

The Clergy in Court

Recent developments concerning canonical rights

Part I

In January of 1988, *The Priest* published an article of mine titled "The Clergy in Court." Since that article appeared much has happened in the area of clergy malpractice, especially with regard to the sexual abuse of children.

There have been more unfortunate cases of priests and Religious who have abused children. More money has been expended by the Church for damage awards, out-of-court settlements, legal fees and medical treatment fees. More priests have been sent to prison and still more have been given probation.

In addition to the accusations of recent child abuse by priests and Religious, adults who were victimized in their youth are now coming forward with lawsuits.

Major question

On the positive side, an increasing number of archdioceses and dioceses have established policies and programs for investigating accusations, offering pastoral care for victims and their families, and providing adequate treatment of priests involved.

In some instances priests have completed in-patient treatment and have continued with out-patient after-care which has enabled them to effectively control their problems.

In still other cases, priests in this category have been readmitted to some form of specialized ministry by courageous and compassionate bishops.

Also, much has been done by psychologists and psychiatrists in developing evaluation techniques and especially therapeutic treatment programs that offer hope to afflicted priests that their disorders can be controlled, allowing them to enjoy productive lives.¹

The problem of what to do with priests who have sexually abused

children is now a major question facing many bishops in our country. It is not a question with a firm answer because there are several aspects of the issue that place the bishops in a delicate and potentially "no win" situation.

Listen to whom?

The first and most obvious aspect is liability. Many dioceses have been sued for large sums of money by victims and their families. There are several theories of liability, none of which are uniformly applied in the civil courts throughout the land.

In some instances, bishops and dioceses have been held liable for what they "knew or should have known" about a priest with a sexual problem.

In others the liability has been based on the legal doctrine of "negligent supervision."

If a bishop reinstates a priest, known to have a problem, he takes a risk.

Is this risk diminished if the priest has completed treatment with a hopeful prognosis and assumes some ministerial position under supervision?

Who should be listened to: The attorneys who may strongly urge that no priest with a past problem or history of sexual abuse (no matter how limited) be admitted to any form of ministry? Or should the bishops listen to the medical professionals . . . the psychologists and psychiatrists who have not only treated the priests but who have kept up-to-date on the developments in medical research on sexual disorders?

Look at rights

Often the two groups are at odds with one another. The attorneys have the obligation of protecting the legal and financial stability of the diocese, and the medical professionals have, as their primary concern, the well-being

of their patients.

It seems there may be some misunderstanding or at least misinformation in this area, because one prominent legal specialist in clergy malpractice is of the opinion that liability can possibly be reduced if a priest is in after-care and in a supervised ministry:

Religious superiors or educational superiors usually will be protected from civil liability by the opinions of the medical people who have evaluated the reformed offender. Again, however, there is not 100 percent immunity from civil suits.²

In this article I want to take a look at the canonical rights of the bishops, the victims, the community and the afflicted priests. In many instances the rights of victims and their families have been neglected because of the fear that contact with them by Church officials would have adverse effects in the event of civil litigation.

Rights protected

There is also the question of the rights of the accused. Often these have been overshadowed by the fear of liability and financial disaster. Yet, the *Code of Canon Law* is a reality and the canonical rights of the community as a whole, the bishops, the victims and their families, and the afflicted priests are most important.

This is especially true of the victims, their families, and the afflicted priests since it seems they have suffered most in this area.

The civil law, with its reporting statutes and child protective agencies, protects the rights of the victims of abuse. It also protects the rights of the accused while the allegation is being investigated and a trial is being conducted. The very purpose of the trial, if

there is one, is to protect the rights of all, and special attention is paid to the rights of the accused.

The *Code* speaks more of the obligations and responsibilities of diocesan bishops than it does of their rights. Yet, some rights can be assumed in that they arise from the obligations.

Canon 383 states:

"In the exercise of his pastoral office a diocesan bishop is to show that he is concerned with all the Christian faithful who are committed to his care regardless of age, condition or nationality. . . ."

From this canon it is obvious that the bishop has the right to make decisions and take actions that will safeguard the faithful from scandal and undue harm. With this canon in mind, the bishop can make decisions concerning the continuing ministry of priests or Religious who may pose a potential

threat to the faithful.

The bishop also has a special obligation toward the clergy (C. 384). Surely he has obligations to priests who are in trouble, but he also has obligations to the presbyterate in general, and from this would come the right to do what is necessary to protect the good name and reputation of all of the priests.

Financial responsibilities

Finally, we come to those rights connected with the bishop's financial responsibilities.

He is ultimately responsible for seeing to it that proper stewardship is exercised over the financial patrimony of the diocese.

For the most part, the diocese operates on free-will offerings of the faithful which are usually invested so as to obtain more financial advantage. The monetary awards that have been given as a result of diocesan liability

are staggering. Insurance coverage for such awards, if they are the result of sexual misconduct, has been eliminated in the case of most dioceses. The potential for financial ruin, therefore, is very real for many dioceses.

When individual priests who have had problems with sexual abuse perceive their bishops as acting only with concern for the financial state of the diocese, they should keep in mind that it is not only the money itself that is important, but the responsibility to the faithful who have donated the money.

In past cases, bishops have received conflicting advice from lawyers concerning contact with the victims of sexual contact and/or their families. Some have been advised to avoid all contact, others to send a subordinate, and still others have been encouraged to make immediate and direct contact.

