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# The Washington Post

washingtonpost.com

A Section

## **Roman Catholic Church Shifts Legal Strategy; Aggressive Litigation Replaces Quiet Settlements** **[CORRECTED 5 JUL 2002]**

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2,771 words

13 May 2002

The Washington Post

FINAL

A01

English

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**CORRECTION:** In a May 13 article about the legal strategy of the Roman Catholic Church in sexual abuse cases, the organizational structure of the church in Hawaii was described incorrectly. Catholics in the state are members of the Diocese of Honolulu. (Published 5/15/02)

Eighteen months ago, she sued the Roman Catholic Church of Hawaii after a parish sacristan who trained her son as an altar boy pleaded guilty to molesting him. Assuming the church would settle before the case went to trial, the 41-year-old single mother was shocked last month when the diocese charged in a countersuit that it was she who was negligent for allowing her boys, then 7 and 10, to sleep over at the sacristan's apartment.

The church's suit also noted that her older boy later sexually assaulted his brother, which the mother confirmed.

"When I heard what they were doing, I couldn't breathe," recalled the woman, who asked that her name not be used and now lives in St. Louis. "They're accusing me of creating all my sons' problems, when the problems started after the abuse. How could they do this?"

Besieged by hundreds of lawsuits accusing clergy and employees of abusing the faithful, the Catholic Church has responded with a muscular display of legal power. Where once the church tried to quietly settle cases, according to church and plaintiff lawyers, it is now pursuing an aggressive litigation strategy, hiring high-powered law firms and private detectives to examine the personal lives of the church's accusers, fighting to keep documents secret and engaging in new tactics to minimize settlements.

In Illinois, church lawyers grilled a victim about the details of his alleged abuse by a priest and asked whether he enjoyed it. In Pennsylvania, a young man who sued the church as a "John Doe" was forced to refile when he turned 18 so he could be identified. In Ohio, a mother whose son was molested by a Catholic school principal angrily dropped her suit after her teenage son left a deposition in tears.

And the Boston Archdiocese this month abruptly backed out of a multimillion-dollar settlement agreement with 86 alleged victims of former priest John Geoghan, who was recently convicted of child molestation. Archdiocese officials, in a marked shift in legal strategy, decided to take their chances in court after financial advisers warned that the church faced financial disaster as more victims come forward. The archdiocese, with the support of Cardinal Bernard Law, had negotiated for nearly a year with distraught victims over the terms of the settlement.

"They [church officials] are signaling that they are willing to litigate very aggressively, and if they win . . . it could deter others from coming forward," said Erwin Chemerinsky, a University of Southern California law professor.

"If they lose," he added, "it's a public relations disaster."

That is a risk the church already runs if its tough tactics end up compounding the damage to its image and moral standing caused by the sex crimes. "The pope talks of charity towards victims," said Mark Davis, the lawyer for the mother in the Hawaii case. "Tell that to the mom who's blamed because she entrusted her children to a church official."

Church lawyers make no apologies for their tactics. They argue that their ethical obligation is to their client, not to some abstract moral standard.

"I'm not going to lay down and die just because I represent the church," said Joseph Sweeney of Halloran & Sage, a law firm in Hartford that defends the Catholic Church in Connecticut. "I attempt to be decent, but I'm not giving away the store."

The 194 Catholic dioceses in the United States, Sweeney noted, do not possess limitless resources -- some estimates put their net worth at about \$15 billion. The church and its insurers have already paid out an estimated \$1 billion in settlements -- obtained from the sale of assets and from special church "abuse or molestation" liability insurance coverage. And officials expect insurance premiums and settlement costs to mushroom.

But money is not the only problem, church attorneys say. If good priests are to be defended, they say, lawyers must explore the psyche and pasts of troubled plaintiffs.

Still, the church faces a moral conundrum. The church is not a Fortune 500 corporation that can rationalize bloodletting in service of the bottom line. It's the largest Christian denomination in the world, with 63 million members in the United States. Forgiveness is woven into the church's fabric. But so is the bond between priest and parishioner.

"This legal crisis is about priests sexually abusing minors," said A.W. Richard Sipe, a psychotherapist and former priest who has treated abusive priests and their victims. "The church cannot shrug off down-and-dirty defense tactics as just the usual legal maneuvering against a tough opponent.

"As I recall, the church is supposed to be a moral force."

#### For the Good of the Church

Once, accusations of clergy sex abuse were easily settled in diocesan offices rather than courtrooms. A bishop met an aggrieved family; there were words of comfort, and perhaps the assurance that the priest would get help. A small monetary settlement might be tendered, rarely more than a few thousand dollars. Eventually, the church began offering victims counseling.

