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From the Los Angeles Times

Legal and moral cloud still shadows Mahony

As the D.A.'s probe continues, cardinal must repair reputation.

By Richard Winton and Steve Chawkins
Times Staff Writers

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Calling Cardinal Roger M. Mahony's actions a "moral failure," Los Angeles County Dist. Atty. Steve Cooley said Monday that his five-year investigation of how top church officials handled sex-abuse accusations hinges on whether he can obtain confidential church files under a record settlement.

"Cardinal Mahony and many others are going to have to live with their conscience and live with their incredible moral failure to the people of Los Angeles," Cooley said. "We've done everything we can under the constraints of the laws of California."

J. Michael Hennigan, attorney for the Los Angeles Archdiocese, said he is "generally a big fan of Steve Cooley," but that the district attorney's remarks were "irresponsible."

"It is irresponsible for a law enforcement official to suggest that a crime has been committed when he has no evidence of it," Hennigan said.

The settlement with 508 victims, formalized Monday, calls for a private judge to review and release church documents obtained during the negotiations, although attorneys and advocates for the victims noted that details of the handoff have yet to be worked out. They said they doubted the full truth would ever emerge.

John Manly, an attorney for some of the priests' accusers, questioned whether Cooley would follow through with criminal action even if the files produced evidence, saying he suspected the prosecutor does not want to alienate Catholic voters.

"Steve Cooley has played politics with this thing," Manly said.

Cooley spokeswoman Sandi Gibbons denied the speculation, and Deputy Dist. Atty. William Hodgman, who heads the church investigation, noted that the deadline for filing charges was fast approaching as the church pursued its long legal fight to shield the files from view.

Although Mahony has repeatedly apologized to the victims of priestly abuse, the scandal has at least temporarily dimmed his reputation, casting a shadow over the leader of 4.3 million Catholics in the nation's most populous archdiocese.

Hollywood-born, Mahony rose with rare swiftness through the hierarchy of the Roman Catholic Church — from shepherding a tiny Chinese-American parish in Stockton to membership in the College of Cardinals, the august body that selects the pope.

Father Thomas Reese, an expert on U.S. bishops and senior fellow at the Woodstock Theological Center at Georgetown University, predicted that the settlement would deflate the abuse issue, freeing Mahony to reassert himself on his signature causes, such as immigration, labor and poverty.

"Now that this is over," Reese said, "there will be a big burst of publicity for a few weeks, then it will be on the back pages and then disappear."

But the church has yet to tell anxious parishioners exactly how it will pay its share of the huge settlement, and what services and ministries will have to be cut back — decisions that could again generate unwelcome headlines focusing on the cardinal.

One Los Angeles priest, who asked for anonymity because of fear of retribution, said it was "laughable" that Mahony can restore himself as a national voice for social justice: "How can he possibly talk about justice," the priest asked, "when he pays huge settlements to cover up for himself?"

And Cooley's investigators still have to plow through the files that Mahony and other church officials have so long concealed.

The church kept confidential files on problem priests, containing parishioners' complaints, letters, police reports, referrals for therapy and reassignment memos. According to reports and documents released during the litigation, Mahony left 16 priests in ministry for periods up to 13 years after parishioners raised concerns about their inappropriate behavior with children.

The cardinal has apologized for his actions in the cases of Michael Baker and Michael Wempe, priests who allegedly went on to molest again after Mahony had sent them to treatment and shifted them to other positions. Wempe was convicted of molestation, and Baker has charges pending.

If the documents fuel criminal action against Mahony or his top officials, the most likely charge would be conspiracy to obstruct justice, prosecutors said Monday.

Even if alleged molestations occurred long ago, a conspiracy can be charged if one overt act — such as destroying a piece of evidence or soliciting someone's silence — took place in the last three years.

"If you managed to keep the crime secret along with others, you may be free from being prosecuted from the crime itself, but you may be prosecuted for conspiracy — the conspiracy of concealment," said UC Davis law professor Diane Marie Amann, speaking in general terms.

Even so, such prosecutions are tricky. Hodgman pointed to a Philadelphia grand jury report outlining the difficulties of making conspiracy cases against entities such as the Catholic Church. Efforts to protect against a scandal do not necessarily amount to the elements of a conspiracy, the report concluded.

Whether Cooley will see all the files he wants is an open question, according to the main attorney for the 508 accusers whose lawsuits were just settled.

"We know some documents won't see the light of day," Raymond Boucher, the lead plaintiffs' attorney, said Monday. "For decades many documents were lost, destroyed or sent back to the Vatican."

Cooley said two big obstacles to prosecuting priests and officials in Los Angeles arose during his lengthy grand jury probe.

One was a 2003 decision by the U.S. Supreme Court striking down a state law that had allowed prosecution in cases of sexual-abuse cases occurring before 1988.

"We had 30 cases in the pipeline," the district attorney said, adding that the Supreme Court decision thwarted his office's ability not just to prosecute individual priests but also to pursue cases against "the quote unquote higher-ups."

The other major obstacle, Cooley said, was the archdiocese's persistence in mounting bruising court battles to block the disclosure of documents that prosecutors deemed vital.

Mahony, arguing that release of the files would violate priests' privacy rights and bishop-priest communications, took his fight all the way to the U.S. Supreme Court, where he lost. By then, most of the criminal cases against priests in the archdiocese had been thrown out because of the earlier high court ruling.

Mahony eventually turned over to Cooley files on two accused former priests, Baker and George Miller.

Under the current settlement, a retired judge is to oversee the release of church documents, hearing any objections from individual priests. The process, again, is expected to be lengthy.

"We don't know what remaining points of the puzzle will be revealed," Cooley said.

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