The conflict is based on the attempt to avoid liability or an appearance of coercion not to prosecute.

Today the consensus among lawyers is to advise immediate contact with the victims and their families. This is certainly good pastoral practice. From a legal viewpoint, it will demonstrate that the bishop and the diocese as a whole are not condoning the incident.

Sexual contact with a child can be an especially traumatic and even devastating experience. The degree and depth of the trauma will depend on the type of contact and the psychological make-up or stability of the child. The event will be even more traumatic if the person instigating the contact is a priest or Religious because it will not only have a severe psychological effect but a spiritual one as well.

Nearly all of the children who have been sexually involved with priests or Religious come from practicing Catholic families whose lives have been closely involved with the Church. As one attorney rightly stated,

"No priest is ever going to get his hands on Jimmy Swaggart's grandson."

When a child experiences sexual molestation it usually affects the entire family. The victim's relationships with

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his parents will be affected as will his relationships with his siblings.

If the incident becomes public, the victim and the family may be looked upon with suspicion by other members of the community.

There have even been incidents when families have been subjected to various forms of harassment by other members of the community because of a warped belief that they were out to hurt the Church by pursuing some form of redress for the wrong done.

Without question, the victim and his or her family have a right to special pastoral care from the bishop and the diocese. In most instances, it is advisable that the bishop himself initiate this care.

He should be ready to encounter anger, rage, shock, confusion and disappointment that a person in whom the victim and family placed so much trust has betrayed them in such a grievous manner.

The victim and family should be offered whatever psychological or medical assistance is necessary.

It is almost always advisable that the victim undergo a medical and psychological examination to obtain an initial determination of the damage done.

There should be ongoing contact with the victim and family to show the caring nature of the bishop and the diocese and to monitor the effects of the sexual contact and progress made in counseling or therapy if it is initiated at this time.

Handled well

A primary concern of every family with a child who has been sexually molested is the disposition of the accused. Usually the initial reaction is a desire for retribution and punishment. Often this changes to a demand that the person receive help so as to avoid future occurrences of sexual contact with anyone.

When the bishop or other diocesan officials are asked "what is being done?" it is simply not enough to assure people that the problem is being taken care of and not to worry. Those (victim,

family) people directly involved in an incident of sexual contact want and deserve more concrete information. This they should be given on a regular basis.

The biggest mistake a bishop can make is to completely ignore a complaint or accusation.

Second to this is listening to the complaint, assuring the complainant that something will be done and then ignoring the victim and the family. If people find that the ecclesiastical structures and mechanisms are not handling their problem to their satisfaction, their frustration can easily lead them to the civil authorities.

The rights of accused priests and Religious

Most families involved in such situations do not sue the Church out of pure malice or a desire to get revenge. They do so because they want assurance that the priest or Religious with the sexual problem will get help or because they believe that they have not been properly treated.

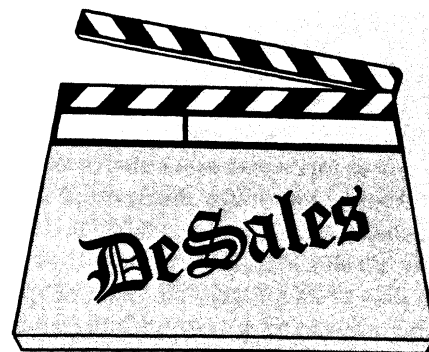
To be fair, it must be said that at this point most bishops are handling accusations in a responsible and sensitive manner. There have been secular news stories of attempts at cover-up or other irresponsible behavior by Church authorities.

In fact, most of the cases that occur are handled properly by the bishops.

If there is a temptation to ignore the complaints, or even worse, to try to discredit the families making the accusation, those so tempted should realize that it will almost certainly backfire.

In spite of the serious nature of an accusation of sexual contact with a child, the accused still has certain rights which must be honored in the course of the investigation and even afterward. This is not to say that by doing so, Church authorities are either condoning his action or trying to cover it up.

The first right of an accused priest or Religious is to an impartial investigation of the incident. This is a right shared by the victim and his or her family. The presumption of guilt and moral turpitude should not be made as soon as



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the accusation is lodged.

If an incident or accusation is made to someone other than the diocesan bishop (a pastor, chancery official, etc.), it should be conveyed to the bishop as soon as possible. The bishop then initiates the investigation according to Canons 1717-1719 ("The Prior Investigation").

Basically, this involves evaluating the complaint and the credibility of the complainant and interviewing the accused. This can be done by the bishop himself or someone delegated by him.

The canonical procedures outlined in the *Code* should be followed because they will protect the rights of all concerned.

Canonical procedures are also advisable from a civil law perspective. By using them correctly, the Church authorities manifest to the civil authorities, and later in a court of law if necessary, that the Church has a method of investigating complaints and that this method was used.

Faces radical change

Lawyers and medical professionals agree that once a priest or Religious is accused, he should be compelled to move from his residence immediately and take up residence in a monastery, a seminary, with the bishop, or in some setting where there are other priests or Religious present.

In the first place, such a move will hopefully diminish the possibility of scandal.

Second, it will be an indication to the family involved and to civil authorities that the Church is doing something.

Third, it is necessary for the welfare of the accused.