In return, court records and interviews with victims indicate, clerics routinely urged families to remain silent for the good of the church.

"Twenty-five years ago, it was inconceivable that anyone would march into a bishop's residence and challenge him to dismiss a pedophile priest," said Michael Dowd, a New York attorney who represents more than 12 people who say they were abused by priests. "This is a church that never had to buy a shredder."

But more and more victims began to speak up -- and sue.

The church's first line of defense has long been the freedom-of-religion clause of the First Amendment and the argument that "secular intrusion" encroaches on protected religious freedom. "Harassing lawsuits will cause a chilling effect on freedom of religious governance," church lawyers wrote in a recent case. Decisions to ordain, promote and discipline priests, the church has argued, are a private matter.

But the strategy has had limited success. Federal and state courts -- with the exception of the Wisconsin Supreme Court -- have generally found that freedom of religion is not a legal shield against wrongdoing by clergy. Just last week, a Boston court rejected the arguments of Wilson D. Rogers Jr., the attorney for Law, who said that forcing the cardinal to give a deposition was an inappropriate "inquiry into the internal working of the church."

Church officials have contended that -- per canon law -- internal records kept in the secret archives of each diocese must remain private. Found in every diocese, those locked archives hold files on secret marriages, psychiatric evaluations and the investigation and dismissal of priests, including those dismissed for sexual abuse. "These files," canon law states, "are to be protected most securely."

In a controversial 1990 speech before the Midwest Canon Law Society, Cleveland Auxiliary Bishop A. James Quinn advised church leaders to purge these archives, destroying all "unsigned letters alleging

misconduct." The most explosive of the reports, Quinn advised, should be handed to the papal nunciature in the United States, which has diplomatic immunity. "Standard personnel files," Quinn said, "should contain no documentation relating to possible criminal behavior."

Church lawyers argue privately that extending diplomatic cover to sex abuse files would do grave damage to the church's reputation. And although at least one bishop has testified that he destroyed some secret archives, the lawyers find that tactic equally troublesome.

After the Rev. Gilbert Gauthé became the first Catholic priest to be indicted for child sex abuse in 1984 and was convicted and sentenced to 20 years in prison, his attorney, Ray Mouton, wrote a report for church officials outlining a plan to deal with pedophile priests that urged full disclosure and settling cases wherever possible. If the church failed to adopt a more accommodating strategy, Mouton and two co-authors -- the Rev. Thomas Doyle, a canon lawyer, and the Rev. Michael Peterson, a psychiatrist -- predicted, it could face settlements totaling more than \$1 billion. The recommendations were ignored.

To this day, church lawyers insist that financial settlements arising from clergy sex abuse remain secret. And they demand that plaintiffs agree to seal court records if they want to see a check.

But maintaining secrecy has become more difficult in the face of demands from plaintiffs' lawyers and the media that documents be unsealed. A Connecticut judge last week accused church lawyers of "inappropriately" blocking release of court documents detailing hundreds of allegations of sexual abuse by six priests in that state. "The court should not be party to a cover up," the judge wrote. "The right to privacy does not protect criminal behavior."

#### Accusers Investigated

Church attorneys argue that their most controversial tactic -- investigating those who allege sexual abuse -- is simply good, routine lawyering. These lawyers, few of whom agreed to speak on the record, said some plaintiffs are delusional, while others blame every problem in their life on past abuse by priests.

"You see someone 40 years old come in with a lifetime of troubles -- they've been abused by their father . . . they've been divorced three or four times, maybe convicted. . . . And by the time you get to trial, 100 percent of anything bad that has happened to this person is blamed on the church," said Patrick Schiltz, interim dean of the University of St. Thomas Law School in Minneapolis, who has been involved in about 500 abuse cases on behalf of various churches. "You have to try to find out what really happened, and that's a painful process."

In Joliet, Ill., according to the Daily Southtown newspaper, which obtained a deposition transcript, a diocesan attorney confronted a 22-year-old former altar boy who accused a local priest of sexual abuse. The attorney portrayed the man as being gay, a liar and an alcoholic.

Do you, the diocesan lawyer asked at one point, blame yourself for the abuse?

In Boston, archdiocese lawyers countersued a 6-year-old boy and his parents, accusing them of negligence for trusting the Catholic priest, the Rev. Paul R. Shanley, who allegedly molested him. It was a strategy similar to the one followed by lawyers for the Hawaii Archdiocese.

In that case, the mother being sued said her church's sacristan took her older boy under his wing after he had trained him to be an altar boy. Within a year, the church employee was suggesting the boy spend the night with him before early morning Masses. The mother agreed, believing the man was a much-needed father figure and a role model.

