

## **Secret archives at heart of dispute; group says files hold key to abuse**

By ROBIN ERB  
BLADE STAFF WRITER  
Toledo Blade (OH)  
March 6, 2005

On a warm September afternoon, three Toledo detectives and a Lucas County prosecutor marched through the front door of the Toledo Catholic diocese and - over the objections of a startled receptionist - loaded into an elevator and punched the button to the fourth floor.

They were carrying a four-page search-and-seizure order signed by a judge, and their abrupt appearance at the downtown office of Bishop Leonard Blair marked a hairpin turn in what had been a cordial relationship between diocesan officials and criminal authorities investigating the 1980 killing of an elderly nun.

"Their communication prior to the search warrants was pretty open and free-flowing between us," the Rev. Michael Billian, episcopal vicar and the diocese's top administrator, recalled of the unprecedented search.

Their target that day: the church's most-secret files - documents that investigators had hoped might contain clues to a 1980 slaying of Sister Margaret Ann Pahl and the man charged in her death: the Rev. Gerald Robinson.

Emerging from his office, Bishop Blair told investigators that such papers simply didn't exist.

But police, who removed 148 documents bearing the murder suspect's name, weren't convinced. Two days later, they returned with a second court order to search the office of the second most-powerful man in the 19-county diocese: Father Billian.

They seized nothing during the second search and haven't returned since.

But the fight may be far from over.

While investigators ramp up their probe in anticipation of the October trial of Father Robinson, accused of stabbing and strangling the nun in the Mercy Hospital chapel, a local support group for victims of clerical sexual abuse has pressed Lucas County Prosecutor Julia Bates to return with another search warrant.

They want investigators to seize the file that police reviewed during the second search, but left behind: accusations of abuse by priests. But so far, Mrs. Bates refuses to say whether her office will return to the diocese.

The local chapter of the Survivors Network of those Abused by Priests say the documents may be key to establishing whether the diocese engaged in a longstanding practice of protecting priests who raped and molested children under their watch, as alleged in a barrage of lawsuits against the church since 2002.

While SNAP is asking for the confidential files, diocesan leaders say such records don't exist. The emerging debate may be new in Toledo, but it has been playing out for years across the country in a controversy that has shaken the American Catholic Church.

An ongoing battle

In courtrooms and at mediation tables since the 1980s, civil and criminal authorities repeatedly have demanded churches' key documents as they try to prove that a diocese's solution to abusive priests was to quietly move them from church to church.

By establishing a crucial link between a pattern of cover-up and specific abuses, attorneys have been able to step around statutes of limitations to pursue decades-old cases.

In Kentucky, a lawyer used the secret files of a diocese to show that church leaders knew about a school teacher molesting children but never bothered to tell police or discipline the abuser.

Despite the fact the abuse took place 17 years earlier - well beyond the statute of limitations - a jury awarded the victim \$750,000, a judgment that stood on appeal in 1998. By hiding the information, attorneys argued, the clock on the statute never had a chance to begin running.

"They obstructed the victim from finding out about their liability, and then they couldn't rely on the statute," said Mary Suzanne Cassidy, an attorney in the case.

But some church leaders are adamant: Protecting the records is critical to the church's mission.

In Los Angeles, the archdiocese is locked in a legal battle over the release of the church's confidential files - not because leaders are trying to cover up crimes, the church says. It's a matter of principle, said Tod Tamberg, an archdiocese spokesman.

Such files contain other sensitive information, including issues in local churches that have nothing to do with abuse. Some priests confide to their bishops about the most private concerns. Prying open the records can destroy that communication.

"[Priests] make vows of obedience to him, and the bishop needs to have confidential communications with those priests. No priest would go to his bishop on anything if that communication is destroyed," Mr. Tamberg said.

In Toledo last week, Bishop Blair issued a statement hours after court documents were released outlining investigators' belief the diocese kept such a "secret archive."

"There is no indication that one might have existed in the past, and there is certainly none in the present," he said in a written statement.

Additionally, Father Billian and diocese spokesman Sally Oberski met with reporters over the next 24 hours, insisting such records haven't been kept for years. The failure to keep such an archive goes against Canon Law, but retaining such files violates the church's new spirit of openness, they said.

"We have nothing we can't talk about," Ms. Oberski said.

Still, some aren't buying it.

The Rev. Thomas Doyle, a canon lawyer and longtime priest who once defended the church against allegations of abuse, calls the diocese's response "nonsense."

He said dioceses across the country fight the release of confidential files - Toledo is no different. The records often lay out a road map of cover-up and conspiracy that is embarrassing to church leaders, and in some cases, incriminating, he and others said.

There's a credibility crisis, and church officials can no longer be taken at their word, even when they insist they're operating under a new policy of openness, Father Doyle said.

"That's the president of Enron saying we're being transparent. We're trying to heal, so leave us alone and we'll fix it," he said.

