

SIGNIFICANT CLINICAL/MEDICAL CONSIDERATIONS

The section entitled "Clinical/Medical Questions" posed many of the importance questions which face an Ordinary in dealing with a cleric who is alleged to have committed sexual abuse or a related act on a child or adolescent. The following considerations in this same area expand on the problems which the alleged offense poses to the Ordinary. It is intended that they provide essential information at the outset. These considerations in no way respond to all of the pertinent questions.

SIGNIFICANT CLINICAL/MEDICAL CONSIDERATIONS

Pre-Intervention Strategy by the Ordinary

The Ordinary, rather than a subordinant or vicar, should confront the cleric as soon as an allegation of a sexual offense is made about the cleric. The Bishop-Priest relationship for instance, is a very special one and should be utilized to the fullest both canonically and psychologically, to intervene immediately if there is a suspicion or allegation of sexual abuse by a priest.

Prior to speaking with the priest (or cleric) the Ordinary (usually the bishop except in the case of religious clerics) should speak with a priest-psychologist who is knowledgeable about this particular problem. This should be done before the Bishop confronts or speaks with the priest so that the bishop can obtain some "pointers" on the intervention itself. The priest-psychologist can also assist the bishop in designing some personalized strategies according to the nature of the allegations made and the personality of the priest involved.

The Ordinary should make it clear to the priest before even stating the allegations that it is vitally important that truthfulness exist between them. The Ordinary should re-assure the priest or cleric that he will support him legally and financially and that he will also help him to obtain evaluation and treatment for his problems. However if the priest chooses not to be fully honest in the initial intervention, the Ordinary may still be obliged to be helpful but he could/should let the priest know that he would be disturbed by the lack of truthfulness in the initial interview.

This initial conversation between the Ordinary and the priest may be one of the most important moments in the sequence of events that will follow. It is assumed that most Ordinaries in the United States have not had a great deal

of experience with child abuse by the clergy and for that reason they need some professional re-assurance for the initial encounter with the accused. Each priest or cleric brings a different set of problems and a different set of circumstances concerning the sexual abuse. The initial intervention should be tailored accordingly.

What Are the Causes of Sexual Abuse by Roman Catholic Clergy

Once the priest or cleric admits to any type of sexual contact with children or adolescents it is not appropriate for the Ordinary to delve into the causes of this sexual abuse. This is best left to the professionals who have had a good deal of experience in this area and who understand Roman Catholic clergy.

Nevertheless it is important that the Ordinary have some idea as to what these causes are so that an appropriate place can be chosen for the evaluation and treatment of the priest.

A concrete example best illustrates the question. A 32 year old priest had been seen by a psychiatrist in private out-patient therapy for 2½ years which included the administration of psyotropic medications. For over a three year period this priest had inappropriately committed sexual crimes in a public grammar school yard in three different locales. He was on his way to jail. He had been evaluated by two "excellent" mental health centers which stated that the inappropriate sexual behavior was due to early childhood experiences that required intense psychotherapy and perhaps group therapy.

When the priest was sent to another evaluation center with the capability of looking at medical, neurological and substance abuse problems as well as psychiatric and psychological problems, it was found that the priest had

been drinking over one quart of bourbon a day over the past five years but was unable to admit to having an alcohol problem. In such a case it would have been inappropriate to have this priest continue to see the private psychiatrist. Rather alcoholism, the primary disorder, would have to be treated and then the inappropriate sexual behaviors evaluated after the patient had been sober for a number of months.

Statistically, at least in regard to adolescent sexual abuse by priests, drugs and alcohol are the primary complicating problem or "mitigating" factor that the treatment professionals must deal with. Even though alcohol or drug abuse is present it does not mean that the sexual problem will necessarily disappear following treatment. There is however, a greater likelihood that the individual will be able to exert control and prudence if he is sober and is monitored over a prolonged period of time. Naturally treatment should be given for the sexual issues as well as the substance abuse issues.