When a priest or Religious is confronted with an accusation of child abuse, he will no doubt be at the lowest point in his life. He may well know that he now faces a radical change in his existence which will include a great deal of personal pain and suffering. Without condoning the actions of the accused, the bishop should offer moral support and an assurance that adequate medical help will be provided.

Depending on the state statute, the bishop or other person receiving the initial accusation may be obliged to report the incident to the civil authorities. An investigation will commence very shortly which could conclude with the arrest of the priest or Religious accused.

As soon as possible after the confrontation, the accused should have a comprehensive medical and psychiatric/psychological evaluation at a health-care facility equipped to handle such cases. Even if the accused person is arrested, this evaluation should take place as soon as possible after he is released from the initial custody.

What about suspension?

We now come to the consideration of the application of canonical penalties.

The bishop's first inclination upon confronting the accused may be to suspend him. This is advisable only if there is convincing evidence that the incident took place and the accused refuses to cooperate with the bishop by moving his residence, ceasing his public ministry, and going for an evaluation.

In lieu of suspension, the same effect can be obtained by placing the accused on an "administrative leave" according to the norm of Canon 1722. "Administrative leave" is not a canonical term, yet it comes closest to describing what happens when the bishop invokes Canon 1722.

By the terms of this canon an accused can be compelled to cease public ministry or any administration of the sacraments, change his residence and even refrain from celebrating the Eucharist.

Griffin's conclusion

It is not a penal remedy or punishment. Rather, it approximates the type of action often taken with members of other professions (medical, law enforcement, etc.) while an accusation of wrong-doing or malpractice is being investigated.

There are two schools of thought concerning the applicability of Canon 1722. The more narrow interpretation

holds that this canon may be invoked only during the formal judicial trial and not during the preliminary investigation, nor may it be used if a penalty is to be imposed by an administrative process.

The other interpretation is more flexible. The leave may be imposed as soon as the Ordinary has reason to believe it is needed.

Since it is rare that formal judicial proceedings are held, Canon 1722 would be useless to bishops if the narrow interpretation is followed.

Father Bertram Griffin published a short study of the issue and reached the following conclusion:

In any event, the *dubium juris* raised by canonists on this issue leaves the Ordinary free to impose "administrative leave" whenever necessary during any stage of the penal process, until such time as the legislator grants an authentic interpretation to the contrary, or until recourse in a particular case decides that "administrative leave" was illegitimate.³

Suspension itself is a censure or medicinal penalty. It is not an expiatory penalty or in the language of the 1917 *Code*, a vindictive penalty. As such, its application and remission are subject to definite norms of law.

Understand conditions

Before proceeding, it may be helpful to expand on the distinction between medicinal and expiatory penalties.

A medicinal penalty is aimed primarily at the reform of the offender.

An expiatory penalty, while it has the spiritual well-being of the offender in mind, is aimed more at the restoration of justice and the deterrence of others from similar behavior.

In short, an expiatory penalty is ordered more to punishment than reform.

Both medicinal and expiatory penalties can include the prohibition of exercising the power of orders and ecclesiastical office. Only an expiatory penalty can prohibit or deny residence (C. 1337).

The *Code* specifically states that by reason of a suspension, a cleric cannot be deprived of a residence which he has by reason of office (C. 1333, par. 3, n. 2).

It is important to understand the conditions under which the penalty of suspension may be imposed and how it may be imposed.

Suspension may be imposed as a result of a canonical trial or by an administrative decree of the bishop without a trial. If imposed by administrative decree, the suspension cannot be perpetual or indefinite. It may be for a specific time only.

The imposition of canonical penalties should be seen as a last resort. This is quite clear from the *Code*. Canon 1341 tells ecclesiastical superiors when they may proceed:

*Only after he has ascertained that scandal cannot sufficiently be repaired, that justice cannot be sufficiently restored and that the accused cannot sufficiently be reformed by fraternal correction, rebuke and other ways of pastoral care is the Ordinary then to provide for a judicial or administrative procedure to impose or to declare penalties.*⁴

It is not enough that there be proof of a canonical crime. Other factors must be considered — such as the state of mind of the accused, the circumstances under which the crime was committed, and the ultimate purpose to be served by imposing a penalty.

Again, we are not dealing here with anything new to legal systems. Most, if not all, civil law systems take these factors and others into account when legal action and the application of penalties is being considered.

Canon 1341 (above) lists three negative conditions for the imposition of penalties. Must all three be present?

In his commentary on the canon, Thomas Green says:

*The first two seem more properly related to expiatory penalties while the last one falls more properly within the purview of censures.*⁵

On the other hand, Canon 18 stipulates that laws which establish a penalty

or restrict human rights are to be interpreted strictly. The canon in question (1341) does not establish a penalty, but it is directly related to the imposition of a penalty and the restriction of human rights.

If we follow the spirit of this canon, then all three negative situations must be present in order to proceed with a penalty. Short of an official interpretation, there seems to be no clear answer to the dilemma.

What is clear however, is this: If the accused has admitted the deed, complied with the Ordinary's wishes, submitted to evaluation, etc., then he cannot be considered to be unreformed and therefore contumacious. A suspension cannot be imposed as a vindictive penalty and, therefore, it would be inappropriate and invalid to do so solely as a punishment.

Question of imputability

The notion of imputability is crucial to the success or failure of a penal process.

