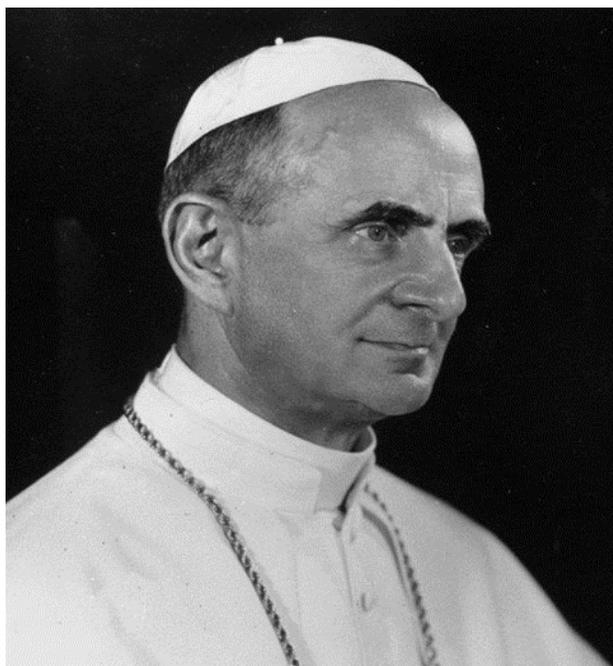


Justice in the Church

A MANUAL of SELF DEFENSE



“There is no true peace except in justice”
Blessed Pope Paul VI

Justice
for Priests and Deacons

**AN INDEPENDENT CANON LAW GROUP
DEDICATED TO DEFENDING THE RIGHTS OF CLERGY**



Justice in the Church

Dedication

THIS COMPENDIUM OF INFORMATION
IS DEDICATED TO ALL MEMBERS OF THE CHURCH
WHO HAVE SUFFERED FROM ANY KIND OF
FALSE ACCUSATION.
YOU ARE ENCOURAGED TO READ THIS INFORMATION
ABOUT YOUR RIGHTS IN THE CHURCH AND
HOW TO DEFEND THEM.
MOREOVER, YOU SHOULD SAVE THIS
FOR YOURSELF OR FOR A FRIEND:
PRIEST, DEACON, RELIGIOUS OR LAITY.
YOU NEVER KNOW WHEN YOU OR A FRIEND
MIGHT SUFFER FROM FALSE ACCUSATION.

CANON LAW IS NOT FOR LAW'S SAKE, NOR JUDGMENT
FOR JUDGMENT SAKE, BUT BOTH LAW AND JUDGMENT
ARE AT THE SERVICE OF TRUTH, JUSTICE, PATIENCE, AND
CHARITY—VIRTUES WHICH CONSTITUTE THE ESSENCE OF
THE GOSPEL.

(BLESSED POPE PAUL VI, JAN. 28, 1971)

THE FIRST BLESSING WHICH JUSTICE BRINGS FORWARD IS
“PEACE WITH GOD AND PEACE AMONG THE FAITHFUL.”

(BLESSED POPE PAUL VI, FEB. 4, 1977)

Justice in the Church

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Foreword

“When a priest is accused it is not just his job on the line, but his calling, his reputation, his ability to ever 'work' again in his chosen 'field', his friends are limited, his circle of support is also limited and also his financial concerns are all tied to this accusation in essence, it is an all or nothing proposition.”

(Robert J. Flummerfelt, “Canon Law: an Overview for the Civil Attorneys Seeking to Assist and Defend Priests,” (2015), p. 32, commissioned by Justice for Priests & Deacons)

Introduction

“There is no true peace except in justice.”
Blessed Pope Paul VI

The following passages on justice in the Church, as seen through the eyes of Pope Paul VI, were authored by the Rev. Francis Morrissey, OMI before the 1983 Code was promulgated. However, the topics addressed are just as relevant and timely in the Church today.

“Over the past 15 years since he became Pope, Paul VI has spoken on some 40 occasions (1) about the role of canon law in the life of the church, its importance in the renewal currently underway, and its essential place in the life of every believer.

“Any social life of humans has as its foundation the practice of justice, which is not based on a subjective approach, on situation ethics or on a philosophy of doing what is opportune. (10) Rather, justice is that which brings peace to others. “There is no true peace except in justice. And true justice is not to be found in a legislation that is imposed by one or another group because of its strong position in society. It is found, on the contrary, in the concern for assuring even better protection for natural rights.’ (11) The first blessing which justice brings forward is indeed peace: ‘peace with God and peace among the faithful.’(12) Justice, therefore, and the juridical life of the church, have no other purpose, it seems, than of being ‘a pastoral means of constantly fostering and preserving peace.’(13).”

“**Canonical equity**, the fruit of benignity and charity, (24) is ‘**justice tempered with the sweetness of mer-**

INTRODUCTION (continued)

cy.’(25) It is the qualitative character of the precepts of law and the norm of their application. (26) Especially, **‘it is an attitude of mind and spirit that tempers the rigor of the law. It is a human corrective element and a force for proper balance.’(27)”**

“Suffice it for the moment to state that ‘in canon law it is equity which governs the application of norms to concrete cases, with the salvation of souls as the goal which is always kept in view. Equity takes the form of mildness, mercy and pastoral charity and seeks not a rigid application of law but the true welfare of the faithful.’(29)” † [\(Back to Table of Contents\)](#)

Selected extracts from “The Teachings of Pope Paul VI on Canon Law,” by Rev. Francis Morrissey, OMI; Presented at the Midwest Regional CLSA Meeting 1978, Duluth, MN.

(1) The following addresses were used as a basis for preparing this presentation: Sept. 21, 1963; Dec. 12, 1963; Nov. 4, 1964; Jan. 11, 1965; Nov. 20, 1965; Jan. 23, 1966; April 23, 1966; Aug. 17, 1966; Oct. 12, 1966; Oct. 19, 1966; Dec. 23, 1966; Jan. 11, 1967; Jan. 23, 1967; May 27, 1967; Feb. 12, 1968; May 25, 1968; Jan. 15, 1969; Jan. 27, 1969; June 23, 1969; Oct. 4, 1969; Nov. 12, 1969; Jan. 19, 1970; Jan. 29, 1970; June 17, 1970; June 23, 1970; July 8, 1970; Jan. 28, 1971; Dec. 13, 1971; Jan. 28, 1972; Dec. 9, 1972; Dec. 13, 1972; Feb. 8, 1973; Sept 17, 1973; Dec. 14, 1973; Jan. 31, 1974; March 18, 1974; Jan. 30, 1975; Feb. 9, 1976; Feb. 4, 1977; Feb. 19, 1977; Jan. 28, 1978.

(10) Id., cf. Jan. 23, 1967, in *La Documentation catholique*, 64 (1967), col. 291.

(11) Id., Oct. 4, 1969, in *The Pope Speaks*, 14 (1969-1970), p. 374.

(12) Id., Feb. 4, 1977, loc. cit, p. 174.

(13) Ibid., p. 179.

(24) Cf. Id., Feb. 8, 1973, loc. cit, p. 75.

(25) Ibid., p. 78.

(26) Cf. *ibid.*, p. 79.

(27) Ibid.

(29) Id., Feb. 19, 1977, in *The Pope Speaks*, 22 (1977), p. 171.

WHEN YOU ARE CALLED IN

Rev. Michael Sullivan, J.C.L., extracted from “*Canon Law: an Overview for the Civil Attorneys Seeking to Assist and Defend Priests,*” by R. J. Flummerfelt commissioned by Justice for Priests.

YOU HAVE JUST BEEN CALLED TO A MEETING AT THE CHANCERY OFFICE WITH THE BISHOP OR OTHER DIOCSAN OFFICIALS. YOU HAVE NOT BEEN TOLD WHAT THE MEETING IS ABOUT BUT THE MANNER OF NOTIFICATION SEEMS SERIOUS. YOU ARE PROBABLY IN NEED OF THE FOLLOWING INFORMATION.

(1) As soon as an accusation is suspected or known, retain canonical counsel immediately.

(2) Any and all meetings with Diocesan Officials should occur only with canonical and/or civil counsel present; the results of such meetings should be in writing.

(3) Do not ever meet with Diocesan Officials regarding an accusation without keeping foremost in mind your right to remain silent and not respond to any accusation.

(4) Make sure not to speak to the allegation presented, but instead take time to consider, reflect and respond in writing to the accusation. Everything a priest says in such a setting can, will and ought to be expected to be used against him.

(5) Never agree to resign from your office as pastor, parochial vicar, or anything. There is absolutely zero gained from resigning from an ecclesiastical office (and of course also the priesthood) without serious consideration of these options after much prayer, discernment and deliberation.

(6) Never agree to undergo psychological counseling or an assessment without absolute certainty that the information **will not** be shared with the Diocese and absolute

When You Are Called In (continued)

assurances that the proposed assessment team is not biased or working for the interests of the Diocese (as sadly often can be the case).

(7) Firmly assert your right to **know fully the accusation and the proofs** (evidence) which have been furnished for the accusation.

(8) Firmly assert your right to **respond both orally and in writing** to any and all accusations leveled against you after first having an opportunity to know the accusation and having an opportunity to review *all relevant evidence* marshalled on the matter.

(9) Request that all legal representation fees be paid for by the Diocese or Religious Community. The costs associated with canonical/legal representation can be the difference between being stonewalled and receiving effective advocacy. Even if a priest-canonist offers to work *pro bono*, justice and fairness necessitate that the priest-canonist be properly compensated so that his time and talent are respected and so that the accused is provided with a zealous canonical advocate.

(10) Never hesitate to get a second opinion in these matters. Canonical advocacy is an area where experience matters and can be extremely helpful. Don't be proud — ask for a second opinion!

(11) If you have a case requiring civil or criminal representation, strongly consider bringing in a canonist as an Expert Witness to present your case to a jury/judge.

