

Bishop Accountability

The Second Wave of Abuse: The Fate of Our Accused Priests

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I'm here tonight to address what I believe is the most underreported aspect of the pedophilia crisis: The lack of due process for accused priests. Let me say first, that I am personally, and as the Editor of SALT, first and foremost an advocate for the victims of this crisis. I am not here today to tell victims what to feel or even to urge them to consider this topic.

That said, however, I believe that we are witnessing a second wave of abuse on the part of many of the bishops and that that abuse is now being directed at the priests accused of pedophilia. Across this country, priests are disappearing never to be heard from again. And their bishops are trampling their legal rights for reasons that have little to do with either canon or civil law. The abuses I am about to delineate for you are not taking place because canon law offers insufficient protection for the rights of accused priests, but because our bishops, either through ignorance or willfulness, are ignoring canon law.

Recently, in an interview with a preeminent canon lawyer, I asked a simple question: What can an accused priest do to clear himself? He replied, "In the present environment, absolutely nothing." I then pointed out some of the many violations of canon law that I have seen in our church's treatment of accused priests and I asked him, "Why aren't the penalties stipulated in canon law being imposed on the bishops who violate the rights of their priests?" And he said to me, "It's not that canon lawyers aren't aware of the abuses. We are. It's because the thugs are in charge." The canonist's reply definitely got my attention and I am hoping that it has gotten yours as well, because I do not believe that the abuse of priests we are seeing now will change until all of us raise our voices to say we will not tolerate abuse in any form. Voice of the Faithful has as one of its goals, support of priests of integrity. I'm here to argue that that goal needs to be expanded to support the rights of all priests to due process.

In our rush to ensure that no child is ever sexually victimized by a priest again, and in the bishops' somewhat knee-jerk reaction to the fully justified public outrage at priest-pedophilia, we have unwittingly allowed another form of abuse to surface: that against our accused priests.

Some of you are no doubt saying to yourselves, "That's fine by me. These priests committed heinous acts against the most innocent members of our society, and worse, they have done it in the name of God." It has been suggested that the crime of pedophilia is a "soul murder", and I believe that from the bottom of my heart. But I am here today to argue that we cannot substitute the abuse of children with the abuse of accused priests. In the abuses I am about to outline for you, I believe you will agree that we have arrived at a point in our handling of these cases where canon and civil law are being eroded to the detriment, and I think diminishment, not only of who we are as human beings, but of who we claim to be as Christians.

In order to bring you more fully into the picture, what I would like to do today is to first outline what SHOULD happen when a priest is accused of pedophilia, and then take you through an overview of the many ways in which our accused priests are being abused by their bishops. First though, I would like to stress that I am in no way implying that the bishop's office should be the first stop in handling these cases. My remarks here tonight are only intended to cover the priests' interactions with the bishop and other church authorities. All complaints of child sexual abuse should be reported to the police and to other appropriate civil authorities first.

That said, according to Canon Law, the following procedure should be followed whenever allegations of sexual misconduct are made against a priest:

1. The allegation should always be made in writing by the plaintiff and signed by the plaintiff in the presence of a Notary Public;
2. If the bishop deems the allegations have merit, he should proceed according to the norms of canons 1717-1715 which outline the requirements of prior investigation. If he then decides to proceed further with the case, the accused is to be given a copy of the allegation and the proofs (Canon: 1720:1).
3. The good reputation of the people involved should be protected, and also their right to privacy and confidentiality (This according to canon 220). The good reputation of a person is always presumed unless the contrary is proven.
4. The accused priest has the right to defend his rights. This presupposes that his rights are known. Note: there is no equivalent of our civil Miranda Law in canon law, but accused priests should be immediately informed of their right to both civil and canonical counsel and their right to remain silent. Ideally, a priest should be informed of the allegations in the preliminary meeting with the ordinary/bishop and then come back to answer the charges on another day with both canon and civil counsel.
5. The accused priest has the right to advocacy according to (Canon 1481:1). The accused in a penal trial must always be provided with an advocate (Canon 1482:2).
6. The Code of Canon Law says that an advocate must have reached the age of majority; may be either a man or a woman, cleric or layperson; enjoy a good reputation; be Catholic unless otherwise provided and have a doctorate in Canon Law or be otherwise qualified.
7. During this process, the priest should continue to receive his salary and sustenance. (Canon 281)
8. There should be a list of competent canonists and civil attorneys provided to the accused. The Diocese should also pay the legal fees and expenses incurred in these cases.