Imputability is the character of a moral act which makes it attributable to a certain person. Canon 1321, 1 states:

No one is punished unless the external violation of a law or precept committed by a person is seriously imputable to that person by reason of malice or culpability.

The key factors in determining imputability are malice and culpability. In his

commentary on this canon, Green says: *The 1917 Code stated that either could be the basis of imputability (CIC 2199). However, the present canon states that normally dolus, or deliberate intent to violate the law, is necessary for penal imputability.*⁶

Referring to malice (*dolus*), one commentary on the 1917 Code stated:

*Malice here means the deliberate will to violate the law; opposed to it on the part of the mind is want of knowledge, on the part of the will, want of freedom. When an external violation of the law has been committed, malice is presumed in the external forum unless the contrary is proved.*⁷

Canons 1322, 1323 and 1324 address the issue of factors that either remove or diminish imputability. The most important canon for our study is Canon 1324 which deals with factors which diminish imputability without removing it altogether.

One who violates a law or precept is not exempt from a penalty but the penalty set by law or precept must be tempered or a penance substituted in its place if the offense was committed:

- 1. by a person with only the imperfect use of reason;*
- 2. by a person who lacked the use of reason due to drunkenness or another similar mental disturbance which was culpable;*
- 3. in the serious heat of passion which*



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did not precede and impede all deliberation of mind and consent of will as long as the passion itself had not been voluntarily stirred up or fostered.

The same canon lists five other factors, however these are far less relevant than the three mentioned above. We will return to this canon in the section on clinical or medical considerations.

The accused bears the burden of proof to overturn the presumption of malice or imputability.

In dealing with persons who have sexual contact with children, it follows that input from medical experts is necessary to determine if their disorder was such that it affected the will to the extent that imputability is either removed or diminished.

Those who wish to impose penalties have no choice but to listen to medical science in this regard.

The older presumptions, that any sexual act is a matter of the will have generally given way to evidence to the contrary. This evidence has shown that in situations involving a disorder, the person has a seriously diminished ability to control his or her actions.

The warning

The law requires that the accused be given at least one warning before a censure is imposed (C. 1347). The warning is required only for penalties that will be imposed and not those that are automatically incurred.

The canonical crime under consideration (C. 1395, 2) does not have an automatic penalty attached to it. Therefore, if the Ordinary is contemplating the imposition of a penalty such as suspension, the warning is required for the validity of his action.

The warning is not required if an expiatory penalty is to be imposed. As we have already said, suspension is a medicinal penalty or censure. It is not

an expiatory penalty.

The warning presumes that the accused is in contumacy or contempt. On a practical level, contumacy could be presumed if an accused refuses to cease his illicit activities or perhaps even if he refuses to submit to the conditions laid down by the Ordinary, such as moving his residence, ceasing public ministry or submitting to clinical evaluation.

If the accused admits the allegations, follows the instructions of the Ordinary and submits to an evaluation, it is difficult to see how he could be considered contumacious.

If he had previously been suspended and is no longer contumacious, the law stipulates that the censure must be lifted if the accused so requests (C. 1358, 1).

Right of support

During the period of the investigation or penal trial an accused cleric has a right to financial support. This right remains intact even if the cleric is suspended. This is obvious from Canon 135, 1:

Unless it is a question of dismissal from the clerical state, when penalties are imposed upon a cleric, provision must always be made that he does not lack those things which are necessary for his decent support.

If the law stipulates that a cleric found guilty of a canonical crime be properly supported by his ecclesiastical superiors, then it follows that this support must also be extended prior to the initiation of the formal canonical procedure. Although it has happened, it is simply unjust and clearly illegal from a canonical perspective to cut off an accused cleric's financial support and health-care benefits or deny him residence while an investigation is pending. If the accused admits the allegations and the Ordinary proceeds in an administrative manner, the right to support remains intact.

The amount of support is another matter. The *Code* does not state that full pay is required, only that the cleric not be denied what is necessary for

decent support. This issue would have to be dealt with in an equitable and charitable manner by the Ordinary.

¹See the excellent article by Dr. Eric Griffin-Shelley, "The Clergy and Compulsive Sexual Behaviors," *The Priest*, May, 1989, p. 40-45.

²Robert W. McMenamin, J.D., and William P. Kralovec, J.D., *Clergy and Teacher Malpractice: Recognition and Prevention*, Portland, Oregon, Jomac Publishing, 1987, p. 156.

³Griffin, Bertram. "Canon 1722: Administrative Leave Against an Accused," *Jurist* 48 (1988), p. 107.

⁴*The Code of Canon Law*, English translation published by the Canon Law Society of America, Washington, D.C., 1985. All English citations of the canons are taken from this translation.

⁵James Coriden, Thomas Green, Donald Heintschel, *The Code of Canon Law: A Text and Commentary*. (New York: Paulist Press, 1985), p. 911.

⁶Thomas Green, *ibid.*, p. 901.

⁷T. L. Bouscaren, A.C. Ellis, F.N. Korth, *Canon law: A Text and Commentary*, fourth revised edition, (Milwaukee: Bruce Publishing Company, 1963), p. 860.

(Next month: Father Doyle concludes his update with a discussion of right of appeal, laicization, clinical considerations, compulsion and control, cure and treatment, and return to ministry.)

