

JUSTICE FOR PRIESTS
AND DEACONS
IS AN
INDEPENDENT
CANON LAW GROUP
DEDICATED
TO DEFENDING
THE RIGHTS OF CLERGY

*"If you want peace,
work for justice."*

Pope Paul VI

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DUE PROCESS, LAW AND LOVE

Justice for Priests and Deacons

CHURCH AUTHORITY – MINISTRY TO THE PEOPLE OF GOD

EDITORIAL

The good standing of the Catholic priest is undergoing serious appraisal in western society. It is being undermined by a series of forces from outside and within the Church. With Pope Benedict XVI proclaiming this year as 'The Year of the Priest', comes an opportunity to critique this phenomenon and how it is being influenced by the understandable furor over the 'breach of trust' issue.

The work of Justice for Priests and Deacons is growing and has exposed a serious weakness in the operation of the institutional church at international, national, and diocesan levels. This is certainly true in the English speaking world. The overwhelming need to protect the image of the church at the expense of individual rights has done serious harm to priests and their standing in the church and society as a whole. There needs to be an attempt to find the correct balance between these issues – to protect the rights and dignity of priests, as well as to protect the people of God.

This unbalance has enabled a coalition of forces to join a crescendo of sustained and damaging criticism of the Catholic Church centered on its Achilles heel of 'breach of trust' by a very small number of priests. In reaction, Episcopal conferences and bishops throughout the Western world have responded in such a manner as to placate public opinion. Many of the rights of priests, which are protected by Canon Law, have been ignored.

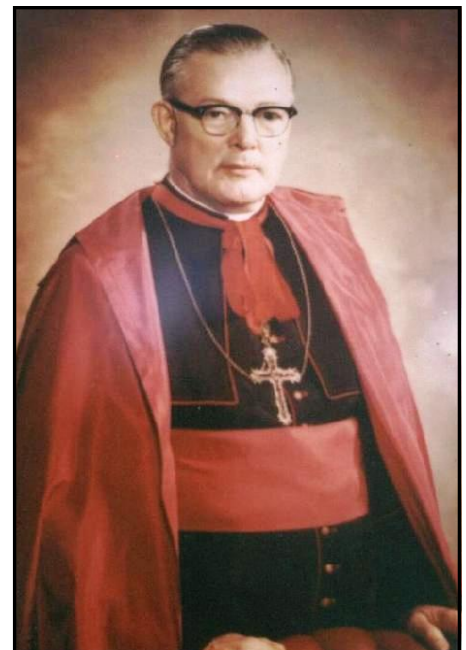
Some bishops/provincials have acted unjustly in dealing with priests who have been accused. Some priests have become the victims of abuse of power without full understanding or advisement of their rights. Each and every priest deserves due process

of the law when he is accused. You will read in this newsletter how this fundamental right is denied to the priests and deacons. Justice for Priests and Deacons is there to promote due process and justice.

Secondly, but just as important, is the issue of the effect of this crisis on the bishop-priest and priest-people relationship. You will read in this newsletter how these essential relationships have been harmed and compromised; how the natural affinity among bishop, priest, deacon, and laity has been damaged."

The work of Justice for Priests and Deacons is essential. Continue to assist our work in promoting the rightful role of the priest.

*Rev. Dr. Michael Higgins, M.A., D.D., D.C.L.,
Executive Director of Justice for Priests and Deacons*



*This newsletter is dedicated to the late
Archbishop Francis Furey Ph.D. S.T.D.
San Antonio, Texas (biography on pg. 16)*

MAY THE LORD BE WITH YOU, MY BROTHERS AND SISTERS

We are delighted to send you our second newsletter: [Due Process, Law and Love, Vol 2](#). The theme of this newsletter is the “[Church Authority – Ministry to the People of God](#).” Now in our 12th year, we are taking this opportunity to reach out to you, our benefactors, interested people, and those to whom we have been able to provide assistance. We pray that you will find this newsletter, which contains important information and worthwhile materials, helpful, informative, and delightful.

OUR PURPOSE

[Justice for Priests and Deacons](#) was founded to create a referral program to offer advice to priests and deacons about their rights under Canon Law. Many priests and deacons are unaware of their rights in Canon Law. The priest or deacon has nowhere to turn for help, support, or advice when he is accused. [Justice for Priests and Deacons](#) strives to fill that void. It is an organization that seeks to serve the needs of the clergy, women religious, and laity. Our organization assists the priest or deacon in the preparation of his case, his defense, and to process his appeal if necessary.

Another important part of our ministry is to offer assistance to those priests who may find themselves abandoned by their bishops or in prison.

WHO WE ARE

[Justice for Priests and Deacons](#) is an independent Canon Law group. Currently there are over 90 canon lawyers available to help clergy. All our canonists are members of the Canon Law Society. We have canon lawyers as well in various countries through out the world, including the United States, England, Ireland, Australia and many others.

Rev. Dr. Michael Higgins is the founder of [Justice for Priests and Deacons](#). Dr. Higgins began to notice the disregard for canonical rights and the lack of justice for clergy and laity by Church authority. He saw the need to vindicate these rights, and he began to do advocacy work and defend those who were injured by the lack of just treatment.

The first meeting of our organization took place in San Diego in October of 1997. Fourteen canonists were present at that first meeting, there are now over 90. All of our canonists have degrees in Canon Law, many have advanced degrees in Sacred Theology, and a few are civil lawyers. We are now known by many members of the clergy and laity not only in the United States, but worldwide. If you are interested in additional information, please visit our web site at: www.justiceforpriests.org.

Since our first newsletter in September, 2007, we have pro-

vided assistance to hundreds of priests, deacons, sisters, and lay people who have been seeking information and advocacy before their provincials, pastors, and bishops. You have been an important part of this ever increasing needed ministry. As time goes on we discover that the need for our ministry has increased. Your continued prayers and support help to make this ministry possible. Thank you for all you do for those who have received injustice and accusations and who need assistance with regard to employment and allegations of sexual misconduct.

With the grace of God we pray that we will continue to help all involved and that eventually our ministry demand might diminish as the justice of God is lived and proclaimed in the Catholic Church.

POWER IN THE ROLE OF SERVICE

“You know that among the pagans the rulers lord it over them and their great men make their authority felt. This is not to happen among you. No, anyone who wants to be great among you must be your servant, and anyone who wants to be first among you must be your slave, just as the Son of Man came not to be served but to serve, and to give his life as a ransom for many.” (Mt. 20:25-28)

When Pope Benedict XVI visited the United States recently, he spoke often about the sexual abuse issue. In other addresses to the American bishops, to the United Nations and to educators he also spoke about the rights of every human being to receive respect and justice as well as the need for true leaders to seek truth if they are to remain faithful to the Gospel.

How ironic that at a time when the Holy Father calls for a need to be a church of compassion, integrity, honesty and a defender of human rights, we find bishops in the United States abandoning all of that in dealing with priests, deacons and others who are accused of violating certain canonical norms of behavior. Bishops certainly must protect the laity in the diocese, but bishops must also protect their priests and deacons for these are the men who are the visible face of the bishop in parishes and other ministries. The Decree on Priestly Life and Ministry from the Second Vatican Council says “All priests share with the bishops the one identical priesthood and ministry of Christ. On account of this common sharing in the same priesthood and ministry, then bishops are to regard their priests as brothers and friends and are to take the greatest interest they are capable of in their welfare both temporal and spiritual.”

