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Religion and the Law

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The legal tactics that Roman Catholic dioceses around the country have used in sexual abuse cases against priests have ranged from withering hardball litigation to mediation to consider payments to victims even after the statute of limitations has expired. "There is not only an enormous variation from diocese to diocese," said Patrick J. Schiltz, the dean of the University of Saint Thomas School of Law in St. Paul, "but also among the attorneys representing a given diocese."

This is because insurance companies, not church officials, choose the lawyers in most of the cases, and the officials are often reluctant to question the lawyers' tactical judgments, legal experts say. Mark E. Chopko, the general counsel of the United States Conference of Catholic Bishops, said that only about 30 of the nation's 194 Roman Catholic dioceses have legal departments.

In general, said Peter H. Schuck, a professor at Yale Law School, the lawyers handling the cases make the tactical decisions regarding them.

The dioceses have on the whole acted little differently from commercial institutions confronted by explosive litigation risks. They have tried aggressively to limit exposure to claims by setting up parishes as individual corporations, invoked the statute of limitations, subjected plaintiffs to days of grueling depositions and settled claims in secret.

Some experts say these tactics are perfectly proper and are, in fact, required by the legal system itself.

"The most important thing is for people to play by the rules," said Ronald J. Allen, a law professor at Northwestern University, adding that the dioceses' legal tactics have been lawful.

Professor Schuck went further. "In our adversary system, it's very important that both sides not pull their punches," he said. "The adversary system suggests a structure of doing what your adversary does and doing it better."

Yet the ultimate question may be whether lawyers for the church have any obligation to play nice in the face of a widespread litigation threat. The church is, after all, not just another company accused of making a bad product. "The church's moral relationship is much more thoroughgoing," said Professor Schuck. But, he said, it also has an obligation to protect its assets for the good of its other constituencies by using the available litigation tools.

In the letter Cardinal Bernard F. Law issued on Friday saying he would stay on as archbishop of Boston in the face of calls for his resignation, the cardinal acknowledged shortcomings in the archdiocese's legal strategy and record keeping. He said the archdiocese had been mistaken in demanding "secrecy as a part of legal settlements" because secrecy "places others at risk." He also pledged to reform the archdiocese's record keeping so that "those who deal with clergy personnel in the future will have the benefit of a full, accurate and easily accessible institutional memory."

Lawyers in and outside the church said that dioceses around the country have reason to be contrite about other things as well.

Insurance company counsels "did things that really hurt the churches," said Mr. Schiltz, who represented a dozen denominations in more than 500 sexual abuse claims against clergymen while in private practice. "They do it purely and simply to harass, injure and embarrass," he said. "A church should not do that."

Mr. Chopko agreed that insurance company lawyers were to blame for some of the Catholic Church's litigation troubles. "The typical insurance defense tactic is to defend everything and defend it to the hilt," he said. "Sometimes the behavior of the lawyers actually makes the situation worse."

Mr. Schiltz cited efforts by insurance lawyers to have the names of abuse victims who had sued using pseudonyms entered in the public court file. Mr. Schiltz said the motions were made only to humiliate the plaintiffs and thus gain an advantage in settlement negotiations.

Another widely cited example of abusive litigation tactics involved the Archdiocese of Philadelphia. It countersued the parents of a man who said that he had been sexually abused by a priest. The archdiocese's theory was that the parents were also liable for endangering their son by allowing him to spend time with the priest in the face of warning signs. The archdiocese has blamed its insurance company for the decision to countersue.

Mr. Schiltz said the responsibility for the tough tactics rested with the outside lawyers. Professor Allen, on the other hand, said that dioceses ought not be free to wash their hands of their lawyers' conduct.

Lawyers for abuse victims say the church itself has sometimes gone too far. They point, for instance, to the transcript of a 1990 speech on pedophilia by Bishop A. James Quinn, the auxiliary bishop of the Cleveland Diocese, to an audience of church lawyers. He urged the lawyers to examine the personnel files of priests charged with misconduct carefully.

"Unsigned letters alleging misconduct should be expunged," Bishop Quinn said. "Standard personnel files should contain no documentation relating to possible criminal behavior. Serious moral questions, signed allegations, those should be part of the secret file anyhow."

Bishop Quinn, who has degrees in both civil law and canon law -- the Catholic Church's internal rules -- discussed with the lawyers the assistance the Vatican's representative in the United States, the Apostolic Delegate, might play in litigation.

"Now what files have been subpoenaed," he said, "they cannot be tampered with, destroyed, removed. That constitutes obstruction of justice and contempt of court. Prior, however, thought and study ought to be given, if you think it's going to be necessary, if there is something you really don't want people to see, you might send it off to the Apostolic Delegate, because they have immunity to protect something that is really dangerous, or that you consider dangerous, you might send it there."

Bishop Quinn's lawyer, Hugh M. Stanley Jr., said the Cleveland diocese "never sent child abuse information to the Apostolic Delegate." More important, Mr. Stanley said, the advice was innocuous. "This is a lawyer talking about document retention programs."

That phrase is a euphemism for the systematic destruction of older documents. Most big companies have such programs. "As any good lawyer would recommend when there is no claim pending," Mr. Stanley said, "you maintain your records in accordance to your document retention program."

The church's critics read the speech differently. "I believe that in saying that he is advising those who are listening to obstruct justice," said Jay Milano, an Ohio lawyer who is suing the the Cleveland diocese in a sex abuse case.

If no formal claim or inquiry is pending, institutions are free to dispose of or transfer their documents as they wish.

Still, Mr. Stanley conceded that lawyers would make effective use of the speech in lawsuits against the church. "This is a blind pig finding an occasional acorn," he said.

Corporate lawyers have also played a role in dioceses' efforts to shield themselves from liability. Jill S. Manny, a professor at New York University School of Law, spoke to the National Meeting of Diocesan Attorneys in 1998 and suggested erecting a barrier to lawsuits against dioceses by separately incorporating their parishes as subsidiaries. Suing a parent company, the diocese, is made considerably more difficult if the subsidiary itself is a corporation.

Ronald P. Weil, a Florida lawyer who has handled scores of cases against churches of several denominations, said the Roman Catholic Church seemed to be following the advice to incorporate its parishes. "Some of their recent hands-off policies with regard to hiring and firing policies is convenient at least and mindful of potential liabilities."

The plaintiffs' lawyers in the abuse cases against clergymen have not been shy about using aggressive legal tactics, either. In two recent lawsuits, Jeffrey R. Anderson, a lawyer who has handled hundreds of sexual abuse cases against the Catholic Church, has sued the Vatican.

Echoing Professor Manny, but drawing the opposite conclusion, Mr. Anderson explained why he thought the Vatican was an appropriate target. "Parishes are corporate subdivisions of the dioceses, which become the subdivision corporations of the Vatican," he said.

But the Vatican is also a nation.

Peter J. Spiro, who teaches international law at Hofstra Law School, on Long Island, said a case against the Vatican would be a legal long shot because nations have sovereign immunity, a doctrine to which there are very limited exceptions. That said, the "Holy See's status as a sovereign is clearly an anomalous one," Mr. Spiro said. "No other religion enjoys that status." In addition, he said, "the Vatican is unlike other sovereigns in that it does direct this enormous domestic institution."

But the Vatican meets the standard definition of a state under international law: It has a defined territory and population, a government and relations with other states, so it is unlikely to be stripped of immunity.