what someone else wants it to be. Once we sacrifice our honesty and independence, we might as well be replaced, because we have lost our value to the Church and to the profession. I know we are not like that!

In 1992 and 1996, we were challenged significantly on abortion and euthanasia. Both of these debates, in 1992 over *Planned Parenthood v. Casey*¹⁰ and the American Bar Association endorsement of abortion,¹¹ and in 1996 on euthanasia,¹² say much about our Association. We live in desperate times. The lives of young and old hang in the balance. Is it any wonder that all the life in between sometimes seems to be treated so cheaply, instead of as the precious gift that it is? Where violence and poverty and injustice stalk the land, we have a solemn obligation to work for peace, equality, and justice. There was no time when I was prouder to be a member of this organization than to look around the general assemblies of the American Bar Association and see, standing up to be counted, the members of this Association. Still, we have much to do for the beginnings and the ends of life and for all the living in between.

The path ahead of us remains uncertain. We have many miles to journey together still. I remember one particularly bleak Holy Week a few years ago. The crises seemed more severe and demanding than usual. I was staring out of Phil Harris's window at the rain-soaked parking lot, when he said, "Let's keep everything in perspective. Sunday is Easter.

¹⁰ 505 U.S. 833 (1992).

¹¹ See Steve Campbell, *Special Counsel No. 7 "Real Straight Shooter" Ralph Lancaster Leaves Maine Behind to Look into Charges Against Labor Secretary Alexis Herman*, PORTLAND PRESS HERALD, July 5, 1998, at 1B ("Lancaster resigned from the American Bar Association to protest its stand endorsing abortion."); see also Ralph A. Rossum, *The ABA: Friend of Bill... not Starr*, WASH. TIMES, Mar. 1, 1998, at B1 ("[ABA] resolved that women have a fundamental right to an abortion.").

¹² See Diane M. Gianelli, *Court's Rejection of Assisted Suicide Leaves Door Ajar: Ruling Stresses Need For Better Pain Control in End-of-Life Care*, AM. MED. NEWS, July 14, 1997, at 1 ("The court appeared to be holding a syringe, if you will, to the head of the medical profession," said Richard Doerflinger of the United States Catholic Conference, which opposes physician assisted suicide."); see also Joan Biskupic, *Assisted Suicide Not a Constitutional Right, Justices Rule*, COM. APPEAL (Mem. Tenn.), June 27, 1997, at A1 ("The clarity of these decisions should serve as a benchmark for other courts," said Mark Chopko, General Counsel for United States Catholic Conference, one of the organizations that has led the fight against assisted suicide.").

And, for us, there wouldn't be much point in doing what we do if there wasn't an Easter." The hope of my salvation lies in my faith and in my works. That is where I found myself ten years ago, and that is where I find myself today. Ten years ago I placed myself in God's hands to decide whether I should be called to serve as General Counsel. That was a difficult thing for me to do. In reading Cardinal Joseph Bernardin's book, *The Gift of Peace*,¹³ I learned that he struggled with this process a great deal. I have only been able to do so occasionally and imperfectly. Each day I pray for wisdom, for courage, and for honesty. In doing this, I join my prayers and works with yours.

In conclusion, the works of this Association stand in sharp contrast to the views of the profession advanced in our secular society. To do what we do everyday demands that we be people of faith, knowledge, courage, and integrity. We must continue to use our very best skills to analyze the law, and to speak the truth courageously. We have done much in pursuit of the common good. Let us continue our work asking only for God's blessings along the way.

¹³ JOSEPH CARDINAL BERNARDIN, *THE GIFT OF PEACE* (1997).

