

December 29, 2003

LAWYERS OF THE YEAR 2003

— Paul D. Boynton

The ink was barely dry on the original signatures to the \$85 million agreement that settled hundreds of claims in the Catholic Church sex abuse cases, when lead mediator Paul A. Finn — agreement safely tucked away in his briefcase — made his way through a battery of reporters and cameramen.

Waiting outside One International Place in Boston where the negotiations had finally wrapped up at Ropes & Gray, the media was getting ready for the press conference announcing the much-anticipated settlement following months of difficult, behind-the-scenes negotiations.

Yet no one in the crowd had any idea who Finn was or that he had the original agreement in his hands — the very information they so desperately wanted to see.

"That was probably the coolest thing I've ever done in my life," he recalls. "I kept on walking to my car, got in, drove to Brockton and went back to work. Just another day at the office."

He was asked to attend the Sept. 9 press conference, but he declined. "This was a day for the victims, not me," he says simply.

This seems to typify Finn's approach to his work: unpretentious and uninterested in grand standing. He takes a no-nonsense, blunt approach to mediation, opting to cut to the quick rather than dance around the edges of a problem.

Finn also exudes that certain force of personality and intellect that was necessary to rein herd on the high-powered set of attorneys representing the various parties in the Boston Archdiocese sex-abuse case. After renowned plaintiffs' attorney Paul R. Sugarman of Boston was chosen mediator in the case, he asked Finn for help. Finn and Sugarman worked together for most of the negotiations, with Finn handling the final rounds of talks leading to the settlement.

Finn brought immediate credibility to the table, having mediated cases full time since 1992, including a slew of high-profile church sex-abuse cases, such as the John Geoghan case in 2001.

But in the end, it's usually about money, and that's why the parties took him seriously, he claims. Finn says he was a "purveyor of reasonable settlement offers. I got their attention from being credible, persistent and prepared. Plus, I was offering them money."

The \$85 million settlement agreement covers 552 claimants, with a high of \$300,000 and a low of \$80,000, depending on the length and severity of abuse. Each claimant was permitted to present testimony at a hearing, and then an arbitrator decided the amount of recovery, based on the type and duration of sexual abuse and injuries suffered. The arbitration hearings wrapped up on Dec. 21.

While he downplays his role in securing the settlement, Finn acknowledges that the negotiations had a profound impact on him. "It has changed my life," Finn says. "It has changed my perception of people."

And he is proud of the final result: "I think we have put together something that in the long run will be looked back on as an important moment in the legal community in Massachusetts."

Q. How did you view getting involved in such a high-profile case?

A. I had been involved in these types of claims previously. I wasn't intimidated, but they are difficult cases to handle emotionally. They're very difficult, listening to the people's stories. It's awful the effect it's had on them.

Q. What did you have to do to get up to speed?

A. First of all I needed to know who the players were — the clients and the lawyers. Some I knew better than others. I had to know what the situation was with the insurance companies because coverage was in question. I had to re-familiarize myself with the main issues — statute of limitations, charitable immunity and notice. I needed to know what the caselaw is. Some of the claimants didn't bring a claim directly against the church. It's pretty clear that the Supreme Judicial Court has spoken on charitable immunity. It's sacrosanct. If you want to change it, go to the Legislature. That was going to be a big issue for the plaintiffs to overcome, in my opinion. On statute of limitations, the SJC has said it's not a given when you're dealing with repressed memories.

Q. Once you got up to speed, how did you go about deciding the framework for conducting the settlement negotiations?

A. That was Paul Sugarman's idea. He and I would talk about it. Paul's idea was to meet with all main players on a regular basis to discuss where we were. We would meet separately with the defense attorneys, the insurance company representatives and their lawyers, and with a representative group of the plaintiffs. At each meeting, he would pretty much run it and I would answer questions that people had. We would bring whatever information we thought was important to each group. Then, after Archbishop [Sean] O'Malley was installed, we prevailed upon the plaintiffs' attorneys that they should have a steering committee. In August, they elected an eight-member steering committee.