He and others point to a suggestion in 1990 by then-Auxiliary Bishop A. James Quinn of Cleveland to church leaders: Send sensitive investigative documents to the Vatican embassy in Washington to avoid subpoenas.

#### Requirement of secrecy

Canon Law is very specific when it addresses "sub-secreto" - Latin for "under secret" - archives, said the Rev. Arthur Espelage, a Jesuit priest and spokesman for the Canon Law Society of America, based in Washington.

Church law specifically requires all dioceses to keep a separate archive on matters of criminal and moral allegations. That means investigating and documenting allegations and preserving the summaries. Only the bishop or a designee is to have the key.

"It would protect individuals involved by putting the files in a place that no one would wander in and read it," he said. But at the same time, that doesn't mean the files should be out of reach of law-enforcement officials investigating crimes.

Others have wanted the records, including victims, support groups, and the media.

The Boston Globe in 2002 convinced a judge to lift the confidentiality seal on such documents, uncovering a long-standing pattern of cover-up and conspiracy involving dozens of priests.

The newspaper's revelations about the Boston archdiocese and Cardinal Bernard Law's complicity to conceal the abuse prompted victims to step forward in more than 100 dioceses.

Victims filed lawsuits, police filed charges, and responses from church leaders have varied from denial to conciliation:

?In the Archdiocese of Los Angeles, Cardinal Roger M. Mahony is fighting civil and criminal attorneys and a judge's order to release certain documents. And in Orange County, a recent settlement with victims mandated the diocese release records of the alleged abusers. The documents show a pattern of cover-up, according to victims' attorneys.

?The Archdiocese of Cincinnati repeatedly refused to release its files, despite pressure from the media and attorneys. Eventually, former Hamilton County Prosecutor Michael Allen was able to review hundreds of documents. The contents led to criminal charges.

On Nov. 20, 2003, Archbishop Daniel Pilarczyk, in his priestly collar, pleaded guilty on behalf of the archdiocese to five misdemeanor counts of failing to report a felony. The church was fined \$10,000.

Dioceses in Manchester, N.H., and Phoenix also have been prosecuted criminally for similar offenses.

?In Cleveland, the diocese turned over 70,000 documents to Cuyahoga County Prosecutor Bill Mason, who subpoenaed the materials on all child sexual abuse allegations. One priest and six lay people were indicted, Mr. Mason said.

"We went through a grand jury subpoena and they complied," Mr. Mason said. "I think the bishop [Anthony Pilla] was very forthcoming with the records. I think we got everything." However, a judge last year sided with the diocese in keeping the records sealed from the public.

?In April, 2002, the Archdiocese of Detroit and the Wayne County prosecutor's office announced that they signed a voluntary agreement to turn over files on sexual misconduct dating back 15 years.

In addition, Detroit Cardinal Adam Maida offered case files to prosecutors in the other five counties in the archdiocese, including Monroe County.

Maria Miller, an assistant Wayne County prosecutor, said last week that the archdiocese "has been cooperative and forthcoming with documentation that we need." Based on the review, prosecutors filed charges against several priests.

"I think the archdiocese has done an excellent job of self-policing," Ms. Miller said.

#### Steps toward openness

As the crisis from Boston reverberated across the country in 2002, the Archdiocese of Baltimore took an unusual step: Cardinal William H. Keeler turned to the Internet to reach out to victims. He posted the names of every priest accused of sexual misconduct since the 1950s. He also sent letters to 180,000 Catholic households, apologizing for mistakes he made in dealing with sexual abuse by the clergy. The move riled some clerics, who complained some allegations never had been corroborated.

The archbishop, disclosing the local church spent \$4.1 million to settle lawsuits filed by eight victims over 20 years, stood firm. "The truth is going to come out one way or another," he said, adding that the Internet posting cleared suspicions and reinforced support for priests who had never been accused of wrongdoing.

Just weeks before the Baltimore development, the Toledo diocese and the Lucas County prosecutor's office signed a voluntary agreement modeled after Detroit.

The accord dictated the diocese open its files involving allegations within the last seven years, and Father Billian vowed the church would provide documents going back 50 years or more.

In fact, prosecutors sifted through files but were stymied by Ohio's statute of limitations. The diocese insists investigators have seen all the files on abuse and, in the matter of the slain nun, all the records on Father Robinson. But investigators refuse to talk about what they found in last year's court-ordered searches.

If the diocese has additional files, prosecutors can expect resistance in obtaining them, said several lawyers who have sued other dioceses for such records.

"Oh, they're going to try to fight," said William McMurry, an attorney who has represented alleged victims in the Diocese of Louisville, but he added, "Declaring [records] secret doesn't make them secret."

Jeff Anderson, a lawyer who has filed more than 400 sex-abuse cases against dioceses, including several in Toledo, said that until the local church releases all its records, "there will be suspicion."

"If the idea is transparency, then you have to be transparent. It's not just lip service. Other dioceses have released their records, and they have moved on. There's very little controversy in those places. That's what Toledo needs to do. Otherwise, there will always be doubts."