(12) Canon Law and Civil Law are very different disciplines; treat them as such. The techniques and strategies in one system may be unethical and even constitute malpractice in another — knowing each is essential to effective advocacy for yourself. † ([Back to Table of Contents](#))

The Right to Privacy and to Good Reputation (CANON 220)

Robert J. Flummerfelt, J.C.L., J.D., Ukrainian Catholic, Las Vegas, Nevada, JusticeforPriests NEWSLETTER, 2014, p. 2-3.

Canon 220 of the *Code of Canon Law* states:

“No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.”

This canon is crucial and fundamental when dealing with matters that implicate allegations against everyone, but particularly in our context, Catholic clergy. The canon reflects two basic rights that come to us from human nature, the right to possess and enjoy a good reputation and the right to protect one’s privacy. **As has been said before and bears repeating, a person can spend decades building a good reputation, but in a matter of a mere five (5) minutes that good reputation can be destroyed and permanently harmed by a false accusation.**

One of the most difficult aspects of representing clergy accused of various forms of misconduct is effectively protecting both their reputation and privacy. When an allegation has been brought forward against a priest, often in an effort to notify the parishioners or diocesan faithful, the Diocese will make known that an allegation has at least the semblance of truth and the accused cleric is placed on so-called administrative leave (if such has not already been done) in accord with canon 1722. At that moment, effectively protecting and maintaining good reputation has already been lost for the priest who has been accused. Henceforth, the priest will always be under a

**THE RIGHT TO PRIVACY AND TO GOOD REPUTATION
(CANON 220) (continued)**

cloud of suspicion (at least to some degree), even if ultimately he is found to be not guilty of the allegation in a canonical process or civil process *or both*.

The challenge arising from such a circumstance is that once the proverbial bell has been rung with an allegation, even if proven to be false, that bell can never be un-rung. The damage done to the cleric's reputation can never be fully restored – it is fiction to believe that it can be. Rather, at best, what can result is some mitigation of the harm to reputation that has befallen the cleric if he resumes ministry. That is the dilemma that faces advocates who deal with these situations daily on behalf of priests and deacons who call our offices in need of our assistance.

In consideration of this dilemma, how can we as advocates for clergy, when confronted with these circumstances, try and do our part to prevent the damage to reputation before it occurs? What steps can we as counsel take to protect and vindicate both privacy and reputational rights of clergy? First, in my experience the best approach in this matter is to, as much as possible, work in collaboration professionally and charitably with the diocesan officials. As members of the Church we must recognize and balance our goals of effective advocacy with respectful dialogue – both can and must occur concomitantly to be effective for clerics accused and in service to truth and charity. There must be a deep overview and plan for the entire course of the cleric's case from start to finish in consideration of both effective advocacy and also protecting his right to a good reputation and privacy. Each point of contact and each point of development of the process from the

**THE RIGHT TO PRIVACY AND TO GOOD REPUTATION
(CANON 220) (continued)**

first notice that there is an allegation, to the first meeting with diocesan representatives on the merits of the allegation to what is stated publicly (and hopefully not at all!) regarding the allegation and what the Review Board hears, decides and is reported all impact substantively a priest's reputation and privacy rights. Being engaged and involved from the outset is essential.

Referencing both privacy and reputational rights at

*The weight of the allegation alone is
enough to cause serious stress ...*

the first moment an allegation comes forward brings the issue to the forefront for all involved. The weight of the allegation alone is enough to cause serious stress, anxiety and fear for an accused cleric. This weight is magnified significantly when the allegation is made public and acts as a source of breach of the accused cleric's right to both good reputation and privacy.

As an advocate, we must actively take steps to ensure that there is no publicity if possible and if impossible in speaking with diocesan officials, take steps to make sure that what is expressed publicly does not place the accused cleric in a false or negative light, especially when the accused is adamant that the allegation is false. In furtherance of these goals, it is important to emphasize to diocesan officials what is also in the interest of the Diocese regarding the downside of making an allegation public.

Often when an accusation is made public against a

**THE RIGHT TO PRIVACY AND TO GOOD REPUTATION
(CANON 220) (continued)**

diocesan priest for example, tension will arise in the parish. There will be those who support Father and who are vocal about their support, through setting up a blog, handing out flyers, trying to meet and build up support for the accused priest. Such a scenario, due to the publicity surrounding the matter often only acts to cause distance, division and harm among the faithful. Explaining to the Diocese how publicity can also harm the Diocese may be a

At what point does making an allegation known to the faithful implicate a cleric's right to a good reputation...

way to realize that the reputation concerns are for all involved. Furthermore as points of reference, it is also important to take into consideration the USCCB Essential Norms germane to our discussion that state:

Norm 6 states in part: “ ... *During the investigation the accused enjoys the presumption of innocence, and all appropriate steps shall be taken to protect his reputation.* ”

Norm 13 also states in part, “... *When an accusation has been shown to be unfounded, every step possible will be taken to restore the good name of the person falsely accused.* ”

The aforementioned norms concretize in practice how the right to a good reputation and right to privacy are exercised. Nevertheless, the challenge has been and continues to be how to ensure that these provisions are implemented at each and every stage of the process for the accused cleric.

Perhaps as advocates we should assertively proclaim

**THE RIGHT TO PRIVACY AND TO GOOD REPUTATION
(CANON 220) (continued)**

what the *Catechism of the Catholic Church* teaches about these important matters:

“**2477** *Respect for the reputation* of persons forbids every attitude and word likely to cause them unjust injury. He becomes guilty:

- of *rash judgment* who, even tacitly, assumes as true, without sufficient foundation, the moral fault of a neighbor;

- of *detraction* who, without objectively valid reason, discloses another's faults and failings to persons who did not know them;

- of *calumny* who, by remarks contrary to the truth, harms the reputation of others and gives occasion for false judgments concerning them.”

At what point does making an allegation known to the faithful implicate a cleric's right to a good reputation to the point of constituting calumny, detraction or rash judgment? Individual facts and circumstances will govern how we apply these principles to our practice in advocating for those accused clerics. But as advocates, if we are fully aware from the outset of these governing principles, we can be most effective at vindicating an accused cleric's right to a good reputation and right to privacy consistent with the letter and spirit of the law. † [\(Back to Table of Contents\)](#)

Stepping Aside After Accusation Announced

Rev. William Cosgrave, S.T.D., Diocese of Ferns, Wexford, Ireland.

It has been and is the practice among Irish Bishops to make a public statement in a particular parish, when a priest in that parish is accused of child sexual abuse. Now it is well known that this practice of the Irish Bishops is a very contentious one. Great numbers of priests and lay people consider it to be unfair to the accused priest, especially as such a statement is regularly followed, very shortly after the Bishop's statement, by widespread and very prominent publicity in the local media about the priest and the allegation against him. In addition, an accused priest is the only citizen in the country about whom such a statement is made in these circumstances.

No Public Statement, No Publicity

One journalist says: 'A priest can only be identified in a newspaper if he has decided to go public on the reason behind his decision to step aside from Ministry ... a newspaper ... would not identify the priest or his parish or indeed the locale if the accused chose not to comment, ... if the diocese does not identify the priest the media is unlikely to'.

It is quite clear from this statement (and others could be quoted) that the one and only reason the media publish the priest's name, etc. in these cases is because the Bishop's statement (or that of the priest himself) has put the allegation and the reason for stepping aside in the public domain. In other words, the church representative has gone public, hence the media are entitled and free to report what has been made public by the church officials.

Stepping Aside ... (continued)

This is confirmed by the fact that in all other cases apart from the priest where an allegation of child sexual abuse is made against an individual, e.g., a teacher, sports coach, uncle, father, etc. there will be no public airing of the accused person's name, etc. when the allegation is made. To do so would expose the paper or radio station to a charge of violation of natural justice and that is the precise reason the media refrain from publishing the details in question in these cases.

...if the diocese does not identify the priest the media is unlikely to'.

As is widely known, the names and personal details of accused persons in relation to child sexual abuse and other crimes too will only be made public in the Irish state when the person in question is charged in court.

A Bishop said recently that, in the statement a Bishop will make in the circumstances we are concerned with here, there will be no mention of the accused priest's name.

But the parishioners will very soon know which of their priests has stepped aside and the reason for it. So it seems to follow that not mentioning the priest's name does not protect the priest's identity. If that is the intent, it fails completely. But, since it isn't to protect the priest, perhaps it is to protect the Bishop against a charge of en-

Stepping Aside ... (continued)

dangering the priest's reputation and good name.

Not consenting to the publication

In relation to this aspect of the question a journalist says: 'Generally defamation requires that the allegation be false and without the consent of the allegedly defamed person. 'Without the consent' is essential: the priest may not be able to prevent his removal [stepping aside], but he can deny his consent [to the publication of the statement]. A priest who consents to identify himself publicly as being the subject of an investigation unwittingly may be a party

[*The question then remains: why does the Bishop make the public statement?*] to his

own defamation.

Why treat the accused priest differently?

It is clear from experience and from what has been said so far that the priest who is accused of child sexual abuse is treated differently by church officials from the way all other citizens of our country are treated.

It is also clear from our experience in Ireland that there is no campaign or even calls by individuals or groups for all those other citizens against whom allegations of child sexual abuse are made to be treated differently than they are now treated in our society by the statutory authorities.

The question then, arises: why is the accused priest made an exception to this universal practice by his own

Stepping Aside ... (continued)

Bishop? One journalist says on this issue, 'I think it is virtually impossible in these circumstances for anyone to shake off the fact that the allegation was made public.'

From the experience in our society just mentioned it is hard to imagine that treating the accused priest like every other accused citizen in relation to child sexual abuse would bring forth a negative response. Hence, treating the accused priests like other similarly accused citizens is highly unlikely to be criticised on grounds of excessive secrecy or as a cover-up.

The question then remains: why does the Bishop make the public statement? One suggestion is: in trying to atone for past mistakes the Church has now swung too far in the opposite direction.

The Public Statement: to whose benefit?

As already indicated, it is certainly not to the advantage of the accused priest. It creates a grave danger that the priest's rights in natural justice will be infringed. Though this episcopal announcement will be a shock to the parish, it is difficult to see that any advantage will accrue to the parishioners. They will come to know in very quick time without any such statement that Fr X is no longer ministering in their parish, and will soon learn the reason for his departure.