It wasn't until 1998, three years after the family moved to St. Louis and both sons were arrested for shoplifting, that the then-teenagers revealed to counselors that they were both allegedly abused. The sacristan was charged in 2000, and in October of that year, the mother sued the Hawaii diocese, the bishop, the parish and the sacristan.

Attorneys for the archdiocese did not return calls for comment.

Church lawyers also aggressively fight for strict adherence to state statutes that limit the time within which a person can sue for past abuse. This is particularly galling to those victimized as children, who often have spent years sorting out shame and confusion.

In Frank Martinelli's case, it was not until 1991 that he dredged up memories of abuse at the hands of the Rev. Laurence Brett, a parish priest at St. Cecilia's in Stamford, Conn., in the 1960s. Martinelli sued the Bridgeport diocese in 1993. His attorney argued that the church covered up Brett's behavior, and so the statute of limitations should not apply. A judge upheld the argument.

Then Bishop Edward Egan of Bridgeport -- now cardinal of the Archdiocese of New York -- testified that the church was not responsible for Brett's actions. And he presented a new argument: Priests, Egan said, are "self-employed" contractors working for autonomous parishes.

"Egan tried to present the Catholic Church as a McDonald's franchise," said Jennifer Laviano, Martinelli's lawyer. "It didn't pass the giggle test."

After seven years, Martinelli, who financed his case with his credit cards, eventually received a settlement from the Bridgeport diocese, which he agreed to keep secret.

Church attorneys in Joliet tried a variation on Egan's strategy a few years ago, arguing that priests are not employees so much as men called by God. More recently, diocesan attorneys in many cities have advised Catholic schools and charities to divide assets among shell corporations. That strategy has yet to get a full court test, and plaintiff attorneys are skeptical. "Schools and churches are under the ultimate authority of the dioceses," said **Ronald P. Weil**, a Florida lawyer who has handled dozens of abuse cases against various churches denominations.

In Boston, church officials have essentially issued an ultimatum to victims to accept a greatly reduced offer -- or go to trial and get less. The archdiocese's financial council said victims could share in a total pool of \$50 million. Should the victims balk and force the cases to trial, the archdiocese is clearly hoping to take advantage of a Massachusetts law that caps the civil liability of charities at \$20,000.

"Plaintiffs' lawyers put the church in an impossible position by making unreasonable demands," said Schiltz, the law professor who has represented churches. "I don't know what they expect the church to do short of just handing them a check book."

'Deny, Deny, Deny'

But the tough legal strategy employed by church lawyers has also provoked lawyers on the other side.

Jason Tremont recalls the day his Ridgefield, Conn., firm filed a lawsuit against a priest accused of sexually abusing children. He returned to the office and there was a call waiting from a diocesan lawyer.

"The lawyer said this was all a mistake, this priest is a good man, no one has ever spoken a bad word against him."

Tremont laughed.

"A couple of weeks later," he said, "we found out that at that very moment diocesan lawyers were talking to another attorney about two more victims of the same priest. The church plays a shell game with us, in which they deny, deny, deny."

"The level of arrogance is so entrenched," said plaintiff attorney Stephen Rubino, who has handled dozens of cases.

Jeffrey H. Newman, who represents 14 young alleged victims of a youth ministry employee of St. Agnes Church in Middleton, Mass., said lawyers for the Boston Archdiocese engage in a deliberate delaying game. Archdiocese lawyers, he said, assured him months ago that they wanted to settle so that the victims -- some as young as 12 -- could get on with their lives. "They told me we were at the top of the list, but it's clear that was just a delay tactic so I would cut off discovery," Newman said. "Shame on me for going along with it. Now I am conducting my own investigation."

Such talk among plaintiffs attorneys has started a kind of arms race and a search for bigger and better legal weapons. The most aggressive plaintiff lawyers want to adapt the weapons of criminal prosecution to the area of civil law.

A well-known Minnesota plaintiffs attorney, Jeffrey Anderson, recently filed three civil racketeering lawsuits, arguing that the Catholic Church acts like an ecclesiastical crime family. The bishops, in his telling, cover up for pedophile priests by moving them from state to state to avoid detection. He named a star defendant in one case: the Holy See.

"They've used papal immunity to conceal documents, and that evidence leads us to the Vatican," Anderson said. "If they're going to act like mobsters, we'll go after them like the mafia."

Even fellow plaintiffs attorneys view the prospect of a papal deposition as somewhere between remote and

impossible. Anderson answers that suing the church was once seen as a fool's errand, but he has represented 450 alleged victims of clergy sex abuse and extracted a string of multimillion-dollar settlements.

He suspects he can make his pedophile-priest-as-mobster analogy stick.

"It was such a powerful, intractable institution," Anderson said. "But I think the dam has burst."