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The Clergy in Court

Recent developments concerning canonical rights

Part II

Right to an advocate and to appeal

If an Ordinary contemplates either administrative or judicial action against an accused cleric, he must provide him with a canonical advocate (Canons 1481, 1 and 1723). The right to a competent defense is basic to both the civil and canon law systems, yet in many cases, clerics facing disciplinary or penal action are not advised to obtain the assistance of a canon lawyer, much less are they provided one.

Canonical penal trials are rare to the point of being nonexistent in this country. The action taken against clerics accused of sexual contact with children has been administrative for the most part.

Clerics who have been suspended or placed on administrative leave or who have had other measures taken against them often do not realize that they are entitled to an appeal process. Properly speaking, there is no appeal against an administrative decree. The appeal belongs to the formal judicial process. Rather, the code provides for recourse (Canons 1732-1739).

Suspends decree

Recourse against an administrative decree of suspension (or the equivalent) begins with a request by the person receiving the decree to the one who issued it. This means that the accused cleric, upon receipt of the notice of suspension, writes to the Ordinary, asking him to either amend its terms or revoke it entirely.

In doing so, he obviously should state the reasons why he believes the decree is unwarranted.

This petition to the Ordinary must be made within 10 working days of the date the cleric received notice of the decree.

The Ordinary is to respond within 30 days of receiving the petition.

The law states that the decree itself is suspended from the time a petition for change or revocation is received by the Ordinary (Canon 1736, 1).

This canon does not state which matters result in suspensive effect, however Canon 1353 tells us that any recourse against a penal decree has suspensive effect. Therefore, recourse against an administrative suspension suspends the decree by which the suspension is imposed.

The cleric is not in fact suspended until the issue has been decided according to the norms of law.

Laicization or return to the lay state

If the Ordinary refuses to amend the decree in any way, the cleric then has the option of pursuing hierarchic recourse.

He must address his petition for recourse to the hierarchic superior of the person who issued the original decree within 15 days of receiving the response to his initial petition to the author (Canon 1735).

If the superior who issued the original decree is a diocesan Ordinary, then the recourse is to the Holy See (the Congregation for the Clergy, to be specific). As in the case of formal judicial procedures, the law states that the one making recourse has the right to the use of an advocate (Canon 1738).

The return of a cleric to the lay state can be accomplished in three ways: a) by administrative action of the Holy See upon petition of the cleric himself, b) *ex officio* by the Holy See even without the cleric's petition and possibly against his wishes and c) as a penalty following a canonical trial conducted even on the local level.

In certain instances it is conceivable that a return to any form of ministry by

a cleric who has been involved in sexual contact with children is ill-advised.

This may be because the scandal that resulted from his actions could escalate if the community knew he was back in action or because of the very high risk that he will act out again.

In such cases, it is perhaps best for the cleric and for the Church if he petition himself for a return to the lay state.

Laicization *ex officio* by the Holy See has been done in isolated instances in the past, although no documentation or hard proof of this is readily available.

At the present time it is not the policy of the Holy Father to laicize priests against their will. This has been made clear by public statements of officials of the Congregation for the Doctrine of the Faith in the recent past. At this writing, there is no indication that this policy has changed.

Consequently, the only possibilities for laicization are petition of the cleric himself and imposition as a penalty after a canonical trial.

Canons applicable

Although laicization following a canonical trial is a rarity, it is worth considering both for the information of clerics who may be threatened with a penal process on the local level, and Ordinaries, who may contemplate such action.

We are speaking of the canonical crime or delict mentioned in Canon 1395: sexual contact with a minor of either sex below the age of 16. This canon does not specify an automatic penalty (*latae sententiae*).

It states that the cleric is to be

"... punished with just penalties, including dismissal from the clerical state if the case warrants it."

We have already considered some

of the rights of clerics subjected to penal process in the section on suspension. These same provisions hold true for a laicization process, e.g., the right to canonical counsel, the right to information about the accusation and the proofs (Canon 1720) and the right to appeal (Canon 1628).

In general, the canons of Book VII, "Processes," are applicable in penal trials. This means that the accused may call witnesses and the judges may request the assistance of expert witnesses.

The letter and spirit of Canons 1321 (imputability), 1341 (penalty as last resort) and 1324 (diminishing factors) present the same problems to a laicization process as they do to a process looking toward the suspension of an accused cleric.

In the first place, the use of a penal process must be a last resort, but, more importantly, serious imputability must be proven (*graviter imputabilis*).

Given the nature of pedophilia and

pedophilic acts, a strong case can be built for the presumption that the accused did not act with complete freedom of the will.

Even if an accused priest has been found guilty by a tribunal, Canon 1324 could be invoked to preclude the possibility of laicization as the penalty.

Clinical considerations

It is obviously the task of medical experts to provide testimony concerning the general nature of sexual disorders and the particular nature of a disorder in a specific case. This leads to a most important part of our considerations: the nature of pedophilia and pedophilic acts.

The following is a quote from a letter published by a secular newspaper following the disclosure that a priest had been involved in a relationship with a young boy.

*I do not believe that alcoholism, drug addiction, pederasty and sins against morality are diseases or pathological disorders. I believe these are sins against God, man and self. . . . Don't be fooled: In the eyes of God, sin is still sin, and every human being is held accountable to God for the sins he or she commits.*⁸

The opinion of this well-intentioned but certainly misguided individual typifies the approach of many to pedophilic acting out. The writer fails to make the distinction between the acts themselves and the motivating factors behind the acts, i.e., the matter and the intent.