We may ask, also, whether the making of the public statement brings the Bishop and the church institution any benefit or advantage?

It shows clearly that the Bishop and the church as institution have learned that secrecy in dealing with clerical

Stepping Aside ... (continued)

sexual abuse nowadays is counter-productive. Also it will be clear that now the church is being fully up front and open in this matter.

One journalist states: ‘...once a Bishop informs a congregation that a priest is being removed because of an allegation of child sexual abuse, the whole concept of ‘innocent until proven guilty’ is stood on its head and it becomes a case of ‘guilty until proven innocent’. Thus the right of the priest to natural justice has been denied him’.

Finally, we may ask: does the making of the public statement bring any benefits to the complainant and to children generally in this matter?

Interim Guidance

No.9 (c) says that the making of a public statement is a matter of necessity, where the respondent [the accused priest] remains in the parish and that this is part of a risk management plan. But earlier in No. 9 (b) the *Interim Guidance* document declares that: ‘consideration may be given to allowing the respondent to continue to reside in his/her current accommodation *if it is perceived not to present any risk to children...*’[emphasis added]. Clearly then, a priest who is accused of child sexual abuse will only be left in residence in the parochial house in his parish when it has been ascertained that he presents no risk to children. Where, then, one has to ask, is the risk that needs to be managed and which makes a public statement by the Bishop necessary?

To take a similar case: if, for example, a Principal teacher is accused of child sexual abuse and is removed but remains in his home in the parish where he was teach-

Stepping Aside ... (continued)

ing, one does not hear of any public clamour for his removal out of the parish. And since the people of the parish will very soon come to know why he has stepped aside, there will be very little risk to the children of the area from this man, and hence, no need at all for a public statement from any official of church or state to alert people to his presence and his proclivities. If someone did make such a public statement, he/she might find him/herself in serious danger of being sued for violation of natural justice.

Given all this, there would appear to be no grounds at all for the Bishop to make a public statement in connection with such a priest stepping aside, since there would seem to be minimal risk of his offending in his altered circumstances, above all if the allegation is historical and comes from, say, 30 years previously.

To make a public statement about such a priest with such little benefit to anyone and such little risk to children but with the strong likelihood of significant damage to that priest's reputation would seem to be quite unjustified.

Conclusion

Of course children must be protected and safeguarded as fully as possible and this is paramount; however, in the process church officials are morally bound to avoid any steps or procedures that unnecessarily damage the good name of the accused priest.

It is clear, then, that the Bishops of Ireland must discontinue this practice immediately out of respect for the rights in natural justice of the accused priests. †

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The Rights of Clergy

Rev. Msgr. Michael Higgins, M.A., S.T.D., J.C.D., San Diego, California, extracted from “*Canon Law: an Overview for the Civil Attorneys Seeking to Assist and Defend Priests*,” by Robert J. Flummerfelt, J.C.L., J.D., commissioned by Justice for Priests, 2014.

In order to understand those basic rights enjoyed by Clergy, it is necessary to delineate and identify them:

(1) the right to communicate their needs and concerns to the Bishop (canon 212),

(2) the right to express his opinion as to those aspects pertaining to the good of the Church (canon 212, §3),

(3) the right to freedom of inquiry and expression once directed concerning the sacred disciplines (canon 218),

(4) the right to protection of privacy and good reputation (canon 220),

(5) the right to vindicate his rights according to canonical process (canon 221),

(6) the right to challenge the judicial and administrative decisions of the Diocesan Bishop concerning his life and ministry (canons 1732-1739) and according to the rules on trials,

(7) the right to not be punished except consistent with the letter and spirit of the law (canon 221, §3),

The Rights of Clergy (continued)

(8) the right to financial provision, annual vacation, freedom to tender resignation from ecclesiastical office and the right not to be removed from an ecclesiastical office except for grave or just causes depending upon the nature of the appointment. (canons 281, 283, 187, 193, 1740-1747).

Protecting the Rights of the Accused Cleric

Whenever rights are threatened through an investigation or allegation, as with the civil law, it is prudent and most advisable to consult an attorney. Similarly, when a priest has any notice either orally, in writing or even through the proverbial grapevine of an investigation or any accusation, it is absolutely imperative that he acquire a skilled canon lawyer to advise him proceeding forward.

Often a priest engages a canon lawyer much later in the process after exercising less than his best judgment and while pressure is being brought to bear on him from his Bishop or Chancery to take a course of action against his best interests and in contravention of his rights. Engaging a canon lawyer as soon as the Diocese invites a priest to a Chancery meeting is essential as often the priest is lulled into a false sense of security (since such a scenario has never occurred to him before) that the Diocese will look out for his interests.

Sadly, the posture most frequent is of a Diocese protecting itself and creating a posture being against the priest under investigation or who has been accused, concerned only with protecting the liability and assets of the Diocese and unconcerned with the rights of the accused cleric. †

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The Right to Privacy & Polygraph Testing

Brian Tanko, J.D., C.P.A., Kalispell, Montana and Las Vegas, Nevada.

CANON 220 OF THE *CODE OF CANON LAW* STATES EXPLICITLY: "NO ONE IS PERMITTED TO HARM ILLEGITIMATELY THE GOOD REPUTATION WHICH A PERSON POSSESSES NOR TO INJURE THE RIGHT OF ANY PERSON TO PROTECT HIS OR HER OWN PRIVACY."¹

While jurisprudence has spoken directly to the absolute right to refuse invasion into the internal forum for psychological testing or matters which have been revealed in the Sacrament of Penance, the same applies to polygraph testing. The Holy See has constantly defended the right of a person to refuse psychological evaluation. (cf. *A.A.S.* LIII (1961)).

On October 8, 1998, The Congregation for the Clergy wrote: "It is the constant teaching of the *Magisterium* that investigation of the interior and moral status of any member of the Christian faithful cannot be carried on except with the consent of the one to undergo such evaluation, as is clearly written about in the instruction of the Secretariat of the State in their August 6, 1976 letter to Pontifical Representatives."

Relying upon the physiological responses of individuals under scrutiny with polygraph testing creates circumstances which can be unreliable, intrusive to the dignity of the human person and create a false expectation that a full vetting of an accusation can be supplanted by a polygraph test. In the United States, federal and most state courts disallow polygraph testing due to its unreliability for producing verifiable, accurate results.

Moreover, in the context of clergy, how can anyone be assured that the results that are being generated by the polygraph examiner are correct? What experience does the polygraph examiner have with clergy in his/her back-

The Right to Privacy & Polygraph Testing (cont'd)

ground? What personal biases are being brought into the polygraph test which cannot be evaluated or screened for? The desire to pursue a polygraph test also flips the presumption of innocent until proven guilty with moral certainty to the point of hearing if you are telling the truth, then why would you refuse such a test? The same poor logic has been applied in the past for anyone asking for a lawyer when confronted with an accusation. Thankfully, it has come to be understood and recognized that invoking the right to canonical or civil counsel is not an admission of guilt, but recognition on the part of the person needing legal assistance that they are in an area beyond their competence as a person uneducated in the law.

In order to fight this unnecessary intrusion into the internal forum and worse possibly share results which are unreliable, it is necessary to decline taking of a polygraph examination when asked. The person who is called to undertake a polygraph examination is automatically in effect stripped of their presumption of innocence and instead needs to 'prove their truthfulness through such an examination. However, in doing so, the priest then has to demonstrate that his responses do not show deception. This is not a black or white proposition, but in our experience we have reviewed polygraph testing where the examiner may make conclusions that the priest in question is 40% deceptive and 60% showing no deception. The imprecision of such an intrusive test does not comport with what is acceptable for the dignity of the human person and because of the responses which can be generated, misconstrued and poorly interpreted must be avoided at all costs. † ([Back to Table of Contents](#))

¹ http://www.vatican.va/archive/ENG1104/___PU.HTM

Your Right of Defense

Rev. Msgr. Michael Higgins, M.A., S.T.D., J.C.D., San Diego, California, "The Right of Defense," in *JusticeforPriests NEWSLETTER*, 2013, pp. 8-9.

Canon law gives laity and clergy the right of defense. In his address to the Roman Rota, 26 January 1989, Pope John Paul II stated: "I intend in today's annual meeting to emphasize the importance of the right of defense in canonical judgment." Pope John Paul further stated: "The new Code of Canon Law attributes great importance to the right of defense. Canon 221 §1 states "that Christ's faithful may lawfully vindicate and defend the rights they enjoy in the Church, before a competent ecclesiastical forum in accordance with the law." Paragraph 2 continues "if any member of Christ's faithful is summoned to trial by the competent authority, they have the right to be judged according to the provision of law, to be applied with equity."

Pope John Paul II further stated in his allocution that one cannot conceive of a just judgment without the "contradictory" due process of law, that is to say without the concrete possibility granted to each party to be able to know and contradict the requests, proofs, and deductions adopted by the opposing party. He further mentioned that "this right of defense in the case should be exercised according to the just depositions of positive law." He also stated that "in a penal case, however, there must be a *de facto* defense, indeed a technical defense, because in a penal trial the accused must always have an advocate." (Cc. 1481 §2; 1723).

It is clear from the doctrinal teaching and jurisprudence of the Roman Rota, Apostolic Signatura, and papal

Your Right of Defense (continued)

teaching that the right of defense is essential from natural law and divine positive law. The Church has always understood that it cannot dispense from natural law. The right of defense, therefore, is a fundamental presumption of all law.

In conclusion, I maintain in the light of the above jurisprudence that any decree, issued without the right of defense, by the Supreme Pontiff, Roman Tribunals, Roman Congregations, decrees of bishops and ecclesiastical tribunals is null and void (*irrita est*) and does not have to be observed and it can be appealed. †

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A Penal Decree and/or Restrictive Precepts Have Just Been Imposed On You. How Do You Check For Validity?

Msgr. Charles L. Scicluna, Promoter of Justice, Congregation for Doctrine of the Faith, "The General Structure of Administrative Justice in the Church," in *Proceedings of the Canon Law Society of India*, (2004), pp. 3,4.