With the promulgation of the Dallas Procedural Norms from the United States Catholic Conference of Bishops

(hereafter cited as the U.S.C.C.B) there are no longer clear norms for seeking truth, defining “reasonable accusations” or procedures for protecting the good reputations of clerics. When a bishop shows an abuse of power he is attacking the basis of all human rights and integrity. When used against a cleric, he is attacking one of the most defenseless of all people in the church. When a cleric is not told who is making the accusation, what the actual accusation is, when it happened or other vital information, the cleric is powerless to defend himself or even prove his innocence. If there is no effort to ascertain the truth of an accusation or to ask for facts that are verifiable then the bishops are opening themselves up to false accusations simply because people are seeking free money at the expense of a cleric. Such a false denunciation is a canonical crime (canon 1390 §3) and reparation can be required.

This abuse of power is driving a wedge between bishops and priests. It affects a growing number of priests in their willingness to comply with diocesan policies; it also effects a growing number of priests in their willingness to promote diocesan annual appeals or financial drives as well as the accuracy of reports that are being sent to diocesan offices.

Bishops are to be in service to the Word of God, the Gospel and to all the people in their diocese. Requiring minimally that the accusations be true and giving clerics the right to defend themselves is simply upholding the recommendations of both Pope John Paul II and Pope Benedict XVI. If the church does not want to uphold the demands made to the United Nations and governments, then the church loses credibility and its moral authority to speak for Jesus.

Rev. Michael Sullivan, J.C.L., is a priest of the Archdiocese of St. Paul-Minneapolis, Minnesota

“With sympathetic understanding and practical help, the bishops should take care of priests who are in danger of any kind or who have failed in some way.”
Decree on Bishops, Vatican II, #16

PROTECTING YOUR RIGHTS AS A PRIEST AND DEACON

A. If the Vicar for Clergy (or another diocesan official) summons you to a meeting after informing you that you have been accused of sexual abuse or other misconduct; or, if you are summoned to a meeting without being given the reason:

- 1) Immediately find yourself a competent canonist. You can always contact our office and we will try to help you and give you canonical advice.
- 2) You should also talk to a civil attorney especially if there is a possibility of a criminal case.
- 3) Take your civil attorney, your canonist or another reputable individual such as a fellow priest with you to the meeting. This will provide you with an independent witness to the proceedings and will limit the possibility that the meeting is mischaracterized or inappropriately interpreted at a later date. You should never go by yourself.
- 4) Request that the Vicar for Clergy put the purpose of the meeting, including any and all specific allegations, in writing. If the Vicar for Clergy refuses to comply with this request, and you and your counsel decide to meet nonetheless, take careful notes. Immediately after the meeting, compose a document summarizing your notes and stating that the Vicar for Clergy refused to disclose the purpose of the meeting beforehand and/or that no specific allegations were provided to you in writing. Request that the Vicar for Clergy enter this document into your personnel file at the diocese.
- 5) Know that nothing you say to any agent of the diocese is considered legally confidential. Make no statements before consulting with your canonist and your attorney.
- 6) During the meeting, neither confirm nor deny anything; nor make any decisions or agreements. Just listen.
- 7) Inform the Vicar for Clergy that you will expect to review your entire diocesan personnel file, and any other records kept about you in the Chancery, Tribunal, or Vicar for Clergy office, when you meet. It is possible that your file contains written complaints or allegations about which you were never informed, even though you have the right to be informed of any such allegations. This is very often ignored.

B. If the Vicar for Clergy (or another diocesan official) demands that you must undergo psychological testing or a psychological evaluation:

- 1) Know that you cannot be forced to undergo a psychological assessment or evaluation, and that you have the right to refuse to release the results of any such process. Note, however, that your decision not to undergo an assessment or evaluation may be interpreted against you in an ecclesiastical process

ABUSIVE BISHOPS AND THE DESTRUCTION OF PRIESTS' REPUTATIONS

The Charter for the Protection of Children and Young People, commonly referred to as the Dallas Protocols, was passed by the American bishops in 2002 at their biennial meeting in Dallas, Texas. The document outlined the procedures for removing clergy accused of misconduct with a minor. The goal was good – “zero tolerance” for any perpetrators of child abuse. However, it bypasses crucial Canon Law provisions for due process and, even more importantly, offends the foundational doctrine of Catholic social justice – “the dignity of the person” – which presumes one’s right to a good reputation.

Instantiated in Canon Law are basic biblical and moral precepts based on the natural law as well as procedural protections of due process for members of the Church.

The Eighth Commandment’s injunction against false witness finds expression in the 1983 Code of Canon Law, which clearly states in Canon 220 the principle of a right to one’s good reputation. A subsequent provision, Canon 221, which deals with the vindication of rights and defense, acts as a remedy to protect any violation of the former¹. For a bishop not to afford these protections violates justice. But even more it may be a seriously sinful cooperation in evil.

Since Vatican II, the Church has been a clarion for justice in the world. Therefore, it impinges on Church leaders to model justice for others. Essential to justice is concern for a person’s reputation since, next to life itself, it is the most precious thing humans have. It is therefore the job of those in authority to protect people whose reputation is being threatened. Here many bishops have fallen short. “The current climate regarding abuse of a minor,” according to a prominent Midwestern canonist “has caused many bishops to place diocesan public relations and finances paramount to the reputation and rights of the priest when such accusations are leveled.” Usually after an accusation has been made, a priest is swiftly removed from his parish residence, and in some cases, with little or no opportunity to get legal or canonical advice.² If a diocesan hearing board is convened to examine the facts pertinent to the allegation, which is not always the case, the facts presented are often weak and/or unsubstantiated. This is a preliminary investigation at this point in the canonical process³.

This scenario often leads to administrative or temporary leave imposed by the diocesan bishop. Administrative leave is not penal; however its effects are devastating. As the British weekly, *The Economist*, wrote: “No crime, not even murder, is vilified in the western world as is pedophilia.

Being accused, even wrongly of anything to do with child abuse can ruin people’s lives.” (18 January , 2003) Once a man is put in this canonical dark hole it may be years, if ever, before his case is adjudicated or any remedy is prescribed. In the meantime because of his removal many people quite naturally presume the man’s guilt⁴. Even in the rare cases when a man is exonerated and returns to the active ministry he is always under a cloud of suspicion. As Cardinal Avery Dulles said: “At the time when accusations are made, it is often impossible to judge their truth, and this impossibility may persist indefinitely if the accusations are denied and probative evidence is lacking. When dioceses routinely announce that accused priests have been ‘removed from public ministry because of a credible accusation of sexual abuse to a minor,’ such priests are, in effect, branded as guilty. An accusation is deemed credible unless it is manifestly groundless. When priests are treated as guilty, they suffer the loss of their good name and as a consequence find it difficult in the future to function effectively in their God-given vocation, assuming that they are restored to ministry.” (America, 21 June , 2004).

¹ **Can.220** – no one is permitted to damage unlawfully the good reputation which another person enjoys or to violate the right of another person to protect his or her privacy.