Needless to say, it is dangerous to conjure up presumptions about those who act out sexually with children, without first having clinical input in order to understand more realistically and accurately the nature of this complex disorder.⁹ Some of the common presumptions are the following:

- a) All persons who have sexual contact with children are true pedophiles.
- b) Pedophilia and homosexuality are one and the same.
- c) A person chooses to be a pedophile and can just as easily choose not to be one.
- d) Once a person acts out with children, he will continue to do so.
- e) The disorder cannot be controlled.

First, we begin by accepting the fact that pedophilia is a sexual disorder. It is one of the type known as "paraphilia" and is listed as such in the *Diagnostic and Statistical Manual of Mental Disorders* (Third Edition).

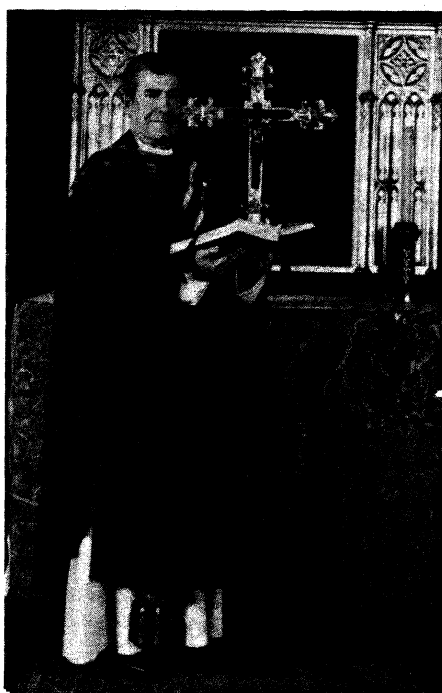
Although one might commonly picture a pedophile as a sleazy predator seeking to inflict harm on children, there is no single social profile for persons afflicted with this disorder: It can be found among judges, teachers, doctors, priests or persons from any walk of life.

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Similarly, it is impossible to situate pedophiles or persons who have engaged in pedophilic acts, in one or the other moral or personality category.

This means that the afflicted person is not, *ipso facto*, a callous, immoral individual. He may be quite caring, intelligent, sophisticated, with a high set of ethical standards. His source of sexual satisfaction does not govern other factors of his personality.

Important point

What must be clearly understood is that persons do not choose to be pedophiles. Dr. Fred Berlin of Johns Hopkins University emphasizes this:

*People do not decide voluntarily what will arouse them sexually. Rather, in maturing they discover the nature of their own sexual orientation and interests, persons differ from one another in terms of (a) the types of partners whom they find to be erotically appealing, and (b) the types of behaviors they find to be erotically appealing. They also differ in intensity of sexual drive, the degree of difficulty that they experience in trying to resist sexual temptations, and in their attitudes about whether or not such temptations should be resisted.*¹⁰

This is a very important point that must be accepted by ecclesiastical superiors who deal with clergy-pedophiles. It is inconsistent with scientific findings to presume that a man goes out one day, decides to try sex with a child, and continues if he likes it.

Pedophilic acts and pedophilia

It is necessary to make a distinction between the disorder, pedophilia, and pedophilic acts, that is, acts of a sexual nature between an adult and a child. Not every adult who engages in some form of sexual communication with a child is a true pedophile in the clinical or scientific sense.¹¹

In other words, the behavior with a child in itself is not sufficient to arrive at a diagnosis of pedophilia, just as an incident or incidents of intoxication do

not constitute clinical proof of alcoholism.

*However, a diagnosis such as pedophilia cannot be made simply by considering behavior alone. Rather, for purposes of diagnosis and for proper treatment, one must try to appreciate the state of mind which contributed to the individuals' behavior. Like any behavior, sexual behavior with a child can be enacted for a variety of reasons.*¹²

The authors give several examples of adult-child sexual contact, including a schizophrenic who responds to voices, a mentally retarded person and an alcoholic. They conclude:

*"In none of these instances would a primary diagnosis of pedophilia necessarily apply."*¹³

Why is it necessary to understand

this distinction? Because it will have a great deal to do with the way an accused person is clinically treated and should have an impact on the determination of his suitability for later ministry.

How acquired?

Why some adults become sexually interested in children is subject to theory and not scientifically proven fact. At this point, it is not known for certain how or why a person becomes a pedophile. Researchers have advanced various theories on environmental, biological and psychological causes, or more accurately, a combination of these.¹⁴

The whole question is under intense study. The fact that medical science is still in the research stage of the causes of pedophilia (and numerous other sexual disorders) should not lead Church authorities to dismiss the results of this research at this point and jump

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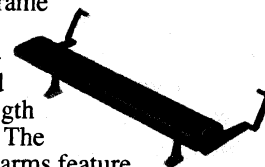
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to the conclusion that "the scientists aren't sure what it's all about. Therefore we will hold to the conclusion that it is a moral problem."

In point of fact, the scientists have accumulated impressive data to justify each of the various theories of causality.

Let us first take a brief look at environmental causes.

Life experiences can have an effect on sexual development and sexual interests. These experiences do not necessarily have a radical or decisive role to play in this regard, but they cannot be discounted.

The data indicate that a significant number of men being treated for pedophilia or pedophilic acts, were themselves involved sexually with an adult when they were children. This data applies also to clerics being treated for pedophilia.