The Difference between a Decree and a Precept:

Can. 48 "*decretum singulare*": "A **singular decree** is an administrative act issued by a competent executive authority, whereby in accordance with the norms of law a decision is given or a provision made for a particular case; of its nature this decision or provision does not presuppose that a petition has been made by anyone".

How Do You Check For Validity? (continued)

Can. 49 “*praeceptum singulare*”: “A **singular precept** is a decree by which an obligation is directly and lawfully imposed on a specific person or persons to do or to omit something, especially in order to urge the observance of a law”.

A check-list for appraising validity of a particular administrative act:

- a. Did the author of the act enjoy canonical jurisdiction and executive power?
- b. Is the act valid according to the general norms applicable to particular administrative acts (cc. 35-58) and to juridical acts (cc. 124- 126)?
- c. Is the act valid according to the rules applicable for the specific subject-matter; have the requisites *ad validitatem* been respected?
- d. Is the act lawful or licit according to both the general and the specific norms applicable to it; has the law been followed **as to the merit** of the decision (*in discernendo*); has the law been followed **as to the procedure** applicable to the case (*in procedendo*)?
- e. Is the act prudent and expedient; does it promote the common good and respect the principles of natural justice and Church doctrine concerning liturgy, dogmatic and moral theology?

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Invalid Imposition of Penal Restrictions

You have just been informed that an accusation has been made against you and the bishop has immediately imposed penal restrictions on your ministerial ability. These passages explain the proper imposition and limits of the bishop's penal restrictions.

Rev. Richard Lucien Millette, An Analysis of the Preliminary Investigation In Light of the Rights of the Accused, an unpublished J.C.L. thesis 2013-2014, Gregoriana Facoltà di Diritto Canonico, pp. 5, 66.

“Per this canon [1722], the Ordinary is allowed to prohibit the accused from the exercise of sacred ministry or an ecclesial office and position. In addition, he can impose or forbid residence in a certain place or territory as well as prohibit public participation in the Eucharist (cf. can. 1722).”

“This canon, however, must be interpreted strictly per can. 18 which means that the Ordinary cannot restrict all of their rights, but only those specific rights which are mentioned within the canon. **Thus, a priest cannot be restricted from celebrating private mass nor from absolving penitents in danger of death** (Cf. B. Daly, ‘Administrative Leave of Priests,’ 474).”

“In addition, clerics cannot be deprived of decent support and/or remuneration. The application of can. 1722 will always tarnish the reputation of the person under preliminary investigation, so it should only be applied when necessary for as short a time as is possible (J. Beal, ‘Administrative Leave: C. 1722 Revisited,’ 316-319).”

“This problem [i.e. invalid preliminary investigation] is compounded by the fact that the Ordinary can pursue a preliminary investigation without ever consulting the canonists within his diocese. All of this leaves a wide margin for error which, with regard to the preliminary investigation, means that there is a large chance that the rights of the person who is under preliminary investigation might be violated.”

Invalid Imposition of Penal Restrictions (continued)

Only After Preliminary Investigation Can Administrative Leave Be Imposed

J. Beal, "Administrative Leave: Canon 1722 Revisited," *Studia canonica*, 27 (1993), 315-316.

"Is there a *dubium juris* (doubt of law) about the timing of the imposition of 'administrative leave'...? It would seem that there is not. Canonical tradition, the text and context of c. 1722, the mind of the legislator and parallel passages in the Oriental Code all lead to the same conclusion. **'Administrative leave' may be imposed only after the completion of a preliminary investigation.** The accused must be cited and given an opportunity to respond, at least extra-judicially, to the allegation and to the proposal to impose 'administrative leave.' This initial citation and hearing can occur before the penal process if formally inaugurated, either in conjunction with the Ordinary's decree initiating a penal process or subsequently. **However, 'administrative leave' can only be imposed in connection with a penal process, whether actual or imminent. It cannot be imposed on the basis of an accusation alone.** This conclusion is settled law, inconvenient perhaps, but still the law."

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No Leave Without Due Process

Frans Daneels, O PRAEM, "The Administrative Imposition of Penalties and the Judicial Review of Their Legitimacy," p.254 in *The Penal Process and the Protection of Rights in Canon Law*, P. M. Dugan (ed.), 2004, Proceedings at the Pontifical University of the Holy Cross, Rome; Gratianus Series, Montreal, Wilson & Lafleur Ltee, 2005.

Frans Daneels, O. Praem, Promoter of Justice for the

Invalid Imposition of Penal Restrictions (continued)

Apostolic Signatura admitted that a decree of the Signatura issued April 22, 1997 seems to uphold the thesis of Fr. Beal at least indirectly:

said precautionary precepts... can be imposed *in quodlibet processus stadio* [i.e. at any stage **of the process**], but there is no doubt that **no process can exist before the decree mentioned in can. 1718**; ... From the acts it is established that the Ordinary, contrary to the prescription of the law, **imposed those precepts outside of a penal process, when a decree had only been issued about the beginning of the prior** [i.e. preliminary] **investigation (cf. can. 1717)**, not a decree about the beginning of the penal process, for one does not find in the acts the decree mentioned in can. 1718, nor the citation for the administrative penal process of canon 1720, §1, nor the accusatory libellus 1721, nor to the decree of acceptance of the libellus and citation of the accused, according to canons 1505 §1 and 1507 §1, **nor indeed any act of a true penal process....**

Daneels concluded that the imposition of precautionary measures in a case presumes that the penal process has already been initiated, that the accused has been cited in regard to those measures, and the promoter of justice has been heard. **When the motivating cause ceases, those precautionary measures must be revoked. †**

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The Preliminary Investigation for Penal Cases: Some Thoughts on Process

Rev. Francis Morrissey, O.M.I., Professor Emeritus, Faculty of Canon Law, Saint Paul University, Ottawa, ON, Canada.

In cases where it appears that a canonical delict has been committed, the (diocesan or religious) Ordinary is to conduct a preliminary investigation (canon 1717 and following). It might be helpful here to review some of the factors involved in such an investigation.

Any canonical penal trial must begin with a preliminary inquiry which has as its purpose to enquire about (1) the facts, (2) the circumstances, and (3) the responsibility of the accused.

Before proceeding with this investigation, we must keep in mind that sometimes there are simultaneous proceedings in the secular courts (either criminal or civil). It might be appropriate to postpone any formal canonical action until the secular proceedings are completed, so as to avoid "discovery" issues, and to risk muddying the waters. **On the other hand, the bishop would need some type of "process" to justify removing a priest from active ministry and placing him on administrative leave.**

The purpose of the preliminary investigation phase is to gather evidence (testimony, documents, etc.) leading to an appropriate degree of certitude regarding the offence. Its purpose is not to prove guilt or impose a penalty; this is the role of the subsequent penal trial or procedure. In other words, is there a sufficient smoke (*fumus iuris*) to consider that there is fire.

The information the Ordinary receives must have a semblance of truth (canon 1717, §1); it can be supported by other data on file in the chancery (i.e., past events).

The Preliminary Investigation ... (continued)

By decree (see canon 1719), the Ordinary names a priest delegate to conduct the inquiry. It is preferable that the Ordinary remain one step removed from the actual process, to allow for latitude later on if something has to be corrected or adjusted.

As to the responsibility of the accused, it would be important, from the very beginning of the inquiry, to determine (if possible) if there was indeed an intention to do something wrong, a "*mens rea*" on the part of the accused. This is an essential element of a canonical delict, for, without it, there is no delict in the formal sense of the term. Although the law presumes imputability, any presumption can be overturned by proof to the contrary.

The delegate cannot serve later as a judge in the process (canon 1717, §3). Therefore, it would be important to keep this in mind when appointing the delegate.

Experience shows that the diocesan attorney should NOT be the person to conduct this preliminary inquiry. The procedures and methods are quite different when it comes to civil or criminal law issues, and, once again, the waters can easily become muddied. Likewise, the diocesan attorney's priority would be to protect the diocese, not the accused, and this could lead to a conflict of interest.

The Ordinary (or the delegate) will determine how to proceed (through personal interviews, telephone conversations, etc.). Regardless of approach, it is essential to observe canon 220 on the right to privacy and reputation.

Before the Ordinary decides anything in the matter, and after receiving the statements of those being interviewed and gathering the preliminary facts, he should hear the accused and the promoter of justice, and also, if he deems it prudent, two judges or others who are expert

The Preliminary Investigation ... (continued)

in the law. This is not a formal interrogation (which will follow later), but, rather, a consultation. Appropriate arrangements should be made for the accused to have suitable canonical and civil law advice.

If this is the first time that the Ordinary (or delegate) is intervening with the priest in the situation, it is not fair to ask the accused priest, on the spot, to resign his parish or to take irrevocable steps that would damage his rights. This is particularly important if the accused does not yet have canonical or civil counsel.

We should always keep in mind the fact that the accused is in a most vulnerable position at this moment. Very often, the accusation has come out of "nowhere" and the accused is at a loss to explain what happened.

The statements of those interviewed should be taken under oath, recorded verbatim, and signed, so that they can become proofs to be used if a formal trial is to be held later. There should be a priest notary (who will carry out the regular functions ascribed to the notary). Witnesses can be heard anywhere, since this is not yet a judicial procedure. (We cannot impose an oath, however, on the accused – canon 1728, §2).

If it is a case subject to the Congregation for the Doctrine of the Faith, having gathered sufficient information, the Ordinary (or the delegate) can then refer the matter to the diocesan or congregational consultative panel (by whatever name it is known - Review Board, Advisory Committee, etc.) for a preliminary overview of the situation. The board could consider the reputation of the person making the complaint; anonymous letters are not used, unless there are other indications; it could, however, if it saw fit, act on rumours.

The Preliminary Investigation ... (continued)

Experience shows that it is important to share with the consultative panel copies of all the information received, and not simply rely on the delegate's version of the facts; there can unwittingly be bias against the accused.