Q. The procedure of arbitrating each claim to come up with an amount for each claimant under the settlement, was that your idea?

A. I'm not going to claim total authorship. It was a combination of a number of factors. Paul and I would look at each different paradigm. In the end, we decided the best procedure was the one we came up with. It was hybrid of my thinking, his thinking and input from the plaintiffs' lawyers, and [Thomas H.] Hannigan [Jr., the lawyer chosen by Archbishop O'Malley to represent the church]. We came to that conclusion after throwing out the different ideas that were discussed.

Q. Was it difficult to persuade the parties that this was the best approach?

A. Yes, it was very, very hard. A lot of late-night meetings. A lot of discussions on the phone.

Q. Why did this approach win the day over the other alternatives being discussed?

A. I really can't get into that.

Q. How would you describe your style as a mediator and how did that play out in this case?

A. I don't know why people listen to me. [Laughs.] I go home at night and say "I've died and gone to heaven, doing mediation work full time." For whatever reason, and whatever style I have, it works. A lot of it has to do with that I know the subject matter. Some people believe that mediators don't have to have subject matter expertise. I disagree. I can't sit down in a case involving an area of law I know nothing about and expect to be taken seriously. The lawyers will look at me and say, "Who's this guy? He doesn't know anything."

I have great compassion and respect for parties who come to talk to me. I have great respect for lawyers. They provide a great service to the public. Our profession's poor reputation with the public is not justified. Maybe that's it. I show great respect to the parties and their attorneys. And I listen. As an advocate, you hear, but have a hard time listening. In this business, I've learned to listen. Someone once told me that you never learn anything new while you're talking. I took that to heart.

Q. How would you describe the negotiations overall?

A. Intense. Very intense. And not necessarily when the parties were getting together at the table. There were times when we needed to take a time out, to use the new expression. It was intense all the time. There were moments when I thought we couldn't hold it together. But everybody was dedicated to the process. Cooler heads would prevail and we would come back to the table.

Q. How did you go about attempting to defuse the emotions and keep everyone focused on the goal?

A. I would suggest we take some time off from each other, and sit back and reflect on what happened. I would suggest we come back refreshed the next day. Or take a couple of days off and then come back.

Q. What was the key event or moment that caused the parties to finally reach a settlement?

A. When [Archbishop] Sean O'Malley showed up here, in my office. He came here the Sunday after Labor Day. He sat down with the plaintiffs' lawyers at around 6 p.m. and stayed here until around midnight. That was the key moment. The plaintiffs' lawyers knew at that point that the defense was serious. All along, that was the message I was trying to convey. When he showed up here, they knew he meant business. He wanted to get this done. Two days later, the case settled. The paradigm was put in place to settle the claims.

Q. Was that the first time he met directly with the plaintiffs' lawyers?

A. Yes. There had been a meeting set up a couple of days before. But there was a concern that because it had been leaked to the press, there would be a media circus. So, I called it off. We kept it low-key so no media would be around.

Q. Did he actually engage in the negotiations?

A. Yes. In any mediation, small or large, the key is to have the decision makers at the table in person or available by phone. The mediator can speak directly with them about what's going on. This was no different. He knew he needed to be there. He wanted to be there.

Q. Is it fair to say that Archbishop O'Malley brought a fresh perspective to the negotiations?

A. Yes. That's a fair statement. When I was scheduled to meet with him for the first time, I was wondering how I should address him. I was told that he doesn't care what you call him, as long as he knows you're talking to him. [Laughs.] I thought that was pretty good. No pretense. None. He's a very humble guy.

Q. Did the lawyers bring to the settlement talks the animosity that had played out publicly for years?

A. No. The public perception of what was out there and reality were two different things. There was great respect for each side. They were lawyers being lawyers, advocating for their clients. But when it came to the discussions themselves during the mediation, there was a lot of give and take. There wasn't any animosity between the sides that I saw.