The important issue is *why* the phenomenon is repeated.

Again, we are faced with theory, not conclusions.

Familial environment

Some theorists have proposed that sexual involvements with children permit the pedophile to work out the effects of a trauma he experienced when he was a child. . . . Now that they are adults, they victimize children to reverse their earlier roles as victims.¹⁵

Another environmental factor is external influences on the development of a person's understanding of sexuality.

The most important of these is the familial environment, that is, what a person was taught at home regarding sex, whether this teaching was explicit or implicit. This of course, can be reinforced by attitudes conveyed at school and church. The religious influence on the formation of a person's sexual psychology can be profound and far-reaching.

J. Money has proposed that excessive prohibition of early sexual expression may also put one at risk of developing pedophilic sexual desires. He has reported that many men with sexual disorders have come from homes where even the slightest expression of

*sexuality . . . was severely chastised.*¹⁶

Without doubt, this theory will be a difficult pill for many Catholics (and others no doubt) to swallow. If human sexuality is considered only in moral categories and somewhat pessimistically ("the most grievous sins are sins of the flesh"), then it will be difficult to step out of this mind-set and be open to the possibility that certain sexual behavior may be morally neutral and / or beyond the complete control of the individual.

Equal to child's

A person brought up in a repressive household may equate any form or even mention of sexuality with evil or sin and likewise may identify intimacy or affective needs and expressions with sexuality (and therefore sin). The person's emotional and psychological development may lag behind chronological development, thus impeding his or her ability to relate to others in a mature fashion.

Such a person may be confused about sexuality and its connection with intimacy. In seeking relief from loneliness, he or she may develop a relationship with a child or adolescent, not fully realizing or at least accepting the fact that it is inappropriate.

The adult often has a sexual maturity level equal to that of the child.

*. . . Pedophiles relate to children because they are at the same emotional and psychological level as children. Being children themselves, they can easily relate to the interests and concerns of "other" children.*¹⁷

The same author mentions the possibility that many pedophiles resort to relationships with children because they have problems relating to age- and gender-appropriate partners:

*Evidence does seem to support the idea that many pedophiles do have problems relating to adult women and that poor social skills and sexual anxiety about women may contribute to this blockage of female adults from their lives.*¹⁸

We must be cautious however, and avoid generalizing about everyone who relates well to children or who has difficulty relating to adult women. These factors are not necessarily symptoms of pedophilia as much as they are characteristics that may accompany the disorder.

Biological factors also play into the possible causes of pedophilia. The degree of biological influence on sexual orientation and desire varies with researchers on the subject.

Some (and Dr. John Money of Johns Hopkins University is among them) hold that sexual orientation develops when a person is still in the womb.

Others believe that there is evidence of some biological or chemical influence but not enough to support the *in utero* theory.

In any event, if the biological basis for human sexual orientation and behavior becomes accepted scientific fact, our traditional approach to the morality of sexual activity will be subject to serious reconsideration.

In his book *Lovemaps*, Dr. Money argues convincingly for the biological approach, realizing the reaction it will evoke in some:

*The very idea that sex hormones can program the unborn brain in such a way as to preordain the behavior of sex in later life is total anathema to people who believe that all human sexual behavior is under motivational control and voluntary choice.*¹⁹

Compulsion and control

The true pedophile finds it quite difficult and often impossible to resist the urge to seek sexual satisfaction.

According to Dr. Money:

*In paraphilia, love and love-bonding are compromised because the genitalia continue to function in the service of lust, but according to the specifications of a vandalized and redesigned lovemap, and often with compulsive frequency.*²⁰

A pedophile experiences a much

higher and more intense level of compulsion for sex than one who is not afflicted with a disorder. He has not chosen the object of his sexual desires and he has a more problematic time dealing with these desires. The fact of the higher level of compulsion must be considered by ecclesiastical superiors as they deal with cleric-pedophiles. Because of the reduced ability for self-control, it would seem that this disorder would diminish imputability for a canonical crime.

The effect of compulsion may not be acceptable to some, yet it is a fact:

*It is easy for a person who is not tempted sexually by children to argue that any pedophile could stop having sex with children if he would simply make up his mind to do so. When it comes to appetites or drives such as hunger, thirst, pain . . . sex, biological regulatory systems exist that may cause an individual to experience desires to satisfy those hungers in ways that cannot invariably be successfully resisted through will-power alone. Sometimes persons may feel so discomforted by their cravings that they feel compelled to diminish their discomfort.*²¹

One final clinical distinction is appropriate. Not everyone who has pedophilic tendencies wants them. Some men who are attracted to children do not want to be and would welcome change. Often, their acting out is followed by massive guilt feelings, sincere remorse and even self-hatred. Such men are classified as *ego-dystonic*.

On the other hand there are men who are quite comfortable with their attraction toward children. They experience no conflicts of conscience and are classified as *ego-syntonic*.

Although no conclusive research data is available, clinicians who have worked with priest / clergy pedophiles have noted that most are *ego-dystonic*.

Like alcoholism, pedophilia cannot be cured. It can, however, be successfully controlled to the point that some afflicted persons can function quite well.

The vast majority of clerics treated for pedophilia began with a lengthy inpatient program extending from six to

eight months or longer.

This is followed by a carefully planned after-care program consisting of psychotherapy, support-group participation and possibly medication.