Can.221 – §1. The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court in accord with the norm of law.

§2. The Christian faithful also have the right, if they are summoned to judgment by competent authority, that they be judged in accord with the prescriptions of the law to be applied with dignity.

²There are however some bishops who have been trying to protect reputations and have been undertaking the preliminary investigation without removing the priest from his parish. As an example, there are a few bishops who will contact the priest indicating that there is an allegation, then asking him to come in for a discussion after he has obtained canonical and/or civil counsel.

³Some argue that there is no right to a canonical advocate at this point in the process. If there is a problem with this it can usually be circumvented by using the term “Canonical Counsel.”

⁴Canon Law, like American law, always presumes a person’s innocence until beyond a shadow of a doubt prove guilty. In many cases of alleged abuse just the opposite is true.

This violates justice. It can be said that when a bishop allows this to happen he has been negligent in his duties since he is the chief magistrate and shepherd of his diocese. As one bishop caustically said to me regarding his power in the diocese, "I hold all the marbles here." And, unfortunately this is true. He then proclaimed, "We have less than zero tolerance here!" Less than justice? It may be that he stands condemned by his own words.

Some American bishops have made a travesty of Canon Law and have sacrificed their priests' reputations to quell a crisis basically of their own making. In doing so, they jeopardize the souls entrusted to their care as well as their own. If they are so willing to sacrifice their own brother priests and deacons, how can anyone take them seriously when they call for justice in society and preach the dignity of persons as a basic moral principle?

Rev. Dr. Michael Orsi, Ed. D., Ave Maria School of Law, Naples, Florida

FINANCIAL SUPPORT

This newsletter is sent to you through the generosity of our many benefactors – priests, deacons, and laity. We need your prayers and your financial support to keep Justice for Priests and Deacons active in the defense of rights for the People of God.

Justice for Priests and Deacons is an independent worldwide group of canon lawyers and is not affiliated with any diocese. It is the only organization that has an advocacy program to defend the rights of clergy, religious and laity. We face tumultuous times where the morale of priests is at an all-time low.

This newsletter is being sent to over 43,000 priests in the United States including active, retired, religious, Eastern-rite priests and military chaplains. It is mailed to all English speaking bishops of the world. Copies are personally delivered to members of the Vatican Curia and the Holy Father.

Sadly, we all know of a priest or deacon who has been removed from active ministry. Many live in fear since in most cases they realize that little support comes from their bishops. There has always been solidarity amongst priests and we are always here to help you.

"It is more blessed to give than to receive." Acts 20:35

DONATIONS

With the current crises in the Church, this organization is essential and needed. It is important that we all support one another and support this organization. We rely solely on people like you who want to help those who have no other help than the services of Justice for Priests and Deacons. We ask that you make a tax deductible contribution to Justice for Priests and Deacons. You can mail your donation to the address below or go to our Web site to donate using your credit card.

www.justiceforpriests.org

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THE PROTECTION OF THE CANONICAL RIGHTS OF PRIESTS

Many priests both religious and diocesan have asked me to outline the rights of clerics in the Code of Canon Law. In the United States today, there is sensitivity to individual and community rights. One indication of this is the backlog in the adjudication of cases in the civil court system.

Priests have the same rights as members of the laity. These rights are found in Canons 208-223. Priests have additional rights because of their incardination into a diocese or an institute of consecrated life. Canon 220 states that everyone has a right to a good reputation and protection of their privacy. An accusation can harm a priest's reputation; it should not be further impaired by the negligence of a bishop.

Canon 221 upholds the right of defense. Such a right provides that a competent canon lawyer be made available, and have access to all the accusations, evidence, and information about one's canonical rights. Pope John Paul II, in 1989, said that one cannot conceive of a just judgment unless the right of defense has been given. In a penal trial, according to Canon 1481§2, the accused must always have an advocate.

Canon 384 points out that a bishop is obligated to protect the rights of priests and to provide for their support. Canon 281 §2 provides for a priest's welfare in the event of illness, incapacity, or old age. If a canonical penalty has been imposed, according to Canon 1350, the priest still has a right to those things which are necessary for a decent living.

Canon 1347 states that a suspension cannot be imposed validly (*nequit valide*) unless a person has been given a warning and a suitable time to repent, which does not apply as the priest never incurred moral guilt.

Under criminal law, the defendant has a constitutional right to legal counsel. The diocese has an obligation to provide an advocate for the priest.

The priest must be given due process. Canon Law provides for an appeal over the decision of the bishop and provincial. Canon 87 §2 states that bishops do not have the power to dispense from penal and procedural laws and this includes the right to an advocate.

Knowledge of your rights is important today because many priests have experienced an abuse of power. Priests and bishops should look at the law as an advocate in pursuing justice within the priesthood and the Church.

Rev. Dr. Michael Higgins, M.A., D.D., D.C.L.
Executive Director of Justice for Priests and Deacons

PSYCHOLOGICAL EVALUATION OF CLERGY

The Holy See has constantly defended the right of a person to refuse psychological evaluation. (Cfr. A.A.S. LIII (1961)

Pope Paul VI held the opinion that psychological testing is an invasion of the internal forum. He instructed Cardinal Villot, then Cardinal Secretary of State, to make his mind known to the bishops of the Church. This was done in a letter dated 6 August 1976, which was sent to all the Nuncios for transmission to the bishops of the world (cfr. Segreteria di Stato, N.311157, 6 August 1976).

On 8 October, 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 6 August, 1976 letter to Pontifical Representatives."

The release of information form that you choose to sign (or not) should be very specific in designating to whom the assessment information will be released, and over what time period it will be in effect. Only you have the right to designate to whom the report will be released.

Federal and civil statutes forbid any information to be released without a signed authorization from the individual. We suggest that you limit the time for the release of information to three months or less. It is also the right of the person to review the information and to approve it before it is released.

These rights must be clearly understood to be real rights of the individual and must be safeguarded as such by competent authority. These are not mere theories subject to arbitrary interpretation and application but are rights guaranteed in our structure.

Rev. Gavin Vaverek, J.C.L. is a priest of the Diocese of Tyler, Texas

PRIVACY OF MEDICAL RECORDS

A person's rights to confidentiality of their medical records are determined by state law which varies with each state. However, in 2003, a federal law went into effect setting a national standard regarding the privacy of medical records. The law called HIPAA (Health Insurance Portability and Accountability Act) gives everyone the right to see, copy, and request to amend their medical records. The amount of information disclosed should be limited to the minimum necessary to accomplish the intended purpose. The physical records belong to the provider but the content of the records belong to the patient. The provider is generally required to get the consent of the patient to release these records to anyone else. Not to obtain such consent would be seen as unethical and possibly criminal depending upon the state laws involved. Unfortunately, many facilities having copies of medical records are very careless in their way of safeguarding the patient's right to privacy.

