

Vatican asks Condoleezza Rice to help stop a sex abuse lawsuit

By John L. Allen Jr.

National Catholic Reporter

Thursday, March 3, 2005

<http://nationalcatholicreporter.org/update/bn030305.htm>

When U.S. Secretary of State Condoleezza Rice visited the Vatican last month, her counterpart, Cardinal Angelo Sodano, asked her to intervene in a Louisville, Ky., law suit that seeks to hold the Vatican financially responsible for the sexual abuse of minors, NCR has learned.

Alongside predictable exchanges on Iraq, the Middle East and religious liberty, U.S. Secretary of State Condoleezza Rice in her Feb. 8 visit to the Vatican also received an unexpected request -- to intervene in a U.S. lawsuit naming the Holy See as the defendant in a sex abuse case.

Church sources told NCR that Rice was asked by Cardinal Angelo Sodano, the Vatican's Secretary of State, whether the United States government could stop a class-action lawsuit currently before a United States District Court in Louisville, Ky., that seeks to hold the Vatican financially responsible for the sexual abuse of minors.

Sources told NCR that Rice explained that under American law, foreign states are required to assert claims of sovereign immunity themselves before U.S. courts.

Vatican spokesperson Joaquin Navarro-Valls, asked by NCR for comment, responded March 2: "It's obvious and reasonable that the Holy See would present its positions as a sovereign entity to the American State Department, and recall the immunity for its acts that international law anticipates."

It's not the first time, according to observers, that the Vatican has asked the State Department for help on a legal matter.

Most experts say that lawsuits against the Vatican in American courts, such as the Kentucky case that prompted Sodano's request, are a long shot. At least two dozen previous attempts have gone nowhere, not only because the Vatican is a sovereign state, but also because American courts are generally reluctant to deal with religious matters on First Amendment grounds.

Yet Sodano's decision to raise the matter with Rice suggests concern in Rome that sooner or later its immunity may give way, exposing the Vatican to potentially crippling verdicts.

William F. McMurry, the Louisville attorney who filed the class-action suit, told NCR March 1 that in his view "billions of dollars would be required" to compensate all the victims of sexual abuse in the United States.

The Kentucky case is one of several lawsuits currently working their way through American courts in which the Vatican is named as a defendant. Others include:

Alperin v. Vatican Bank, which deals with the Vatican's alleged role in recycling loot stolen by pro-Nazi Ustasha regime in Croatia during World War II (the Franciscan Order is also named as a defendant);

Zivkovich v. Vatican Bank, a similar action;

Dale v. Holy Se, a Racketeer Influenced and Corrupt Organization (RICO) suit filed by the Insurance Commissioners of Mississippi, Tennessee, Arkansas, Missouri and Oklahoma, seeking \$600 million in damages related to an insurance scam pulled off by Martin Frankel, allegedly using Vatican cover;

A number of cases related to sexual abuse, including Doe v. Holy See in Oregon and Gomez v. Holy See in Florida.

The Kentucky case is, however, the only instance in which the Holy See is the lone defendant, and the only class-action suit against the Vatican related to the sexual abuse scandals that have rocked the American church.

A 1976 law known as the Foreign Sovereign Immunities Act makes it possible to sue sovereign entities in American courts under certain conditions, especially when that entity engages in commercial activity in the United States. The act has also been used to sue foreign governments for mistreatment of citizens if some aspect of that mistreatment took place in the United States. In 1996, for example, Jose Siderman, an Argentinian Jew, forced the Argentinian government to settle a lawsuit for torture he suffered in Argentina. American courts agreed to hear the action because Argentina once attempted to extradite Siderman by filing papers in the United States.

Jeffrey S. Lena, an attorney from Berkeley, Calif., who represents the Vatican in the Kentucky case and other matters, declined NCR requests for comment, referring queries to the Vatican press office.