After examining the complaint and other factors, the panel could determine that there is no credible basis to the information received, and recommend that the matter be dropped. Or, it could state that it considers that there appears to be some credibility to the accusation and recommend that canonical processes or a judicial review be undertaken. Especially at this point in the inquiry, we should keep in mind that the panel's role is consultative and the Ordinary is not legally bound by its recommendation. Of course, the diocesan attorneys might not agree with this, and say that the diocese is opening itself up to accusations of negligence if the bishop does not go along with the consultative panel's recommendation.

If the panel is meeting, it is desirable that the promoter of justice participate in the discussion. The promoter will then have a better sense of what to do should the Ordinary decide to proceed with a process.

If we are dealing with one of the reserved cases, the Ordinary, once the preliminary investigation has gathered appropriate information, transmits this information to the Holy See (usually to the Congregation for the Doctrine of the Faith – CDF). Otherwise, he proceeds on his own. The Ordinary should prepare a *votum* or recommendation to assist the CDF to determine the next steps to be taken.

If the statute of limitations (i.e., canonical prescription) determines that the right to process a case has expired, and if it is a CDF case, the Ordinary is to request a dispensation from the norms of canons 1362-1363 if he

The Preliminary Investigation ... (continued)

wishes to proceed with the case.

Once the preliminary inquiry is begun, the Ordinary or the Presiding Judge can invoke the provisions of canon 1722 (on "administrative leave") in regard to the accused. It would be fitting that the accused be given the right of defence and that the promoter of justice be heard (keeping in mind that the Code does not call for the mandatory intervention of the accused at this initial stage of the process. It would certainly not be appropriate to impose such measures without hearing the accused).

If the Ordinary decides to proceed to a canonical trial, and it is not a CDF reserved matter, he issues a second decree, indicating that the matter is to be remanded to the instruction and penalty phase of the process (canon 1719). This decision is based on a number of points:

- whether it appears that a canonical crime (delict) has indeed been committed (keeping in mind that not all sinful conduct is a canonical crime or delict);
- whether the period of prescription has lapsed or not (or if, in CDF cases, the dispensation granted);
- whether the accused is imputable for the act by reason of malice or culpability;
- whether it is expedient in the light of canon 1341 to initiate the process for declaring or inflicting a penalty;
- whether an extra-judicial decree can be issued, or whether the case is one which requires a formal trial.

The decree must state the conclusion arrived at whether he has moral certainty concerning the sufficiency of the proofs, and, on that basis, whether to undertake the instruction and penalty phase of the penal process (see canon 1718, §1). Before issuing the decree, the Ordinary can consult two judges or other legal experts.

The Preliminary Investigation ... (continued)

The Promoter of Justice would then be asked to prepare an introductory *libellus* ("bill of complaint"). It is important, when determining the grounds, to make certain that the appropriate questions are asked. Reference should be made in the *libellus* to the presumed existence of a canonical delict, to the required responsibility (imputability), and to the eventual penalty to be imposed.

The Ordinary might decide that, although the accused priest did commit the offences, he is labouring under serious psychological problems which call for his being placed in treatment, or at least call for an intensive psychological evaluation.

Also, we must keep in mind that there is a major difference between "stupid" behavior, or "imprudent" conduct, and a formal canonical delict. † ([Back to Table of Contents](#))

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With the current crises in the Church, we need this organization. After our 2013 newsletter we received inquiries from more than 30 countries. We *must* support one another. This book will cost us over \$35,000. We also plan to publish it in different languages. We ask you to consider making a tax deductible contribution to Justice for Priests and Deacons. You can donate through our website by credit card at www.justiceforpriests.org, or you can mail your gift to:

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Accusations Against Priests, Part I

Richard P. Fitzgibbons, M.D, Psychiatrist, West Conshocken, Pennsylvania, in Homiletic & Pastoral Review Online at www.hprweb.com, January 29, 2015.

The Need for More Justice and Psychological Science

The evaluation process of accusations against priests in regard to determining their suitability for priestly ministry would benefit from greater justice and knowledge of psychological science. There are presently severe weaknesses in this process that should be addressed.

Response to Accusations

The practice of immediately removing a priest from ministry after an accusation is made should be reevaluated unless it has significant credibility. **When the accusation is questionable and involves supposed boundary violation, grooming behavior, or consensual sexual behavior with an adult, the removal from active ministry harms the good name of the accused priest.**

An inappropriate response of some diocesan investigators is to go to the accused priest's parish and communicate to parishioners the (unproven) accusations against him. Then, parishioners are asked to report any information they may have of any inappropriate behavior by the accused priest. Such behavior could create false memories in parishioners¹ and harm the accused priest.

The Accuser

Justice requires an in-depth knowledge of the accuser, given the prevalence of false accusations in the culture such as occurred in the false memory epidemic against fathers that was influenced by mental health profession-

Accusations Against Priests, Part I (continued)

als.² This knowledge would include an identification of the accuser's emotional background with his/her father because unresolved anger with a father can be misdirected, perhaps even unconsciously, at another father figure, the priest. It is also vital to evaluate any major weaknesses in secure attachment relationship from childhood and adolescence with parents, siblings and peers, and any traumatic experiences in adult life.

False Accusations

An understanding of false accusations is essential for all involved in the evaluation and discernment process. Participation in ongoing education in this area should be required with proof of a thorough understanding of the research and writing of the leading expert in memory and false memory, Dr. Elizabeth Loftus, University of California, Irvine.³

Making false accusations undoubtedly is one of the reasons for the eighth commandment, "Thou shalt not bear false witness." In view of the commandment, encountering false accusations should not be surprising to anyone.

False accusations against authority figures, coworkers, members of the clergy, and even spouses have been increasing in our clinical experience. Those against priests have been caused most frequently by excessive and misdirected anger and by hope for financial gain.⁴

When gathering data concerning the accused person, it is important to discover any possible hidden motives in the accuser. Actual case histories have revealed some of

Accusations Against Priests, Part I (continued)

the following conflicts in the accuser:

- significant anger against male authority figures, or other important males, which is misdirected at a priest
- a compulsive need to control, with intense anger toward the priest, because of an inability to control him
- intense jealousy of the priest
- profound lack of confidence with a need to feel superior to the priest and to punish him
- depression and mental instability
- substance abuse
- desire for publicity
- hatred of the Catholic Church
- sexual conflicts
- prejudice
- desire for financial gain
- blind zeal for a cause
- anger against the fullness of the Church's teaching on sexual morality and the liturgy, and the faithfulness in the priest in these areas
- narcissism
- lack of faith
- feminist agenda for the Church
- homosexual agenda for the Church
- sociopathic personality traits

Unfortunately, Vicars for clergy and bishops all too often accept accusations as being truthful without exploring the background and possible motives of an accuser, and then request the priest go for an evaluation.

Accusations Against Priests, Part I (continued)

The Responsibility to Prove the Accusation Is Not False

Mental health professionals who are called upon to evaluate priests should report fully on the background of the accuser and should document how they have determined that the specific accusation against the priest is not false. The need for such an evaluation process is clear, given the extent of the false accusations made in our culture today. The same responsibility applies to review boards.

Since the major unresolved anger that adults bring into their adult lives that is misdirected at others arises from hurts in the father relationship, a thorough history of the accuser's relationship with her/his father is required.

Unfortunately, some dioceses have supported false accusations made by accusers with criminal records. One such accuser, who had no proof of her accusation, received a financial settlement. This was followed by an attempt to laicize the priest. Other reports of false accusations against priests have been documented which were supported by district attorneys' offices.⁵ †

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1. Dr. Elizabeth Loftus (1997). "Creating False Memories." *Scientific American*, September; 71-75.
2. Mark Pendergrast (1996, 2nd edition). *Victims of Memory: Sex Abuse Accusations and Shattered Lives*. Upper Access.
3. Elizabeth Loftus (2013). *Myth of Repressed Memory: False Memories and Allegations of Sexual Abuse*. St. Martin's Griffin.
4. John L. Allen (2011). "A New Symbol of False Sex Abuse Allegations." *National Catholic Reporter*, December 2011.
5. Ralph Cipriano (2013). "Star Witness' Story in Philadelphia Sex Abuse Trials Doesn't Add Up." *National Catholic Reporter*, April 29, 2013.

Interviewing Witnesses in The Preliminary Investigation

Selections from John P. BEAL, "The Rights of the Accused in the Canonical Penal Process," in *CLSA PROCEEDINGS*, 53 (Oct. 1991), pp. 83-84.

"A suspect also has the right to have this prior investigation conducted properly. **This investigation cannot be limited to the collection of letters of a file of letters of complaint, private documents of dubious probative value.** Although extrajudicial in form, the preliminary investigation serves a judicial purpose—to collect evidence needed to determine whether a penal process can and should be initiated and to serve as the foundation of the prosecution's case in that process. In sum, the evidence collected must be of such quality that it can "hold up in court." The ordinary or his delegate is to carry out the investigation in the manner and with the powers of an auditor in a judicial process (c. 1717, §3). While all forms of proof recognized in law may be collected during a special inquisition, the critical part of the investigation will normally be the interrogation of witnesses. **The investigator is to follow at least substantially the general norms prescribed for the interrogation of witnesses in the judicial process (cc. 1547-1573).** [Cfr. Francis Xavier Wernz & Peter Vidal, *Ius Canonicum* (Rome: *Apud aedes Universitatis Gregoriana*, 1949) 6: c.722; Michael Cardinal Lega and Victorio Bartocetti, *Commentarius in Iudicia Ecclesiastica* (Rome; *Azienda Libreria Catholica Italiana*, 1950) 3: 237]

"The discretion that should characterize the investigation requires that the investigator interrogate only those he has reason to believe have relevant and judicially admissible knowledge about the commission of

Interviewing Witnesses in The Preliminary Investigation

crime or its imputability. [Lega-Bartocetti, 3: 326; Wernz-Vidal, cc. 722-723]

“Since the investigation is informational in nature, witnesses believed to have knowledge favorable to the suspect should be included in the scope of the investigation. [Lega-Bartocetti, 236] Although it is an inquisition, the special investigation is not a witch hunt but a search for the truth.