Dr. Weston Edwards, Ph.D., Minneapolis, Minnesota

MINISTRY TO PRIESTS IN PRISON

Justice for Priests and Deacons has an active ministry reaching out to those priests who are in prison. Many of those priests have been abandoned by their bishops. They feel alone and cut off. These men are modern-day lepers. We keep in contact with them and offer them moral support, our friendship, and financial help. We have been blessed that some priests and laity have given substantial donations to this ministry. We have been able to send them a financial gift every few months. Dr. Higgins has been able to visit a few of these men in prison. When these men are released from prison, it is difficult for them to find employment. If you can assist these men in finding employment, please contact our office. Also, if you can help in our prison ministry in any other way, please let us know.

IMPLEMENTATION AND INTERPRETATION OF CHARTER CREATES PROBLEMS FOR PRIESTS

The document of the United States Conference of Catholic Bishops, Essential Norms for Diocesan /Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests and Deacons, has been in force since 2002. Its implementation and interpretation by bishops and religious superiors has created significant problems for priests and deacons. A number of years ago, I asked a bishop how he sees most bishops lead, reactively or proactively. After much thought, he said he would have to say mostly reactively. We are faced with a problem and react, often after much hesitation and sometimes as a last resort. And then we tend to overreact, perhaps out of anger, frustration and/or fear.

The Bishops' Charter is a reaction to a crisis in the Church, namely sexual abuse of children by clergy. There is no way that I can go into the history of this complex problem in this article. As a psychiatrist who has worked with victims of sexual abuse and priests who have been accused and/or charged with sexual abuse, I would like to share some observations and concerns.

Over the past five years, the implementation and interpretation of the Charter has significantly undermined any trust between priests and bishops or their religious superiors. In many cases, due process has not been followed and many priests have been basically abandoned by their bishops.

Many bishops seem to overreact out of anger, frustration and/or fear. Given the difficult task of balancing justice for victim and priest this might be understandable, but never excusable. Once an allegation has been filed against a priest, he would be foolish to put his trust in his bishop to protect his rights. Many priests have realized this too late.

The second concern is the creeping and expanding interpretation of what constitutes sexual abuse. Allegations that should be considered sexual harassment or boundary violations are being treated as if they were sexual abuse. Much clearer definitions of sexual abuse must be adhered to by bishops, counseling centers and facilities that evaluate the priests. I would advise priests to insist on getting the allegations in writing and with all the detail possible. Bishops and evaluating facilities need the same. No vagueness should be allowed much less be part of a decision.

A third concern that I have is the jump from "credible allegation" to "presumption of guilt". Almost all allegations appear credible, that is, sound credible, when they are presented. Many alleged victims have had professional help and advice on how to make their allegations sound credible.

Too often what appears to be credible is deemed to be credible with no further evidence presented. Once an allegation

is deemed credible then the Charter initiates what can only be perceived by the priest as punitive actions. He is "temporarily" removed from active ministry. Many of the effects of being removed from active ministry in fact remain permanent no matter what the outcome of the investigation. At the same time, the burden of proof falls on the priest to prove that the allegation, which is now deemed credible, is not true. He is presumed to be guilty.

These priests are frequently referred for an extensive evaluation which is supposed to give further evidence of guilt or innocence. Unfortunately, it seems that some of the places bishops send their priests for evaluation, like St Luke's Institute in Maryland, U.S.A., have aligned themselves with the bishops and religious superiors. They seem to have lost their objectivity in the search for the truth. Or they have been afraid to keep their recommendations in line with the results of their evaluations. In one recent case, after extensive evaluation, they could not show the allegation to be true. But in their conclusion they recommended the priest's ministry be restricted. This implies guilt. It assumes credibility to the allegation and leaves the priest in a terrible predicament--removed from ministry, presumed guilty and unable to vindicate himself.

After five years under the Charter, these are three of the concerns that I have: The reactive nature of the Charter; the creeping expansion of what constitutes sexual abuse; and the jump from sounding credible to presumption of guilt. This understandably leaves many priests on the defensive, and not just those who have been accused of sexual abuse. One can not protect the rights of one group (the alleged victims) at the expense of another group (the accused priests). Bishops and religious superiors need to be concerned about this. The whole Church and society need to be concerned about this. There is a great need for the work of Justice for Priests and Deacons.

Dr. Donald Ruedinger M.D., M.Div. is a retired psychiatrist who has worked extensively with priests and has been a consultant to several bishops and religious superiors on these issues for over 35 years.

OUR DATA BASE

We wish to inform you that we do not have a data base of the names and addresses of priests and deacons in the United States. We get our information from the Official Catholic Directory. If there are errors in your address, you should contact your diocesan/provincial office; they can update your information.

YOU ARE A PRIEST FOREVER — EVEN IF LAICIZED

“You are a priest forever according to the order of Melchizedek.” How often did we hear those words in the seminary? We probably took them in an accommodated sense as forecasting our future status, not noticing that scholars were unsure what the Hebrew text of Psalm 110:4 meant. The irony of its use in Hebrews 5-7 also escaped us: Jesus, a peasant layman whose lineage was unknown as Melchizedek’s, is acclaimed as priest and king.

Western theology has taken “forever” literally. The character of ordination means a permanent difference between laity and priests. Priests have powers laity don’t, particularly to consecrate and to forgive sins, to act in the person of Christ, and these powers can never be lost or taken away, no matter what.

This approach needs to be critiqued. The ordained are still members of the faithful. Ministry is based on service, not power. Priests’ likeness to Christ puts them at the service of his Body, not in a position of privilege. Priestly ministry goes beyond sacramental ritual, flows from the Word, and exists to build up the Church as the Body of Christ. Presiding in Eucharist is because of priests’ relationship to the Church-assembly whom they lead in the Eucharist.

This raises questions about understanding and practice. The distinction between orders and jurisdiction, for one, is a legal fiction of dubious value. There are problems with what law allows a priest to do alone—the private Mass—which a lay community cannot do without a priest. There are problems with a discipline which prevents a growing number of communities from obeying Christ’s command to do his memorial. There are problems with the process, even the concept, of laicization.

“Laicization” too is a legal fiction: the man remains a priest. Ordination isn’t taken away even if (as in rituals thankfully no longer used) oils are scraped from the hands and the individual loses the status of cleric and is “degraded” (an offensive term) to the laity. Law regards “holy orders” as higher castes with special privileges. A laicized bishop, priest, or deacon loses those privileges and is forbidden to function sacramentally. One problem is that bishops have used this fiction to deny the continuing relationship between presbyters and bishop and the responsibility that a bishop has for presbyters of the local church, even those not allowed to function. Another problem is that punitive prohibitions restrict the laicized priest from lay ministries—lectoring, ministering Communion, teaching religion.

The Western Catholic Tradition regards priesthood not merely as a function but a permanent reality. The ordained

have a permanent relationship to the Church as authorized ministers. Individuals may be “laicized,” but they remain priests. They may be forbidden to preside at sacraments, but, if they do, the sacraments, though illicit, are still valid. Absolution is not only valid but also licit in certain circumstances.

Much remains to be done in developing a contemporary theology of the presbyterate. At the very least, if we truly believe that priesthood is forever, we need to develop a better concept than “laicization” for the situations when an individual will no longer minister officially in the Church. And we need to recognize that laicization does not end ministry.