Q. What skills have you developed in your 25-year legal career that came to bear in getting the parties to settle this difficult case?

A. I understand the professional mindset of a plaintiffs' attorney. It's a very, very difficult job for a private attorney to represent someone who's been severely injured. I show respect to them. I show deference. I brought a sensitivity to the table for what the plaintiffs' lawyers were trying to do, and what the defense attorneys were trying to do in representing their clients. I have an appreciation of what lawyers go through in representing clients.

Q. How is it that you were able to command the attorneys' respect to keep them focused on the goal, when the mediation could have unraveled?

A. I don't know if I commanded their respect, but I got their attention. I did that by being credible, persistent and prepared. Plus, I was offering them money. Paul Sugarman and I were the purveyors of reasonable offers. I do not want to be caught saying something when it's not true. When I'm being told something that's important to the negotiations, I want to make sure that what I'm being told is the truth before I convey that to the other side. And parties know that. And when I start something, I want to finish it. I started this case, and even though I got frustrated on a personal level sometimes, I wanted to finish it.

Q. Did you consider imposing any sort of "gag order" on the lawyers?

A. In handling these cases, I had gone through something being played out in the press previously, and I made it very clear to the steering committee of the plaintiffs' attorneys that I didn't want to go through that again. Paul Sugarman and I made it very clear to them in July and August when things started to heat up when Archbishop O'Malley got involved that they had to be professional and they couldn't play it out in the media. They gave me their assurances that there wouldn't be any press leaks. I don't believe any one actively involved in the negotiations on either side leaked anything to the press. From the beginning of August to the day of settlement [Sept. 9], the stories in the press about the amount of money being offered or increased were for the most part inaccurate. Clearly they weren't getting the straight skinny from the people actively involved in the negotiations.

Q. What was your role in the arbitrations that concluded on Dec. 21?

A. Chief arbitrator. I put together a terrific group of arbitrators — men and women whom I have great respect for. I've handled some of the claims, but the vast majority of claims were handled by the others.

FRANCIS J. LYNCH, South Easton trial attorney, on Paul Finn ...

Francis "Jay" Lynch, a veteran trial lawyer, first locked horns with Paul A. Finn about 25 years ago during a trial in Brockton District Court. Over the years, Lynch has used Finn as a mediator many times.

What sets Finn apart as a mediator, Lynch says, is his ability to "equalize" the parties.

"He is able to reduce everyone down to just being people," Lynch says. "He never, ever takes himself too seriously, and he will not allow a lawyer to take himself too seriously. He does not allow for a pompous legal ego. That's Paul Finn's whole shtick."

Lynch adds that Finn "really wants to do justice. He won't let a seasoned, talented attorney take advantage of a marginally skilled or inexperienced attorney. Of course, most of us spend our careers trying to do just that in the courtroom. No one gets run over or pushed around in his mediations."

Finn spent the first 15 years or so of his career building a practice in Brockton as a general practitioner.

"That also gives him an edge," Lynch notes. "He understands everything about the law. He's not forgotten a thing. He could try a criminal or civil case, get you a divorce, prepare your will. There are not too many true general practitioners left."

And Finn brings humor to most of what he does.

"He's a funny guy," Lynch says. "His sense of humor violates the boundaries that most people would recognize. But he has an uncanny ability to judge what works with people. He knows intuitively what will interest and amuse people."

While Finn is painfully blunt, that's often useful, according to Lynch, because it reduces the time and effort in negotiations.

"What can take most mediators hours to say by beating around the bush, Paul can say it in two minutes. That's an art," Lynch observes. "Paul realizes it's only about money. He doesn't spend anytime being patronizing to severely injured plaintiffs. By being blunt, Paul is compassionate. Plaintiffs are usually damn sick and tired about being patronized about their injuries."