That is what should happen. Unfortunately, however, it almost never does. Instead it has become typical for an accused priest to be called into the bishop's office, told there are allegations against him, and then be coerced into submitting his resignation. The priest should be told whether the diocese has cooperated with civil officials when the accusation is made. He should be informed about whether everything collected by the diocese has been given over to civil authorities and thus subject to subpoena. If so, he should be provided with appropriate civil counsel in order to exercise his right not to incriminate himself.

Very often, priests have been threatened with having their financial support and benefits immediately withdrawn if they do not resign; others have been threatened with the loss of financial support if they do not immediately agree to psychological evaluation. It should be noted here that it is a consistent teaching of the Catholic church that no one may be forced to undergo psychological testing and/or treatment, so right there, the priest's rights are being violated. As noted earlier, canon law also prohibits the bishop from withdrawing financial support while the process is ongoing, so again, the priest threatened with loss of financial support and/or benefits is being violated. Remember, canon law insists that a priest's salary remain intact while the process is ongoing. Here in the Bridgeport diocese, and in many other dioceses as well, priests have either had their salaries cut entirely, or as is the case in this diocese, they are being given only meager stipends of little more than \$1,000. Obviously no priest can afford housing on such a stipend, many cannot afford even the co-payments necessary to visit a doctor and the majority in this situation have also been forced to eat in soup kitchens or starve. Again, here in Bridgeport your accused priests have been refused hospitality within the diocese, making their living situations all the more dire.

All of this often takes place in the initial meeting with a bishop, when the accused priest has no benefit of either civil or canonical counsel. If in his innocence of his rights, he agrees to psychological counseling, he must be very careful of any wavers he may be asked to sign. Canon law defends his right to confidentiality, but the waiver a bishop puts in front of an accused priest very often states that the results of the evaluation are to be made known to the bishop. The bishop may then go on to share that information with plaintiff's counsel, other bishops, etc. and before he knows it, a priest's right to confidentiality is gone. I would like to note here that Canon 187 provides that a priest may rescind a resignation, if he can later attest that it was undertaken in a climate of "grave fear." If you think about what has been happening to priests in many of these initial meetings, then you can easily understand that many of them have grounds to invoke this canon. Recently a priest in the Bridgeport diocese did just that—sending a letter to Bishop William Lori rescinding his resignation citing Canon 187.

First, however, it is important to understand the different types of actions taken against priests in removing them. Strictly speaking, Canon Law provides for both Administrative and Judicial removal of an accused priest. Very often, we read in the paper that a priest has been put on "administrative leave" from the diocese. Simply stated, the bishop has the choice of utilizing administrative means to remove an accused priest from ministry or he may put him through a penal trial. For many reasons, the majority of accused priests are currently being removed through administrative action on the part of the bishop. One reason this is so is that properly speaking there is no appeal against an administrative decree. The bishops for obvious reasons therefore favor this form of removal. Any appeals belong to the formal judicial process. It is important to understand that no bishop may use an administrative process to achieve the permanent removal of a priest from the diocese.

For that, the bishop must avail himself of a full judicial trial, or petition Rome for the laicization of the accused. Many priests are being offered small, one-time settlements to apply for “voluntary” laicization, but there is nothing voluntary about it. The majority are presented with such offers along with a threat of reduced or complete loss of financial support.