Further, there are a number of rarer or more unusual disorders that can cause unusual behavior over a prolonged period of time. These include such disorders as manic-depressive illness, frontal lobe dysfunction, temporal lobe epilepsy, brain tumors etc. These problems will never come to light if a priest or cleric is evaluated at a center that looks only at the psychological dynamics of the patients family, his adult and religious life as the source of all problems, using the same model for treatment. Refer again to the 32 year old priest with two competent evaluation, neither of which uncovered the problem of alcohol abuse.

How Soon Should the Evaluation Take Place

IMMEDIATELY. As soon as the Ordinary has ascertained that there is some

truth to the allegations of sexual abuse by a cleric, arrangements should be made the same day or the following day at the latest for the priest's transfer to an evaluation center. The Ordinary may be familiar with a competent evaluation center or may have discussed such a center with the priest-psychologist.

It is especially important to understand that evaluation centers may be located in states having reporting laws which might prove problematic for the Ordinary. For examples some states have enacted legislation that does not extend privilege of communication between a patient and his psychologist or psychiatrist to cases involving child abuse, including sexual abuse of children. In Massachusetts a therapist, no matter what his training, must report the incident to the local authorities if there is any indication that the incident occurred within the state of Massachusetts. It is also possible that this extends to people who were involved with other adults who were involved with the incident in the state of Massachusetts. For this reason this state would be a hazardous area to send a priest for evaluation because of the stringency and extent of the reporting laws. Almost all states require and suspend the privileged communication between mental health professionals and the child if the child is the patient. A sexually or physically abused child seen by such a mental health professional must be reported in all 50 states along with the names of the persons offered by the child.

The point here is that the Ordinary should determine the reporting laws in the states of possible evaluation centers. It would be wise to consult with attorneys knowledgeable of these issues prior to sending the priest for evaluation.

The nature of the disorder dictates why the evaluation should be immediate. We are dealing with compulsive sexual habits which the priest may temporarily suspend in the face of legal or canonical pressure, but not in all instances. There are many examples wherein sexual abuse took place very soon after the

the confrontation between the priest and his Ordinary had taken place. The priest must clearly be seen as one suffering from a psychiatric disorder that is beyond his ability to control. For this reason...the compulsion of the disorder...evaluation of the disorder and the separation from temptation should be immediate and stated as such to the priest by the Ordinary without the Ordinary experiencing any feelings of misplaced guilt or lack of charity. This will emphasize to the priest the importance of his being truthful both to the bishop and to the evaluating mental health professionals.

Should the Alleged Offender See Anyone else Prior to Evaluation

The Ordinary may perceive, as he converses with the priest, that the latter is not taking the allegations very seriously. If this is true it is strongly urged that the Ordinary have the priest meet with competent attorneys conversant in dealing with the issue (whether or not there is an immediate legal threat). This should be arranged immediately. The attorneys should outline in detail all of the possible consequences in criminal law as well as the civil law liability of the priest and the diocese. This will also be helpful to the evaluation center since the priest will have a better appreciation of the significance and consequences of his behavior and perhaps even of the effect it may have had on the victims.

What About Canonical Suspension

A suspension of the cleric, especially if he is a priest, should happen in all cases. This makes a clear separation between the Ordinary and the cleric. It is a statement that the man is not capable of carrying out his sacred functions or ministry until an evaluation is completed and a determination of his fitness for ministry is made.

How Long Does an Evaluation Take

Some mention should be made of the open ended nature of the evaluation. Many times it takes a week or two for the evaluating center to arrive at a good picture and feel for the total situation involved with the priest as well as his diocese or religious community. Most centers will do an evaluation in five days but usually will extend it in order to better get to know the priest and his diocese/community. Thus they are in a position to make a better recommendation to the Ordinary when the evaluation is completed.