“Witnesses should be advised that, should a penal process ensue, their names and the content of their testimony will be revealed to the accused and that they may be summoned later to repeat their testimony or to respond to additional questions proposed by the judge, the promoter of justice, or the accused. [Wernz-Vidal, c. 734] **If witnesses refuse to testify under these conditions, they should not be interrogated. Should they subsequently refuse to comply with these conditions, the information they supplied should be stricken from the record. Before and after their testimony, witnesses must take an oath by which they swear not only to tell the truth but also to maintain absolute secrecy about the fact and the substance of the interrogation.** (1917 Code, c.1944, §1; Wernz-Vidal, §722; Lega-Bartocetti, 236)”

“Concern has been expressed about the practice, apparently not uncommon in cases involving clerical misconduct, of summoning a cleric before the diocesan bishop and extracting a confession under duress without informing him of his right ‘to remain silent.’ While such a practice may be an expeditious way to protect the diocese’s ‘deep pockets,’ it is a gross violation of canonical process (Lega-Bartocetti, 238).” [Beal, note 18, p. 85] †

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Anonymous Letters and Third Party Accusations

Anonymous Letters

Rev. Dr. Michael Higgins, M.A., D.D., D.C.L., "Anonymous Letters,"
from **JusticeforPriests.org**, Executive Director of Justice of Priests and
Deacons.

The Holy See has always taught that anonymous letters are to be disregarded and have never recognized that they have any probative value. On May 7, 1923, the Sacred **Congregation for the Sacraments** issued the decree, *Doctrina Catholica*. Its rule 77 § 1 states, "No document is entitled to credit unless it is proved to be authentic and genuine." (cfr. *Acta Apostolicae Sedis*, Vol. 15, pp. 389, ff.)

The **Sacred Congregation for the Sacraments**, August 15, 1936, promulgated the decree, *Provida Mater*. Article 165 states, "Anonymous letters and other anonymous documents of any kind usually cannot be considered as an indication, unless, and to the extent that, they report facts which can be proved from other sources" (cfr. AAS Vol. 28, pp. 313, ff.).

The jurisprudence of the **Roman Rota** is fully concordant with these statements (cfr. *Sacra Romana Rota: Decisiones* 22, n. 9, pp. 373; Vol. XXV, decision 35, n. 12, p. 303).

The Supreme **Tribunal of the Apostolic Signatura** has the same philosophy of jurisprudence with regard to documentation (cfr. Private Reply, *Apostolic Signatura*, November 24, 1973; reported in *Communicationes pro Religiosis*, Vol. 56 (1975) pp. 373-383; and *Periodica*, Vol. 64 (1975) p. 296-303).

Many **commentators** express the same opinion. Wanenmacher writes, "As long as the authorship of the

Anonymous Letters ... (continued)

document has not been duly established, there is no legal proof forthcoming." Anonymous letters cannot be brought as evidence in the trial. (cfr. Francis Wanenmacher, *Canonical Evidence in Marriage Cases*, Philadelphia, Dolphin Press, 1935, p. 236).

Revealing The Accuser's Identity

Thomas J. Green, "The Penal Process; Counsel for the Defendant," on Canon 1723 in *New Commentary on the Code of Canon Law*, by John P. Beal, James A. Coriden, Thomas J. Green, (eds.), Paulist Press, New York, NY/Mahwah, NJ, 2000, p. 1813.

"In connection with the accused's right of defense, one might note that the accuser's name does not have to be revealed **initially** to the accused. **If, however, a given accusation were used as a proof in the process, the accuser would then technically be a witness, and his or her name would then be revealed to the accused** (Comm. 12 [1908] 194)."

Third Party Accusers

John P. Beal, "Doing What One Can," in *THE JURIST*, 52 (1992), pp.642-68.

"Denunciations may be lodged by third parties other than parents, who claim to have witnessed the misconduct, to have received information about the incident from the victim himself or herself, or to have seen or heard something suggestive of impropriety. In general, these third parties should swear an oath not only to tell the truth but also to maintain secrecy about the fact and the substance of the interrogation (Wenz-Vidal, 6: 700)."

"The usual norms for interrogating witnesses in con-

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Anonymous Letters ... (continued)

tentious trials (cc. 1558-1571) should be observed when these inquiries are being conducted (Wenz-Vidal, 6: 700). Third party witnesses may not reveal to ecclesiastical authorities anything that would violate the canon of professional confidentiality (c. 1548 § 2, 1).”

Taking Accusations For Granted

Augustine Mendonca, “The Bishop as the Mirror of Justice and Equity...,” in *PROCEEDINGS OF THE CANADIAN CANON LAW SOCIETY*, 37, (Halifax 2002), pp.19-40.

Decisions from Congregation for Clergy: “Several cases in 2001 from the Congregation of the Clergy seriously attack the procedures used in dioceses to condemn priests or to remove them from ministry. In the case of December 21, 2000 (PN 2000/1201) they attacked procedures used—‘without recognizable administrative or judicial process for the application of the provision of a perpetual nature.’ For instance, the investigation was carried out in the name of the diocese by individuals not appointed in accordance with the law. **They had not followed procedures consistent with the norms of the Code. The acts had no identification of the accusers including dates, time, places and witnesses of the alleged abuse. Individual accusations could not be verified by recognizable means. It seems that the accusers had been taken by the Ordinary at face value, overturning any presumption of innocence to be afforded by natural law to the accused.** Public statements made by the diocesan officials apparently harmed the good reputation of the accused.” †

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Psychological Evaluation: Some Recommendations

Dr. Donald Ruedinger M.D., Psychiatrist, Anthem, Arizona and
Dr. Weston Edwards, Ph.D., Licensed Psychologist, Las Vegas, Nevada.

What if you are asked to undergo Psychiatric/Psychological evaluation/treatment? What should you do? What are your rights? What is the value of Psychiatric/Psychological evaluations? Where is the best place to have such evaluation done? Is the recommended treatment what I need? What will be the effect of this on my future?

Know that you do have rights

When a priest has an allegation of sexual abuse made against him, frequently he is asked to go for a psychiatric evaluation and/or psychological testing by his bishop. The Congregation for Clergy communicated on October 8, 1998, that no person may be coerced into an evaluation. However, a refusal to have an evaluation may be used against the priest. Thus cooperation by the priest is recommended. However, that doesn't mean blindly going along with what is frequently recommended, i.e. being sent away to a residential facility for a period of time for evaluation and treatment.

Most priests are not so severely mentally ill or a danger to themselves or others that they require such extreme treatment. (The mental health field calls this "levels of care," and in most cases the appropriate level of care can be done on an outpatient level—i.e., local--- versus the residential level—i.e., travel/out of state.) Most dioceses have psychiatrists and psychologists locally available who are competent to conduct an evaluation and /or psychological testing. **You have the right to refuse being sent to**

Psychological Evaluation ... (continued)

a residential facility when the evaluation can be done locally on an outpatient basis. The stress to a priest of being accused of sexual abuse is great enough without adding the additional stress of being sent to a strange place, losing their support system of friends and family, their phone, etc. **You have a right to be involved in the decision as to how and where the evaluation is done.**

Value of Psychiatric/Psychological evaluations

It has been long recognized that such evaluations competently done can provide valuable information in understanding the person's thoughts, feeling, and behaviors. However, such evaluations have their limitations. For example, they have little validity in accurately predicting future behavior. They are like a snap shot picture taken at a given time in the person's life rather than a motion picture of the person's life taken over an extended period of time and circumstance. This is particularly true if the person is under considerable stress at the time, some of this stress being artificially added because of how and where the testing is done.

Privileged nature of the evaluations.

The information given and obtained in these evaluations is "Protected Health Information." **You have nearly absolute control over what happens with your Protected Health Information.** Exceptions to this control have to do with imminent harm to self, others or abuse to children or vulnerable adults, or when a court orders the release of information. Outside of these exceptions, you are not required to share your records with anyone. **No profession-**

Psychological Evaluation ... (continued)

al person can release your information to others without your written permission.

You also have a right to review your records and receive a copy of your records. If there is information in your records that is untrue and/or you disagree with, you cannot require them to change their records. However, you have a right to have your corrections added to your records and they have the obligation to add your corrections to your records. **It is your right to refrain from giving written permission for your records to be released until you have had an opportunity to review them.** **Should you give written permission to release your records, you can be very specific as to whom they are released.** At any time you can withdraw your permission to release your records and from that date on your records can not be released to anyone without a new written permission from you.

It is important to highlight that **you do not have to release information to your ordinary or his representative.** The prudence of releasing information to your ordinary should be reviewed with your civil and canonical representation.

If you are admitted to a residential facility, one of the first things you do is to sign many forms which include releases of information. **It is recommended that you defer any signatures on releases of information until a later date.** The treatment facility will encourage you to sign these right away to make their job easier; however, your rights allow you to defer these signatures until you talk with your legal representative. These releases will often be too general at the start of treatment and may put you at risk.

Psychological Evaluation ... (continued)

The appropriateness of treatment recommended

You have the right to know, what is the purpose or goal of treatment and does it flow from the diagnosis?

For example, if inpatient or residential treatment is recommended for a primary diagnosis of Adjustment Reaction or Depression without suicidal ideation, it is inappropriate. The general principle regarding the appropriateness of treatment is:

the treatment being recommended ought to be the least invasive that offers the best chance of being effective.

It is reasonable to be suspicious of the treatment recommended if it does not flow from the diagnosis made. It is reasonable to be suspicious if the facility only provides one form of treatment, for example, residential, and that is consistently the only form of treatment being recommended.

There are very few treatments in the mental health field that can be effective without the cooperation of the treated person . Any recommended treatment plan needs to have your participation in its development. Your input is critical (and required) for treatment's success.

Second Opinions

If you have any questions about either the evaluation done or the treatment plan recommended **you have a right to have them reviewed by another professional.** The effect of an allegation made can be so devastating and have major consequences on the rest of your life. Therefore, getting a second opinion about the diagnosis and especially the treatment plan would be a very reasonable step for you to take. † ([Back to Table of Contents](#))

Accusations Against Priests, Part II

Richard P. Fitzgibbons, M.D., Psychiatrist, West Conshocken, Pennsylvania, in Homiletic & Pastoral Review Online at www.hprweb.com, January 29, 2015.