Canon law also makes provision, within the sphere of administrative removals, for the removal of a priest under Canon 1044. Canon 1044 loans itself to abuse by the bishops more readily than most. This Canon essentially deals with removal based on lack of psychological competence. Currently, accused priests suffering from bipolar disease, or other common forms of mental illness are being removed under Canon 1044. But it is important that those priests being removed under this canon also immediately be provided both canonical and civil counsel. Canon law stipulates that when the bishop declares that a priest may not exercise his orders, *he must have proof of the accusation*. And that *He may not prevent the exercise of ministry, hoping that the evidence will come out later*.

As many of you know, the “Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons” call for an independent evaluation of all allegations to be made by an independent local review board prior to any charge against a priest being made known. This, however, is an area where the majority of the abuses against priests are committed. Too often, the bishop does not wait for a proper review of the accusations, but jumps instead to putting the accused on administrative leave and announcing it to the press. Thus, a priest’s good name is often destroyed by his own bishop in direct violation of canon law and Norm 6 which says,

“When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in harmony with canon law will be initiated and conducted promptly and objectively. All appropriate steps shall be taken to protect the reputation of the accused during the investigation.”

When it comes to canonical penal trials, we come up against one of the true difficulties in dealing with the pedophilia crisis. Strictly speaking, canonical penal trials are rare to the point of being non-existent in this country. As many canonists will tell you, though there are many marriage tribunals in existence, we are probably another three years away from having tribunals equipped to deal with pedophilia cases in this country. For one thing, there simply are not enough canon lawyers trained in these laws. For another, canon lawyers who are functioning in the Rota system in a diocese often do not want to take these cases on as they often put them at odds with the bishop. Bishops and priests both have the right to insist on a tribunal in Rome before the CDF, but there a new host of problems waits—among them that under the guidelines set forth of tribunals of this kind in the document, *Sacramentorum Sancititas Tutela* all participants in tribunals must be priests. This clearly bars many of the competent canon lawyers a priest is entitled to hire under canon law. All such tribunals are further subject to pontifical secret, leaving many to wonder how an accused priest could actually clear himself if innocent. We need only think about how the late Cardinal Bernardin to ask how he could possibly have emerged with his reputation intact in such a system?

So, the majority of pedophilia cases continue to be handled as administrative actions with the attendant problem that the right of appeal belongs to the judicial process. In response to an administrative action, a priest may “appeal” first by writing to the ordinary who issued the action against him. If the ordinary refuses to reverse or amend his decree, the priest then has the option of pursuing hierarchical recourse, addressing his petition to his ordinary’s immediate superior. If the bishop who issued the original decree is also the diocesan ordinary, then the priest’s recourse is to the Holy See (the Congregation for the Clergy). Currently, however, there are only two priests charged with reviewing all of the sexual abuse cases before the Congregation of the Doctrine of the Faith in Rome. Until a month ago, there was only one. Obviously this means that priests cannot obtain a timely trial.

Norm 9 of the “Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons” also contains what some canonists have dubbed a “backstop” administrative procedure, which allows a bishop to remove a priest through an administrative act. The problem most canonists have with Norm 9 is that canon law expressly forbids a bishop from permanently suspending a priest by an administrative act. One canonist asked, “is the purpose of the norm to achieve administratively a goal which could not be attained judicially?” I would submit that it’s an excellent question, and one which we might all do well to ask.

In addition to all of the above, accused priests are often subject to involuntary laicization and in many cases, bishops are appealing to Rome for laicization without the consent or even the notification of the priest in question. Similarly, a bishop may enter into a settlement on behalf of any priest in a diocese without consulting him or having his permission. This has just happened in the Diocese of Bridgeport, where the diocese entered into settlement agreements with victims on behalf of priests who maintain that they are innocent. When these settlements are reported in the news, however, you are almost never told that the priest had no say in whether his case was settled or not.