Rev. Dr. James Dallen, S.T.D. is a priest of the Diocese of Salina, Kansas; and Emeritus Professor of Religious Studies at Gonzaga University, Spokane, Washington

DIOCESAN LAWYERS

There have been times when some priests have been given misleading information and advice by diocesan lawyers. Since the diocesan lawyer is a member of the bishop’s staff, it is our opinion that you should consult another civil lawyer in order to get an objective opinion. In providing canonical counsel to priests, we strongly recommend that they have a civil attorney as a resource. This is the counsel that gets the immediate and moderate response from ecclesiastical authorities. Please contact us if you want us to find a canon lawyer for you. We might also know a civil lawyer in your area.

TREATMENT CENTERS

Justice for Priests and Deacons strongly suggests that any priest, diocesan or religious, be very careful in choosing an institution for psychological evaluation, therapy, or treatment. It is our opinion that many institutions do not give an objective report. However, there are institutions that give excellent support to priests and religious in the United States. You may contact us and we will supply you with the names of institutions that give an objective report.

FORGIVENESS: AT THE HEART OF THE MATTER

Anger is rampant in our society. When newspapers report the violent results of road rage, we are shocked but not greatly surprised. We ourselves have probably been provoked by other drivers and have wanted to take some kind of retaliatory action. It is not, however, just road rage. Anger leaks throughout all our social networks. I have seen seniors angrily bang each others' shopping carts in the supermarket. I have seen sports fans and little league parents be enraged by a missed play or a bad call. I have witnessed vicious attacks and counterattacks in church meetings. There seem to be no sacred precincts protected from anger.

What is all this anger about? Where does it come from? Why does it happen? How is it so pervasive? I suspect that many commentators are ready to provide explanations — psychological, sociological, political, or whatever. And I wonder if we can ever get at a root cause of it all. What we can do — at least from the perspective of faith — is to rediscover the remedy for anger. Very simply, it is forgiveness.

To say, however, that the remedy is simply forgiveness does not mean that forgiveness itself is simple, especially in our context. At the height of the abuse crisis when the United States cardinals were summoned to Rome, Cardinal Francis George offered an extraordinary observation that was reported in *The Tablet*.

He said that United States culture was suffused with a kind of secular Calvinism. In this environment, everything is permitted and nothing is forgiven. Much could be said about our culturally shaped understanding of freedom as choice and autonomy. It is a very limited take on human freedom, and that has been amply explored, notably by Pope John Paul II in the encyclical, *Veritatis splendor*. The other half of the statement — and nothing is forgiven — bears further scrutiny, because it has been, I believe, less explored.

As I understand it, Cardinal George is identifying with his sense of “a secular Calvinism” a kind of secular predetermination. Once one has transgressed, there is no recovery, no restoration possible. The case is closed. For those of us deeply immersed in the Catholic experience, this impossibility of forgiveness is impossible to imagine. We have the Sacrament of Penance, we have acts of contrition, and we have the blood of Christ “poured out so that sins may be forgiven.”

Has the “ease” of forgiveness gotten us into trouble? Is it more likely that we will misbehave if we know that forgiveness is readily available? I hope that is not the case, and it certainly does not square with the authentic nature of God's forgiveness. Even the misuse of available forgiveness, how-

the Christian life. If Cardinal George is correct, forgiveness may run counter to our cultural currents. So be it. But we cannot forget the centrality of forgiveness, and we cannot be remiss in standing for this possibility, even in an unforgiving and angry environment.

Of course, it is not a neat and tidy package. For example, how ought the process of re-integration go after the act of forgiveness? Is it business just as it was before? Probably not. The story of the Prodigal Son may give us some clues about what it means to come home again. Are there consequences and commitments that follow upon forgiveness? Absolutely. The story of the unforgiving servant in Matthew 18 tells us as much. Forgiveness must beget forgiveness or it is not forgiveness. So, when will the anger stop? Probably, when the forgiveness begins.

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THE CHASM BETWEEN BISHOPS AND PRIESTS CONTINUES TO GROW

Pope Benedict XVI addressed the United States bishops on 16 April, 2007. During the course of this address he said, “Priests, too, need your guidance and closeness during this difficult time. They have experienced shame over what has occurred, and there are those who feel they have lost some of the trust and esteem they once enjoyed. Not a few are experiencing a closeness to Christ in his Passion as they struggle to come to terms with the consequences of the crisis.” He further said, “At this stage a vital part of your task is to strengthen relationships with your clergy, especially in those cases where tension has arisen between priests and their bishops in the wake of the crisis. It is important that you continue to show them your concern, to support them, and to lead by example.”

These words of the pope are based in the theology of the Episcopal office in regard to a bishop's relationship with his priests. This theology, canonized in the Eastern Code of Canon Law, canon 192 §4 and in the Latin Code of Canon Law, canon 384, is beautifully stated in the documents of the Second Vatican Council. In article 28 of *Lumen gentium* (Dogmatic Constitution on the Church), the Council fathers teach, “On account of this sharing in his priesthood and mission let priests sincerely look upon the bishop as their father and reverently obey him. And let the bishop

THE CHASM BETWEEN BISHOPS AND PRIESTS CONTINUES TO GROW (CONTINUED)

regard his priests, who are his co-workers, as sons and friends, just as Christ called his disciples no longer servants but friends.” These sentiments are repeated in *Christus domini* (Decree on Bishops’ Pastoral Office in the Church), article 16, “A bishop should always welcome priests with a special love... He should regard his priests as sons and friends... He should be concerned about the spiritual, intellectual and material condition of his priests, so that they can live holy and pious lives and fulfill their ministry faithfully and fruitfully... With active mercy a bishop should attend upon priests who are in any sort of danger or who have failed in some respect.”

Sadly, many bishops are no longer relating to their priests in this way but rather as corporate managers relating to employees who can be dismissed from their employ and for whom they no longer need have any concern. Equally sad, more and more priests also no longer see their bishops as spiritual fathers who have an active concern for their well-being. The sexual abuse situation has resulted in the Charter for the Protection of Children and Young People and the Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons. These documents of themselves are good for the most part but have often led to abuse of power by bishops in relation to their priests.

Some examples taken from my own experience are useful in understanding why the chasm between bishops and priests continues to grow. In many dioceses, when a priest is placed on administrative leave and prohibited from acting or presenting himself as a priest, he is also cut off from all diocesan communications. His whereabouts are a secret closely guarded by the chancery so that even brother priests cannot be in touch to give him moral and spiritual support. The most they can do is send letters to him in care of the chancery. In addition, often the bishop distances himself from the priest, rarely contacting him, and often only doing so through a chancery official. There are bishops who fail to provide the means of a decent livelihood to which the priest has a canonical right so that the priest must take recourse to the Holy See. There is a bishop who, for more than four years, failed to reply to any of the petitions of one of his priests or the priest’s canonical advisor. Even when the Holy See upheld the priests’ recourse, the bishop failed to comply with the Holy See’s directive. Another bishop has used the Essential Norms in dealing with a priest accused of sexual impropriety with an adult woman, even though the norms can only be applied to situations of suspected abuse of a minor. This case was even referred to the diocesan review board, which is not intended by the norms to be used

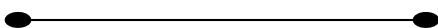
in this way. In another case, a priest was accused of sexual impropriety with an 18-year old. The bishop placed the priest on administrative leave and refused to give him any assignment, even though no canonical trial had taken place to find him guilty of the charge. When the priest took recourse to the Congregation for the Clergy, the congregation upheld his recourse and stated that the bishop had acted illegally. In a recent visit to another diocese for a conference, the priests attending were notified that they had to have letters of suitability from their own bishops in order to attend the conference, which, incidentally, did not involve ministry to children or young people. The rationale offered for this requirement was that it was a prescription of the charter. In fact, it is not. All of these are clearly abuses of power by bishops, whatever their motives may be. Such abuses widen the gap between bishops and priests. This estrangement makes it difficult for priests to trust their bishops or ever to confide in them. Such a situation is greatly harmful to the ministry of the church.