The Evaluation of Grooming Accusations

Many priests have been accused of grooming youth without meeting the criteria for any of the stages of grooming behaviors. Many of these priests had integrated their sexuality into their total gift of themselves as other Christs, as spiritual fathers, and as spouses to the Church.

Dr. Michael Welner, forensic psychiatrist and associate professor of psychiatry at NYU School of Medicine, describes six stages of grooming that should be evaluated in those accused. These include:

- Stage 1: Targeting the victim
- Stage 2: Gaining the victim's trust
- Stage 3: Filling a need
- Stage 4: Isolating the child
- Stage 5: Sexualizing the relationship
- Stage 6: Maintaining control

These behaviors are often never identified. Nonetheless, the priest is accused of grooming. In response to one case of a priest identified as violating boundary violations and grooming, a highly respected forensic psychologist reviewed the case and concluded that the child protective office of the diocese did not know how to make an accurate diagnosis of boundary violations and grooming, and needed education in this vital area. This priest continues to be denied priestly ministry even though no family or child has ever filed a complaint against him for inappropriate sexual behavior.

Accusations Against Priests, Part II (continued)

The Evaluation of Boundary Violation Accusations

In our clinical experience, priests are being subjected increasingly to accusations of having boundary issues. These accusations of boundary violations are often made by members of the parish and rectory staff, as well as school teachers or principals. In our evaluation of such cases, the priests were often engaging in completely appropriate priestly ministry with youth. **No accusations of boundary violations should be given merit unless the criteria for grooming behaviors are met, especially targeting a victim and isolating a minor.** Those who accuse priests of boundary violations or grooming behaviors often have the same inner psychological and spiritual conflicts as those who make false sexual allegations.

The Appropriate Mental Health Evaluation and Review Boards

Presently, a major conflict exists, in that, for evaluations of allegations of grooming behaviors, boundary violations, and allegations of troubled or inappropriate behaviors, priests are required to go to inpatient treatment centers for priests and religious, rather than to mental health professionals who provide comprehensive evaluations in their offices.

A number of deviations from the accepted standards of care in the mental health field regularly occur in the evaluations and recommendations at these inpatient centers, which include:

- the recommendation for a six-month hospitalization, rather than a brief psychiatric hospitalization with a later focus on outpatient treat-

Accusations Against Priests, Part II (continued)

- ment;
- the recommendation for hospitalization for a narcissistic personality disorder or traits which are not treated by hospitalization;
- the regular diagnosis of a narcissistic personality disorder in priests treated by other mental health professionals who attest that neither the history, nor the testing support such a diagnosis;
- giving vocational testing to hospitalized priests, and suggesting other vocations be considered in priests who love their priesthood and who have no allegations against them except supposed difficulties in working with parish staff;
- failing to recommend return to active ministry in priests whose outpatient evaluations revealed no psychological conflicts that would interfere with priestly ministry;
- violating patient confidentiality by not communicating to the priest the information provided to the treatment center by a diocese or religious community;
- failing to recommend return to ministry in priests who have made a sexual mistake with one woman and who have worked to resolve the loneliness that made them vulnerable;
- the requirement to return twice yearly to the hospital for week-long evaluations over a five-year period when the standards in the mental health field are that post-hospital care is managed solely by outpatient mental health professionals.

Accusations Against Priests, Part II (continued)

Another grave injustice in the psychological evaluation of priests has been done by mental health professionals who work in close association with a district attorney's office.⁶ For example, a psychologist gave a priest the Abel Assessment for Sexual Interest, which has no proven scientific validity.⁷ **The diagnosis given to the priest was that he had a psychiatric disorder related to attraction to girls, which has never existed in the mental health field.** Opinions from such mental health professionals should not be accepted by review boards and second opinions should be required.

There are competent mental health professionals in most parts of the country today with a proven sensitivity in the evaluation of accused priests, who could perform evaluations of accused priests without the pressure of needing to fill inpatient hospital beds. Many priests are fully aware of these difficulties concerning treatment center evaluations and insist upon the right to choose mental health professionals with expertise in treating priests, with the diocese or religious community having the right to request a second opinion.

Procedures, Diagnoses, and Recommendations of Review Boards

The background for the work of the review boards is that the allegations of a charge of sexual abuse seem to be the one "crime" in our society in which the accused is considered guilty until proven innocent. A number of glaring deficiencies exist in the review board process and they include:

1. *Lack of knowledge of the science related to memory and to*

Accusations Against Priests, Part II (continued)

false accusations. As stated earlier in this report, a lack of knowledge in regard to the current science surrounding accusations from the past is a serious problem for mental health professionals who evaluate accused priests and for the work of review boards. Review board members should be required to participate in ongoing education about the current science surrounding recall of traumatic sexual memories. Review board members, bishops, and religious superiors should have a thorough knowledge of the work of Dr. Elizabeth Loftus.

Knowledge of the psychological background of the accuser is essential. Major, unresolved anger that people bring into their adult lives arises from hurts in the father relationship can be unconsciously misdirected at other father/authority figures.

2. Failure to interview the accused. **In review boards for other professions, no major decision is made against the individual to exercise his/her profession without giving the individual the ability to appear before the review board to defend himself/herself.** Priests deserve a similar just process.

3. Lack of ability to read charges against the accused. In the past, a priest was permitted to review the charges against him with his canon lawyer present. Now that fundamental right has been removed. Today, only the canon lawyer is allowed to read the charges and cannot take a copy of them to the priest to review. This restriction is clearly unjust and damages the priest's ability to defend himself.

4. Lack of knowledge of the spiritual life and priestly ministry of the accused priest. Many accused priests have successfully integrated their sexuality into their total gift of them-

Accusations Against Priests, Part II (continued)

selves as spouses to the Church and as spiritual fathers. Priests, who have done so, usually cope well with sexual temptations and are unlikely to engage in inappropriate sexual behaviors. The priest's spiritual life should be evaluated by a priest member of the review board or by a consultant to the review board. This report should be available for review by all involved and should be an important aspect of the discernment of the bishop.

5. Unscientific diagnoses used against an accused priest.

Review boards have arrived at opinions against the suitability of priests for ministry that often have no basis in psychological science. For example, priests have been determined to be unfit for priestly ministry because they were determined to be immature (absent sexual accusations against them). The claim is made that this diagnosis makes them potentially dangerous to youth. No psychological science exists that supports a relationship between so-called immaturity and a risk of sexual acting-out with youth. In our evaluation of priests so accused, they demonstrated a zeal for ministry to youth in parish schools.

Bishops should require that opinions offered by review boards be based in psychological science and reason, not upon intuitive feelings against a priest.

6. Lack of transparency. When the review board offers opinions, they should be in writing, and the priest should be able to review them at the time of his meeting with his bishop or superior.

Opinions of review boards which support accusations of boundary violations and grooming behaviors need to be defended with objective criteria that are agreed upon by competent mental health professionals. Each review

Accusations Against Priests, Part II (continued)

board should include at least one competent mental health professional who is familiar with the psychological dynamics related to false accusations.

7. *The history of priestly ministry of the accused.* In addition to the spiritual evaluation of the accused priest, the history of the exercise of his priestly ministry should be documented. This history is vital in the discernment process for each priest.

8. *Proof that the accusation is not false.* The review board should be required to state its specific reasons as to why it has determined that the accusations against a priest for boundary violations or inappropriate sexual behaviors are not false accusations. **They should describe the family background of the accused and life adjustment at the time of the accusation. The causes of false accusations should be listed and identified as not applicable to the accuser.**

The Final Decision by the Bishop

Justice requires that the bishop should insist that the review board present to him a thorough analysis of the adult accuser(s) of priests. The bishop should review with the priest how the review board has determined that the accusations are not false.

Bishops and religious superiors need to exercise caution and prudence in evaluating the review board's decisions specifically in support of boundary violations, grooming behaviors, and psychological conflicts that the board has determined indicate the need to remove priestly ministry.

Some bishops attempt to laicize priests after one sexu-

Accusations Against Priests, Part II (continued)

al mistake with a woman while reassigning priests who act out homosexually. Other bishops have refused to even read a second mental health opinion which attests to a priest's psychological health and fitness for ministry. Many priests with healthy personalities have been the victims of the injustice of having their priestly faculties removed, due to a flawed evaluation process by child protective services, mental health professionals, and review boards.

Recommendations

We recommend that a task force be developed of American Catholic psychologists and psychiatrists, to review the process of evaluating accusations against priests and the criteria used for claims of boundary violations and grooming behaviors.

Justice requires that many priest cases be reviewed in light of the psychological science related to anger, the nature of false accusations, and memory recall. We recommend a task force be developed of American Catholic psychologists and psychiatrists to review the mental health evaluations of accused priests and the activities of the review boards, in order to develop more scientifically rigorous criteria to protect priests and the Church.†

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6. Richard Fitzgibbons & Peter Kleponis, (2011). mercatornet.com/articles/view/abuse_allegations_true_false_and_truthy/.
7. Robert Enright's report on the Abel at www.priestlyhealing.com.
8. Pope John Paul II (1992). *I Will Give You Shepherds*. St. Paul Books and Media.

Appeal to Your Bishop: Revocation or Amendment of the Bishop's Penal Decree

Msgr. Charles L. Scicluna, Promoter of Justice for the Congregation for Doctrine of the Faith, "The General Structure of Administrative Justice in the Church," in *PROCEEDINGS OF THE CANON LAW SOCIETY OF INDIA* (2004), pp. 6, 7.

The first stage or phase of recourse against an administrative act is the request for revocation made by the individual or juridical person concerned to the Diocesan Bishop.

Can. 1734 § 1: "Before having recourse, the person must seek in writing from its author the revocation or amendment of the decree. Once this petition has been lodged, it is by that very fact understood that the suspension of the execution of the peremptory time-limit of ten canonical days from the time the decree was lawfully notified". This stage is not optional. The person aggrieved must petition the bishop to reconsider his decision.