Mark Chopko, general counsel for the U.S. bishops' conference, told NCR that in his 21 years in that role he's seen at least "two dozen" cases in which the Vatican, the papal ambassador, or even the pope himself, have been sued.

"It's extremely easy to name people in lawsuits," Chopko said. "It's how modern litigation is done -- just name everyone, in the hope that the defendants point fingers at one another."

Chopko said that often the paperwork in these cases is never even served on the Vatican, a complicated step involving transmission through the U.S. State Department and the U.S. Embassy to the Holy See, and they end up being dismissed. He said he's not aware of a single case in which the Vatican has suffered a negative judgment in an American court.

Notice has been served on the Vatican in the Kentucky case.

When notice is served, Chopko said, it's a fairly routine step for the Holy See to request action from the State Department, which can ask the Department of Justice to recommend against moving forward because of the Vatican's sovereign status. When that happens, Chopko said, it's usually enough to bring the matter to a close. For example, he said, a case named *Guardian F v. Holy See* in the early 1990s was tossed out of a Texas state trial court on this basis.

Legal observers, however, say that the State Department does not generally like to be involved in such cases, intervening only when there is an "overriding foreign policy interest."

McMurry and other attorneys suing the Vatican argue that it played a principal role in covering up sexual abuse of children on American territory. McMurry points to a 1962 Vatican document, *Crimen Sollicitationis*, which he alleges "proves that the Holy See ordered American bishops not to comply with civil laws on reporting childhood sexual abuse." (See NCR Aug. 13, 2003 and *The Word* from Rome Aug. 8, 2003 and Aug. 15, 2003.)

Other experts say that document, which concerned abuse of the sacrament of confession to solicit sexual favors, imposed secrecy on the church's internal procedures but did not prohibit penitents or others from reporting criminal activity to the civil authorities.

McMurry also argued that the Foreign Sovereign Immunities Act shouldn't even enter into his case, because the Vatican was not acting as a sovereign state but as a "religious organization" in its policies on sexual abuse.

Chopko, however, said that even if attorneys such as McMurry could get past sovereignty and First Amendment considerations, their argument would fail on the merits.

"The idea that the Holy See is managing directly all these activities of the church is not well-taken," he said. "Supervision of clergy is vested directly with the local bishops, and nowhere else."

For that reason, Chopko said, the Holy See's legal exposure is "remote."

California attorney Jon Levy, who represents the plaintiffs in the Alperin case, said that of all the legal action against the Vatican in American courts, the insurance commissioners' suit may stand the best chance of going forward. In that case, the allegation is that a foundation linked to the Holy See was involved in a scam to loot seven American insurance companies. A former Vatican official, Monsignor Emilio Colagiovanni, was fined \$15,000 in federal court and received five years probation on state charges in Mississippi related to the case.

Chopko, however, said that the fraud in the Frankel case had already occurred by the time that the Vatican-linked foundation became involved.

McMurry said that he's awaiting a decision in his case on a request to depose victims. Eventually, McMurry said, he wants to depose Vatican officials, to establish "what they knew and when they knew it."

McMurry said he's financing the lawsuit personally, and that he knows it's "high-risk litigation." Yet he said he has "fire in the belly" out of his experience of representing 243 victims, whom he said were abused by 38 priests over 30 years.

"This won't be over until the party who is directly accountable is brought to justice, and in my opinion that's the Holy See," he said.

Current estimates are that payments related to sex abuse lawsuits have already cost American dioceses \$750 million, a figure expected to rise as other cases make their way through the system. Given that this amount is roughly equivalent to the Vatican's total patrimony of \$770 million (which includes some 30 buildings and 1,700 apartments in Rome, investments, stock portfolios and capital funds), the possibility of similar judgments in American courts against the Holy See is a subject of alarm in Rome.

A senior Vatican source told NCR some months ago that the possibility of becoming implicated in civil litigation is one reason the Holy See has been reluctant to enter into the details of sex abuse policy in the United States.