In a letter written to Bishop Wilton Gregory, the President of the United States’ Conference of Catholic Bishops, outlining his concerns about the lack of due process for accused priests, canon lawyer Monsignor Michael Higgins, founder of the organization “Justice for Priests and Deacons” cites “Mediated Settlements” as one of three major categories of abuse against priests. He rightly objects that such settlements make little or no effort to search for the facts or the truth of an allegation. Quoting a defense attorney involved in a settlement in the Manchester diocese, he writes, “He praised the Manchester Diocese for its cooperation and said it has taken a leadership role in dealing with sexual abuse complaints. During settlement negotiations, diocesan officials did not press for details such as dates and allegations for every claim, he said. “I’ve never seen anything like it.” Higgins goes on to ask, “Why are these cases being settled so quickly, without a process for attempting to determine the facts or allow the accused due process rights for his defense? It is wrong to just assume guilt and defame the name of an accused. Where is the justice,” Higgins asks, “in handling matters in this manner? Why are the bishops so eager to settle now? What might they be trying to hide?” Obviously, settlements make the priests in question look as if they are admitting guilt and it is important to pay attention to the fact that the priests may not even have been consulted, and cannot prevent the settlement in any event. Since such actions do give the appearance that the priests involved in a settlement offer are guilty, they do harm to that priest’s reputation. Canon law is very strict in providing for penalties against those who cause harm to a priest’s good reputation. Specifically, Canon 220 clearly states that, “No one may unlawfully harm the good reputation which a person enjoys, or violate the right of every person to protect his or her privacy.”

In closing, I would like to point out that if bishops did follow the letter of the law in dealing with these cases, the end result of each would likely be the same. Giving priests the due process rights to which they are entitled will not free the guilty. Thought of in this way, the bishop's violations of priest's rights to due process constitute nothing more than gratuitous abuse. At present, there is precious little oversight in these cases and abuses abound. For that reason, many canon lawyers are calling for the creation an independent oversight board to which accused priests can turn when they find their rights violated.

As VOTF has already stated, local review boards must be appointed by the laity and must have full access to all information. To have these boards appointed by the bishops themselves is a direct conflict of interest. The local review boards we have now are further hamstrung by the fact that they have no authority to investigate accusations, nor do they have subpoena power. They are forced the make decisions based on only what the bishop gives them to consider, and the bishop is not mandated to give them everything he has.

We need further to demand regular status reports from our bishops on all priests removed from ministry due to accusations of child abuse. Those reports should include all pertinent information about the disposition of each case, as well as the level of support being offered to the accused in the form of reasonable support and/or salary, assistance from civil and canonical counsel, with proof of legal bills and support paid by the diocese. You should also check to see whether your diocese's policy on handling accused priests is published, and if so, where? Is it available on the diocesan web site? Is it published as a formal document available to the public?

Let us not forget that some of the priests being accused are innocent and that the bishops are operating within the bounds of national and International civil law, both of which demand due process for the accused. We need to send the bishops the message that this is not Guatemala. This is the United States of America, where the right to due process is guaranteed. To do anything less is to diminish not only the foundation of our legal system, but who we claim to be as Catholics as well.

In their 1971 document *Justice in the World*, the World Synod of Bishops wrote:

Our relationship to our neighbor is bound up with our relationship to God; our response to the love of God, saving us through Christ, is shown to be effective in his love and service of people. Christian love of neighbor and justice cannot be separated. For love implies an absolute demand for justice, namely recognition of the dignity and rights of one's neighbor. Justice attains its inner fullness only in love. Because every person is truly a visible image of the invisible God and a sibling of Christ, the Christian finds in every person God himself and God's absolute demand for justice and love.

Let us remember always that faith ascends not to a set of theological and canonical propositions set forth by the hierarchy, but to God, and let us use that knowledge to ensure justice for all. Thank you.

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