There is nevertheless no need to ask for revocation or amendment when the bishop has decided not to answer a petition for a decision and a negative answer is presumed after three months under can. 57 (failure to answer a **request for a decision** to be made) or after thirty days in the case of can. 1735 (failure to answer the **request for revocation**) [c. 1734 § 3, n.]

The request for revocation or amendment has to be made in writing and should be addressed to the bishop. This implies that the petitioner or recurrent has to provide justification for his or her request. At this stage the concept of grievance or *gravamen* takes on a very wide connotation. Arguments of expediency or prudence are acceptable motivations for a request to revoke.

Appeal to Your Bishop ... (continued)

Whereas a **request for revocation implies a total disagreement with the decision** of the Bishop, a request for amendment may focus on some aspect of the decision which aggrieves the petitioner but saves other aspects of the decision.

Worthy of note is the rule of can. 1734 § 1 concerning request for suspension of the act: “Once this petition has been lodged, it is by that very fact understood that the suspension of the execution of the decree is also being sought”.

Time-limit for requesting revocation

The request for revocation or amendment has to be made within a very strict time-limit which must be respected. Canon 1734 § 2: “The petition must be made within the peremptory time-limit of ten canonical days from the time decree was lawfully notified”.

This time limit is peremptory: therefore a person who unjustifiably fails to respect it forfeits the right to make recourse against the decision of the Bishop.

The time allowed for the request is “ten canonical days” or “ten available days”. The original Latin states “*intra peremptorium terminum decem dierum utilium*”: can. 201 § 2: “Canonical [or available] time is time which a person can so use to exercise or to pursue a right that it does not run when one is unaware, or when one is unable to act”. There are therefore two circumstances in which *tempus utile* does not run: ignorance and inability to act.

Can. 1734 § 2 refers to notification of the “decree”, and this implies a decision duly formalized according to the general norms. Canons 54-56 give specific rules con-

Appeal to Your Bishop ... (continued)

cerning the notification of decrees and precepts.

The praxis of the Apostolic Signatura applies can. 1467 to administrative recourse so that if the last day of the *terminus peremptorius utilis* is a holiday, the term is considered to be postponed to the first subsequent day which is not a holiday.

What are the options available to the bishop in the case of a request for revocation or amendment of his decision?

Can. 1735: the Bishop is expected to respond within thirty days of the receipt of the request for revocation.

He may decide to revoke his decision by a direct decree of revocation (cf. cc. 47 and 58). In this case there is no scope for further action on the part of the aggrieved petitioner. The Bishop may revoke his decree at any stage of the controversy. The hierarchical Superior or the *Signatura Apostolica* are obliged to take note of the decision to revoke and declare that the object of contention does not exist anymore. Whether the bishop would after such revocation still be accountable for damages caused by his action is at present very much a moot point.

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ST PETER'S BASILICA SERVICE FOR VICTIMS

In May 2010 Msgr. Charles Scicluna, Promoter of Justice for the CDF, delivered the homily at a holy hour of reparation organized by pontifical university students and seminarians at St. Peter's Basilica. Msgr. Scicluna also addressed other wounds in the Church: "How many are the sins in the church for arrogance, for insatiable ambition, the tyranny and injustice of those who take advantage of ministry to advance their careers, to show off, for reasons of futile and miserable vanity!" (*Zenit.org, Irene Lagan*)

Appealing Penalties to Rome

Rev. Msgr. Maurice Dooley, S.T.D., L.C.L., Archdiocese of Cashel and Emly, Tipperary, Ireland.

Clerical child sexual abuse is penalized in canon 1395 §2, and, since 2001, is one of the crimes reserved to the Congregation for the Doctrine of the Faith (CDF) in the document *Sacramentorum sanctitatis tutela* (SST) issued in 2001 and revised in 2010.

Whenever the Ordinary (a Bishop or Religious Superior) receives information, “which at least seems true”, that a crime such as clerical child sexual abuse (as defined in canon 1395 §2 and SST Norms Art.6) has been committed, he is bound by canon 1717 to conduct a Preliminary Investigation to ascertain the facts which will enable him to decide whether a process to impose a penalty on the cleric should be initiated (c.1718).

If he decides that such a penal process is warranted, he must next submit the case to the Congregation for the Doctrine of the Faith which in 2001 took over supervision of all such penal cases. The Ordinary submits the details of the case, along with a summary on a standard form, which includes his *votum* or opinion on how the case should be dealt with. If the CDF finds the Ordinary’s proposal reasonable, they usually authorize him to proceed in first instance either to a full judicial penal trial in the diocesan court in accordance with canon 1721, or exceptionally, by way of an extrajudicial decree in accordance with canon 1720 (an administrative process where a penalty is imposed by decree by the Ordinary without a formal trial). The CDF could also take on the case to try it themselves in first instance, but this would be very unusual. And in very grave cases, where it is manifestly evident

Appealing Penalties to Rome (continued)

that the delict was committed, the CDF obtained in 2003 the right to bypass a trial and present the case to the Pope to personally impose dismissal from the clerical state, without possibility of appeal.

The full judicial trial involves a court of three judges, a prosecutor (called the Promotor of Justice), and an Advocate for the accused, and follows the canon law on Penal Processes contained in canons 1717-1728. Such a court trial has the power to impose perpetual penalties including dismissal from the clerical state. The “extra-judicial decree” procedure, or “administrative penal process”, is a simpler one. The Ordinary with the advice of two assessors judges the evidence collected, decides on the guilt of the accused, and imposes an appropriate penalty, which cannot however be a perpetual one unless by special mandate of the CDF.

Recourse or appeal in second instance from either of these two penal processes can be made, either in regard to the verdict of guilty or in regard to the penalty imposed, but only to the CDF. In January 2015, implementing a Rescript issued in November 2014, Pope Francis appointed seven Cardinals and Bishops as members of a new special College within the CDF to deal with appeals to the CDF in the cases reserved to them by SST. According to news reports this was to lighten the load on the Congregation itself which at its monthly meetings had to deal with 4 or 5 appeals from priests claiming to have been wrongly accused.

These ecclesiastical trials are very different from the trials in open court in the civil legal system familiar to most people. The ecclesiastical processes are all held in closed sessions not open to the public or even to the ac-

Appealing Penalties to Rome (continued)

cused. In any session of the full judicial process, for example, no one is present in court except the judges, the Promotor of Justice, a Notary, the accused's Advocate, and the person whose evidence is being taken. No one but a judge asks the questions, there is no cross-examination, and if the Advocate or even the Promotor wants a question to be put to the witness, he must ask the judge to put the question for him. **The whole trial is secret; the accused is not allowed to be present at the questioning of any witnesses, though he must be allowed access to all the evidence before the case is concluded.** The public has no right of access to anything except the verdict of the court. At the recourse or appeal stage in the CDF, the whole proceedings are subject an even higher level of secrecy called "Pontifical Secrecy" which covers the whole process and seemingly even the verdict. For this reason not much is known about jurisprudence or case law in CDF cases.

If a verdict of guilty in first instance is confirmed in second instance in the CDF, the matter becomes a *res iudicata* or "adjudged matter" from which there is no further appeal in law. All there can be is an appeal to the Pope personally in accordance with canon 1417 §1, or a claim for what is called *restitutio in integrum* or resetting the case back to square one, which is allowed only for cases in which the injustice of the decision can be clearly established for one of five reasons set out in canon 1645, i.e., evidence subsequently discovered to be false, newly discovered documents which undoubtedly demand a contrary decision, a sentence rendered due to the malice of one party which harmed the other, neglect of a prescript of the

Appealing Penalties to Rome (continued)

law which was not merely procedural, or a sentence contrary to a previous *res iudicata*. **If the CDF verdict amounts to the dismissal of the cleric from the clerical state, this makes the case one concerning the status of persons, which by canon 1643 never becomes *res iudicata*, and therefore allows for recourse at any time for a new presentation of the case within the conditions given in canon 1644.**

All these recourses or appeals are supposed to observe the basic principles of law, often called the “rule of law”, which in our civil courts have been worked out by long experience in trying to establish human rights, and in overcoming the oppression of rulers who bent the law to suit themselves or to favor the prosecution. From this interaction we get such principles as: innocent until proven guilty, the accused is not bound to admit guilt, the *onus* of proof rests upon the person who makes an allegation, claims are not proven until independently corroborated, legislation cannot be retrospective, and there is no crime and no penalty except in accordance with legislation existing at the time the action occurred.

Canon law is supposed to operate in accordance with such basic principles too, and many of them are written into the Code. Indeed, canon 221 §3, in a part of the Code which establishes a kind of Bill of Rights, says clearly that “The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.” Would that this were always so! In some cases the canon law is defective and biased in favor of the prosecution; in other cases it is misapplied by the prosecution and the accused is poorly defended by his Advocate.

Appealing Penalties to Rome (continued)

In recent years, some priests have received decrees from the Holy See which state that there is no right of appeal. Some bishops and canonists give as the reason why there is no appeal is that the Holy Father signed it. This is not true. Sentences of the CDF are signed by the Judges and Notary, and even when a priest is laicized in the exceptional cases where a trial is bypassed and the case is sent by the CDF directly to the Holy Father, the decree is signed by the Cardinal Prefect and the Archbishop Secretary of the CDF.

There is a long tradition in the church that any member of the faithful can always exercise his right of appeal to the Pope. This is why canon 1417 §1 says: “By reason of the primacy of the Roman Pontiff, any member of the faithful is free to bring or introduce his or her own contentious or penal case to the Holy See for adjudication in any grade of a trial and at any stage of the litigation.” Canon 1638 further states “that an appeal suspends the execution of the judgment,” and there is a similar suspensive effect for recourse against decrees in canons 1734-1736.

Some priests have received a decree of laicization and were not aware of any canonical process taking place. This is contrary to due process and the norms of law in the opinion of many prominent canonists. We suggest that if this happens to you that you find a competent canonist outside of your diocese, and appeal your case to the Holy See, even to the Holy Father personally. Some priests have done this and their appeal has been accepted. The idea of no appeal is so contrary to U.S. Constitutional Law where you always have the right of appeal. †

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