Abuse of power is not limited, however, to diocesan bishops. While it has been made canonically legal by the pope, how can laicization *ex officio et in poenam* (*ex officio* and by way of penalty) be other than an abuse of power? To the best of my knowledge, in these cases the accused priest never has an opportunity to offer a defense. The Congregation for the Doctrine of the Faith (CDF) apparently relies solely on the information submitted by the bishop, without contacting the accused priest. The church teaches that the right to due process is a fundamental human right of natural law. Natural law is divine law. How can the church take away a divine right? In addition, the CDF does not respond to inquiries of priests or their canonical advisors. It is not unheard of that a priest is left in the dark by his bishop as to what response or action the CDF is taking or has taken and the priest cannot find out from that congregation by a direct inquiry. This may be in accordance with the particular regulations of that congregation but it impedes the pursuit of justice and is an abuse of power. Other dicasteries of the Holy See have a spotty track record in responding to priests who have inquired of them. The Congregation for the Clergy, on the other hand, does regularly respond to priests and keeps them informed of what action is being taken.

This article is not so much intended as an indictment of those exercising power and authority in the church as it is intended to be a clarion call to bishops to renew themselves in the office of bishop as the theology of the church intends it to be. Bishops must once again see themselves as fathers and friends of their priests, including, and especially, their errant ones. They must exercise their proper pastoral ministry toward their priests, regardless of adverse media atten-

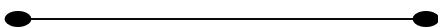
tion or of what their attorneys or accountants advise to the contrary. The church's theology, and only the church's theology, can direct the path of her ministry.

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*“This is what the Lord Almighty says:
'Administer true Justice; show mercy
and compassion to one another.' ”*

Zechariah 7:9



SECOND OPINION OF YOUR CANONICAL CASE

If you are involved in a canonical process and would like one of the canonists of Justice for Priests and Deacons to give you a second opinion, we would be happy to arrange this. However, it is imperative that you first contact us either by e-mail, letter, or fax giving us a brief history of your case including your name, diocese/religious community, address, phone number, and e-mail. We will then contact you. This is essential to enable us to process correctly the information that you give and offer you the best canonical advice.

ERODING THE RULE OF LAW

The Code of Canon Law sets out people's rights within the Church and a legal structure for vindicating these rights. Indeed since Vatican II, the official Church has frequently stressed its commitment to human rights and has even included a kind of "Bill of Rights" in the 1983 Code. The Church sees itself as a "mirror of justice" and operates under the "rule of law", and does not, or at least should not, operate like the old Star Chamber where rights were ignored and laws flouted or changed to suit the prosecution. Human Rights experts speak of "equality of arms" to indicate that the prosecution (usually the bishop or chancery officials or a Roman Congregation) and the accused priest should have equal assistance from the law in their contest; a more colloquial expression is that there should be a "level playing field" for both sides. However, the question must be asked: Does the Church's concern for human rights work, and is there a level playing field for the prosecution and the accused? The existence of Justice for Priests and Deacons would seem to cast doubt on it.

There are certain fundamental human rights known even to those unskilled in law. These include the presumption of innocence until proven guilty, the right to defend oneself, the right to avail of expert legal advice, the right of the accused to know all the allegations invoked against him, the right that judges be unprejudiced and base their decisions solely on legally acceptable evidence, and so on. These and other basic principles are, however, safeguarded by precise legal norms in the Code of Canon Law. These laws are not optional: whether he likes them or not, a bishop is bound by them, and rights given in the law must be respected. Some of these are the following.

No penalties can be inflicted except in accordance with the law, and only for actions which are specified as crimes in the law (c. 221 §3). Where a bishop imposes penalties directly ("administratively") he is governed generally by the same laws as when penalties are imposed by a court in a court trial ("judicially") (c. 728 §1). No penalties can be imposed unless the crime is canonically proven to have occurred and to be gravely imputable (c. 1321 §1). Censures, including any kind of suspension, cannot be imposed without a prior warning to the offender to cease being contumacious (c. 1347 §1), and must be remitted once contumacy has ceased (c. 1358 §1). A bishop has no power to dispense himself (or anyone else) from procedural or penal laws (c. 87 §1). Laws prescribing penalties or restricting the free exercise of rights must be interpreted to give the maximum of freedom and minimum of restraint (c. 18). An accused person is never bound to admit the offence with which he is charged (c. 1728 §2); it is up to the prosecution to prove its case (c. 1526 §1). Perpetual penalties cannot be imposed by

ERODING THE RULE OF LAW (CONTINUED)

decree of the bishop though they can be imposed by a Church court (c. 1342 §2). Penal cases cannot be taken after the time limits established by the law have passed, and penalties barred by prescription (Church statutes of limitation) cannot be imposed (c. 1362). Decrees imposing penalties must include a statement of the law justifying them (c. 51, c. 1720 3°). Such decrees cannot validly be issued without the bishop hearing two assessors to advise him (c. 1720 2°, c. 127). Decisions must be made on the basis of moral certainty, derived solely from what is proven in a proper Church investigation (c. 1608). It is absolutely forbidden to use information given to the decision-maker which is not in the dossier of the case and available to the accused (c. 1604 §1). The accused must be given access to all the evidence assembled in the case (c. 1598). In the argumentation of the case, the accused or his representative has the right to speak last (c. 1725). If the right of defense is denied, the decision made is irremediably invalid (c. 1620 7°). Judges must disbar themselves from cases in which any personal interest may be involved by reason of marked hostility or possible financial profit or loss (c. 1448 §1).

This listing of these rights stated in the Code of Canon Law may ring hollow for clergy sidelined because of allegations of child sexual abuse. Bishops feel free, it would seem, to act as if these laws did not exist, or that in their present crisis situation, that they do not apply to them. So they simply ignore the law, invent concepts such as “administrative leave” unknown to the law, pay no heed to the complaints of the penalised priest, and effectively act as judge, jury and executioner. Many of the victims of such Episcopal action may well feel that in this particular area, the whole Human Rights structure guaranteed in the Code has been declared “inoperative”, to use the Nixonian phrase.

It is of course true that in crisis situations such as war, the State sometimes introduces emergency legislation or temporarily suspends normal legal protections. The bishops seem to be doing something similar, dressing up their ignoring or suspension of the normal law by the cover-all catchphrase that they are just regulating the exercise of rights in view of the common good as is allowed by canon 223, §2.