The treatment programs for pedophiles differ from those recommended for men who have had sexual contact with children but not as a result of pedophilia. It is too early to have an in-depth assessment of the success or failure of the treatment programs.

Nevertheless, the medical director of one treatment facility boasts a 100 percent success (no relapse) record for more than 45 persons treated during the past four years.

Return to ministry

What happens to a cleric who has completed in-patient therapy and is ready for discharge and the beginning of his after-care program? Does he return to any form of ministry or should he seek laicization and find another occupation?

There is no single answer because each case differs. Some priests are able to return to a specialized ministry and, indeed, a number have done so and are functioning as priests. Naturally, the after-care program and continued supervision is a must.

In other cases, the probability of returning to any form of ministry is remote. This may be so because of the nature and extent of the priest's sexual contacts, scandal or a poor prognosis that he will remain in remission.

The decision concerning future ministry should not be made unilaterally by the bishop alone. It should be the result of consultation with the health-care professionals who have treated the priest, the law enforcement and legal personnel and the priest himself.

In some instances, input from the victims and their families should also be sought.

A primary concern will be the risk incurred by the diocese or religious community. The bishop should obtain realistic legal advice to determine if the risk factor is actually reduced if the priest has completed treatment and is in a supervised after-care program.

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"The harvest is good but laborers are scarce. Beg the harvest master to send out laborers to gather this harvest."

(Mt. 9, 36-7)

It is most important that the bishop realize that no medical person can give 100 percent certitude that his patient will never suffer a relapse. To this end the bishop should be certain that in reading the medical reports and prognoses for the future, he understands what the therapists intended to say.

It is incorrect to assume that any priest with a sexual difficulty is unfit for ministry, either from the viewpoint of the disorder itself, or the possibility of civil liability.

*Many clergy or education malpractice cases are a result of mental or psychological problems or disorders. . . . The religious institution or school will have to rely on medical experts to let them know if an offender can be placed in certain work opportunities or positions of responsibility. While psychiatrists and psychologists cannot predict behavior with 100 percent certitude, they can, however, give their educated opinion about probabilities and expected future conduct.*²²

Robert McMenamin, author of the above quotation has much experience in handling clergy malpractice cases. At the conclusion of his chapter on rehabilitation, he repeats what many ecclesiastical superiors know to be true: that a priest with a treated problem such

as alcoholism, is often a highly effective minister.

There are no uniform and easy answers to this problem. As time goes on, new factors enter the issue to make it even more complicated than when it first became a public problem several years ago. We cannot succumb to the temptation to condemn or abandon the clerics who must live with this disorder.

Similarly, we cannot ignore or nurture the belief that prayer, self-denial and warnings will keep the problem in check.

Finally, we cannot simply banish every cleric who has some type of sexual problem, especially pedophilia.

*Finally, it is the hallmark of the Christian to extend compassion and support to all those who are struggling and in need. The pedophiles in today's Church are often the most despised, but also in the greatest need.*²³

⁸ For obvious reasons the source of this citation will remain confidential for the sake of the priest to whom the letter refers, as well as the letter writer.

⁹ Jerry E. Paulson, *The Clinical and Canonical Considerations in Cases of Pedophilia: The Bishop's Role*. Master's Paper, Faculty of Canon Law, Saint Paul University, Ottawa, Ontario, Canada, 1987, p. 7-32. The author of this paper has done

an excellent job of summarizing the clinical data on pedophilia. All ecclesiastical superiors (diocesan and Religious) would do well to obtain a copy of the complete paper or the author's article on the subject: "The Clinical and Canonical Considerations in Cases of Pedophilia: the Bishop's Role," *Studia Canonica* 22 (1988), pp. 77-124.

¹⁰ Fred Berlin, M.D., Ph.D., and Edgar Krout, M.A., "Pedophilia: Diagnostic Concepts, Treatment, and Ethical Considerations," *American Journal of Forensic Psychiatry* 7(1986), p. 13.

¹¹ Here we must keep in mind the distinction between the legal and clinical definitions of pedophilia. The law may consider anyone who acts out with a child under a certain age to be a pedophile. Medical science has another approach. Those who prefer adolescents, or post-pubertal males or females are classified as "ephebophiles." In addition, some who act out with children may do so not because they are true pedophiles but for other psychological reasons.

¹² Berlin and Krout, p. 19.

¹³ *Idem*.

¹⁴ Fred Berlin, M.D., Ph.D., "Treatment of Pedophilia," *The Medical-Moral Newsletter*, 21(1984), p. 23.

¹⁵ G. Keller, "Sexual Abuse of Minors," *Human Development* 7(1986), p. 32.

¹⁶ F. Berlin and E. Krout, p. 17.

¹⁷ Keller, *op. cit.*, p. 32.

¹⁸ Keller, p. 33.

¹⁹ John Money, *Lovemaps*, New York: Irvington Press, 1986, p. 14.

²⁰ John Money, *Lovemaps*, p. xvi.

²¹ Berlin and Krout, p. 20.

²² Robert W. McMenamin, J.D., and William P. Kralovec, J.D., *Clergy and Teacher Malpractice: Recognition and Prevention*, Portland, Oregon, Jomac Publishing, 1987, p. 156.

²³ Rev. G. Martin Keller, "The Pastoral Care of Pedophiles," *House of Affirmation Newsletter*, Spring 1989, p. 2.



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