There is a further problem since 2001 when clerical child abuse cases were reserved to the Congregation for the Doctrine of the Faith (CDF) in the document *Sacramentorum sanctitatis tutela* (SST). Though this document was developed independently of the crisis on child abuse in the United States, and though it included the protections afforded to the accused by the Code, it nevertheless brought child abuse cases within the special rules of the CDF which could negate these protections. It is troublesome that only

a truncated version of *Sacramentorum sanctitatis tutela*, omitting the substantive and procedural rules, was officially published, and that three derogations or changes modifying that document were soon obtained by the CDF, and also implemented without apparent promulgation or publication. This sounds very much like the prosecution changing the law to suit itself, while keeping the accused in the dark as much as possible, to his evident disadvantage.

Following the tradition of its forebears (the Holy Office and the Congregation of the Inquisition), the CDF follows its own rules (Old Code c. 1555, Pastor bonus, art.52) and is not bound to implement the protections enshrined in the Code of Canon Law. And diocesan chanceries follow suit. So when bishops, as required by Article 13 of *Sacramentorum sanctitatis tutela*, send a clerical abuse file to the CDF with their votum or recommendation of what should be done, they frequently give the accused no right of access to the file, and no right of presenting his side of the story or any mitigating circumstances.

So too, when some of the 2001 regulations were found irksome by the prosecution (Bishop or CDF), they sought and obtained derogations or exemptions from them. This is so in the “fast track” process whereby the requirement that the case be dealt with by a normal judicial trial (SST, Article 17) is waived for “grave and clear” cases, which are then sent to the Pope to impose ex officio dismissal from the clerical state, with no trial, no right of defence, and no appeal; or else such “grave and clear” cases are remanded back to the bishop for a summary process which may result in his requesting the CDF to impose dismissal by decree, with no appeal except within the CDF itself. And who decides that the case falls into the category of “grave and clear” cases? The prosecution, the CDF, of course, in violation of the principle of “equality of arms”.

The rights of the accused priest are also arguably violated in the case of CDF derogation from prescription (statutes of limitation). The Code of Canon Law set out a limit of five years for the taking of criminal cases, and this was extended for the United States in 1994 to allow cases to be taken up to the time the victim reached majority (18) plus 5 extra years for old cases and 10 years for new cases. When the time limit expired, the accused acquired immunity from prosecution and penalisation under the common law of the Church – that is the very essence of prescription laws. Article 5 of the Norms of *Sacramentorum sanctitatis tutela* imposed the prescription time limit of 18 plus 10 on the CDF. This irked the CDF as hitherto they did not recognise any law of prescription in their own internal rules applicable to such cases, so they promptly got from the Pope the power to “derogate

ERODING THE RULE OF LAW (CONTINUED)

from prescription on a case by case basis at the request of individual bishops.” The idea of derogation from prescription seems to many a contradiction of the very meaning of prescription and a violation also of the principle of non-retroactivity of the law.

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THE RIGHT OF APPEAL

In recent years, priests have received decrees from the Holy See and those decrees state that there is no right of appeal. Some bishops and canonists give as the reason why there is no appeal that the Holy Father signed it. This is not true. I have seen many decrees and the Holy Father has never signed any decree that has come to my attention. The decree is generally signed by the Cardinal Prefect and the Most Reverend Secretary.

There is a long tradition in the Church that a person can always exercise his right of appeal. This is very clear from the Second Council of Lyons in 1274 (cfr D.B. 466.) which states that anyone can appeal any burden “*ad ecclesiasticum forum pertinentibus appellare.*” The First Vatican Council taught the same doctrine in 1870. (Cfr. D.B 1830) concerning the Roman Pontiff, ... we declare, that he is the supreme judge of the faithful, and that in all cases looking for ecclesiastical examination one can turn to his judgment “*et in omnibus causis ad examen ecclesiasticum spectantibus ... cuius auctoritate maior non est, iudicium a nemine fore retractandum,*”

Canon 1417 §1(C.I.C. 1983) states that at anytime a person may refer his case to the Roman Pontiff; and canon 1638 further states “that an appeal suspends the execution of the judgment.” 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. This is 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 the Holy Father. Some priests have done this and their appeal has been accepted. The idea of no appeal is so contrary to our constitutional law where you always have the right of appeal.

Rev. Dr. Michael Higgins, M.A., D.D., D.C.L., Executive Director of Justice for Priests and Deacons

THE ABUSE OF POWER IN DUAL RELATIONSHIPS: RISKS REAL & IMAGINED

Codes of Pastoral Conduct are required in United States dioceses and eparchies. Clergy know they exist but few are familiar with their demands. Codes of conduct define a standard of professional behavior for clergy in their interactions with people who seek pastoral care. In failing to uphold any aspect of their code of pastoral conduct, priests and deacons risk exposure to ecclesial and/or civil discipline.

Codes of pastoral conduct are similar to codes of ethics used by mental health professionals. These practitioners are most often disciplined for engaging in dual relationships that violate professional boundaries. This occurs when the professional interacts with a client outside the helping relationship. This additional interaction may be social, business or sexual. As a result of codes of pastoral care, clergy now face ecclesial and similar civil penalties for professional misconduct.

For clergy, dual relationships are abundant. Clergy must remember that the needs of those seeking pastoral care outweigh their own. Many will wish “to do Father a favor.” However, most codes of pastoral conduct require that clergy avoid these dual relationships because of the potential for abuse of power, real or perceived.

With the size of parishes, the shortage of priests, and the multiple functions of ministry, dual relationships seem inevitable. For instance, a parishioner seeks pastoral counseling. Later this parishioner, a CPA, offers to prepare the priest’s taxes or help with parish finances. It is critical that the parishioner does not feel exploited or manipulated. Priests and deacons reduce their risk of being accused of misconduct by avoiding business, social or sexual interactions with persons who seek their pastoral care. Clergy who provide spiritual counseling to friends or parish employees confuse roles and boundaries

Like it or not, risk management is part of 21st century ministry. The best advice: avoid dual relationships. People who receive pastoral care should not be on the priest’s list of friends, business contacts, or social acquaintances. No matter the intention, clergy must remember that they bear full responsibility for engaging in a dual relationship.

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PRIESTS ARE CITIZENS OF THE UNITED STATES TOO

The Constitution of the United States in the Fifth Amendment states, “No person shall be deprived of life, liberty or property without due process of law.” The Constitution was written for everyone. This fact is made clear by its very famous opening phrase, “We the people.” Of late, however, that phrase has not referred to everyone. Roman Catholic priests have been denied their basic natural and Constitutional rights. Accused Roman Catholic priests have had their psychological and personnel files sent to the courts for public inspection without even a whisper of outrage from bishops, the Canon Law Society of America, or justice groups throughout the country.

A priest is also a citizen fully endowed by the Constitution of the United States with all the rights and privileges everyone possesses in this great nation! When an accusation is levied against a priest, it seems as though it is acceptable to strip him of all his rights simply because he is an ordained Catholic priest. The Constitution presumes everyone’s innocence until proven guilty. Everyone in this country has the right to due process of law. The exception seems to be Roman Catholic priests. Once the charge of any misconduct is laid against a priest, both society and the bishops of the country presume guilt by denying him his ministry, the right to wear the Roman collar, or to present himself as a priest until the investigation is completed.

In the Sixth Amendment, the Constitution directs, “The accused shall be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” This principle of law is also denied to Catholic priests. Many are told only that an allegation of sexual misconduct has been made against them. They are not allowed to confront their accusers, they often face officials of both church and state by themselves, they are not provided with the opportunity for self defense, and they are forced to live as sexual deviants even though no proof has been offered. The allegation alone is enough to destroy a priest, so much so that even if found not guilty, his life as both a priest and a man is negatively impacted in society. Little to nothing is ever done to correct that injustice.

Bill Donohue, the president of the Catholic League, said while being interviewed in 2005 on The Today Show, “There is no segment of the American population with less civil-liberties protection than the average American Catholic priest.” Avery Cardinal Dulles, when he wrote for the Jesuit magazine America in 2004, observed, “The church must protect the community from harm, but it must also protect the human rights of each individual who may face

an accusation. The supposed good of the totality must not override the rights of individual persons.” The Constitution was written to protect the rights of all Americans, no matter what the crime or alleged offense, and no one should be denied this protection, especially priests of the Roman Catholic Church.

Mr. Gary Watson, J.D., El Paso, Texas

RECOURSE AGAINST A BISHOP’S DECISION

A bishop’s decision against anyone can be challenged. Once notified of the decision in writing, the person has 10 days (c. 1734) to send in the challenge to the bishop, which has the effect of suspending the decision. The bishop has 30 days (c. 1735) to respond, and if he rejects the challenge or doesn’t respond, to keep that decision suspended, recourse to the Vatican must be made in writing within 15 more days (c. 1737.2). If the competent Roman Congregation affirms the bishop’s decision, to suspend that decision, a similar challenge as above must be sent within 10 days of being notified.

If this fails, recourse to the Apostolic Signatura will keep that decision suspended. This must be made within 30 days (*Pastor Bonus*, 123.1) of notification. Even if this fails, recourse can be made to the Holy Father (cc. 1405.1, 2f.) with the same effect of suspending the decision. This would take the form of a denunciation (c. 1717) of a violation against c. 1389 sent to the Holy Father via the Apostolic Nunciature, who will send back a letter that it was received and sent on. It is up to the Holy Father to assign an investigator (usually through the Office of the Secretary of State such as the Apostolic Nuncio) to report back to him what has been worked out (c. 1718).

Once the bishop is notified of the decision, the bishop does have the right to lodge any objections or provide proof of compliance, where one would find out indirectly of this decision. If the bishop’s decision was upheld by the Holy Father, it goes into effect once the person is notified. Even this decision can be suspended if there is clear proof of an injustice (cc. 1645ff.) presented to the Holy Father within three months (c. 1646). The final decision can only take effect upon notification (cc. 1647f.) where there is no further possibility of recourse (c. 1404).

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THE RIGHT OF DEFENSE

Canon law gives laity and clergy the right of defense. In his address to the Roman Rota, 26 January, 1989, Pope John Paul stated: "I intend in today's annual meeting to emphasize the importance of the right of defense in canonical judgment." Pope John Paul II 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 to 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." (Cf. Cc. 1481 §2; 1723)

It is clear from the doctrinal teaching and jurisprudence of the Roman Rota, Apostolic Signatura, and Papal teaching that the right of defense is intrinsic to the essence of 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.

**Rev. Dr. Michael Higgins, M.A., D.D., D.C.L.,
Executive Director of Justice of Priests and Deacons**

*"How can you perceive of justice
without the right of defense."*

John Paul II

PRIESTS NEED PRIESTS

Ever since the Dallas Charter of June 2002 and the adoption of zero tolerance by the Church, the Catholic clergy have come under attack. This attack has been enhanced by the media and some liberal groups. Zero tolerance is a violation of our theology and biblical teaching on reconciliation and charity. There are different reasons why this happened, especially with the Vatican's treatment of laicization without any due process. Priests are summarily dismissed from their assignments. This does not happen in any other profession. There is also a double standard for priests and bishops. Twenty-six bishops have been accused of sexual misconduct. One bishop even admitted to ten cases of pedophilia. All these bishops still have financial support and medical benefits, and perform ecclesiastical ministry.

It is now more important than ever that we stand in support of each other. The best statement to be found regarding relationships of priests among themselves is the Decree on Priestly Life and Ministry, #8, Vatican II: "All priests, in that by their ordination they join the presbyteral order, are bound together by close sacramental brotherhood. Though engaged in a variety of duties, they themselves nevertheless exercise a single ministry, namely, to build up the body of Christ. Finally, priests should be aware that, in virtue of their communion in the priesthood, they are under special obligation to any who are struggling with difficulties, giving them timely help, and even, should the need arise, a discreet word of caution." How much more true and needed is this statement today, especially in light of the crisis in the Church created by the Dallas Charter? Many of our fellow priests have been wrongfully harmed; their rights and dignity have been ignored or trampled upon. We need to band together as ministers of the Gospel, as fellow priests, in order to help and support each other.

St. John Vianney once stated: "When people want to destroy religion, they begin by attacking the priest; for when there is no priest, there is no sacrifice; and when there is no sacrifice, there is no religion."

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International Hyperbaric Research Institute,
Newport Beach, California**

In conclusion, we sincerely hope that you have found the information in this newsletter to be useful, informative, and helpful. We suggest that all clergy hold on to their copy of this newsletter for future reference - you might need it. It is imperative that you know your rights when your priesthood is being attacked. Let us pray and support each other.

ARCHBISHOP FRANCIS FUREY PH.D. S.T.D.

Archbishop Francis Furey was born the son of a coal miner in Pennsylvania, attended St. Charles Borromeo Seminary, Philadelphia, and received a Ph. D. and a S.T.D. from the Pontifical Universities in Rome. He was ordained for the Archdiocese of Philadelphia. He was rector of the seminary, and in 1960 he was consecrated auxiliary bishop of Philadelphia. In 1963 he was appointed second bishop of San Diego, California. In June of 1969 he was appointed third archbishop of San Antonio, Texas.

We dedicate this newsletter to him because he was a great advocate for justice and human rights. He was loved by priests and laity. His door was always open to his priests and they appreciated this by surprising him with an award and spending a day with him. Archbishop Furey died of cancer in 1979. He was a personal friend and he ordained our class to the priesthood in March of 1964 in San Diego. On the morning after the death, Archbishop Quinn of San Francisco prepared the following remarks about Archbishop Furey:

“There will be more happiness in heaven from now on because a happy man has gone there.” Francis James Furey was a distinctive friend of great simplicity, keen intelligence, warm heart, and indomitable good humor. He was generous in the extreme. There was little, if any, given to him which he did not give away. He was self-confident but never self-seeking.

“ He loved the Church completely and served her selflessly in the spirit of obedience, which for him was the touchstone of a real priest. A man of deep faith, he was never given to religious display, but if he was asked to unlock the deepest wellspring of his personal life, no doubt he would point to his own coat of arms on which are written the beautiful words of St. Bernard from his sermon on the holy name of Mary. The Latin words are *‘Ipsam sequens non devias’*. (Following her you will not go astray.) He had a very definite personal devotion to the Mother of the Lord. He prayed to her, he trusted in her guidance and following her he did not go astray.”

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**Do you know your
rights in Canon Law?**