What Should an Adequate Evaluation Include

This is a very important question. In the final report the following should be looked for as part of the evaluation from any competent center.

a. Clear evaluation by the psychologist or psychiatrist who has had experience in dealing with sex offenders of different types.

b. An evaluation by a chemical dependency counsellor or someone with equivalent experience in substance abuse to make certain that the person does not have a history of abuse of alcohol or drugs which would be contributing to sexual problems.

c. A complete physical and neurological examination completed by an internist or neurologist.

d. A electroencephelogram done both in the sleep state and with nasopharengel leads.

e. A CT brain scan with and without contrast dye study to rule out the possibility of intercerebral tumors or other cerebral pathology.

f. Blood and urine laboratory tests that rule out the presence of alcohol and/or other illicit substances. The lab test should include an evaluation of liver, kidney, endocrine, lung, heart, and other vital functioning, all of

which may give clues as to the presence of "mitigating" problems that must be explored.

g. Some neurological assessment including an intelligence test which will give an idea of the "functional" capacity of the patient.

h. Appropriate psychological tests including projective testing which may give clues as to the stability of the character structure of the priest or the pathology of the character structure.

This is not an exhaustive but a basic list of tests which should be completed on a priest who is accused of sexual offenses. In other words, it is important to have an holistic approach to the problem which helps to discover mitigating factors which will assist in moving in the correct direction for the appropriate modality and treatment facility.

How To Choose an Appropriate Treatment Center

This is a most difficult and at the same time important question for the Ordinary. He may have a center where he has been pleased with the treatment of priests with other problems. However the "favorite treatment center" may not be the appropriate center for clerics with sexual problems, especially if the problem is pedophilia. The following is a partial list of appropriate questions to be answered.

a. Have the therapists and other professionals of the center had significant past experience in dealing with sexual abuse/sexual offenders/pedophiles. Will the priest be supervised by professionals with such experience?

b. What kinds of physical and environmental restrictions will be placed while the priest is in therapy. Will he be allowed use of a car at any times? Will there be non-supervised periods in a 24 hour period each day? Will he be allowed to go out to dinner, entertainments, churches where he might encounter

children in the course of his treatment program.

c. Will he be allowed to consume alcohol of any kind. No sex offender should ever be allowed use of alcohol or drugs in a recreational or social setting because of the possibility of relaxing inhibitions or relapse of sexual acts. Total abstinence is a must in order for there to be hope for abstinence and control of the sexual problem.

d. What are the criteria used to determine the fitness of the priest for discharge, possible return to ministry. How are these criteria tested during the treatment program.

e. What self-help group will the priest be required to attend while in the treatment program as well as after he leaves. It is essential that there be some form of mandatory self-help group such as AA or a sex offender group for the rest of this person's life. This should be started during in-patient treatment and encouraged, to the degree that the patient is taken to the group if necessary.

f. What concrete follow-up plans are made for the patient after treatment is concluded. Does he return on a period basis for an aftercare program. What kind of aftercare programs are set up in the diocese if the priest is to return to function there. What are the guidelines that will be given to the Ordinary with reference to future functioning in the diocese.

All of these plus many more questions must be answered. Every treatment center is not the same nor do all have the same treatment philosophy. It must be stated unequivocally that a pure psychoanalytic or psychodynamically based program is inadequate for the treatment of sex offenders. There must be a multi-disciplinary and multi-dimensional approach to the treatment of these very special people and it is essential that the Ordinary find out exactly

what is offered in and by the different treatment programs and centers before a decision is made to place the priest in a center for a prolonged period of time.

Can the Priest Ever Return to Ministry in the Diocese

Individual factors, the extent of the sexual abuse, the extent of the notoriety involved and the extent of knowledge of the problem are but some of the factors that go into this question.

The treatment center chosen should be one that works on a "family model" approach. This means that members of the religious family involved with the priest prior to treatment should be involved in the treatment and in the post treatment plans. There should be close communication and coordination with the diocese or religious community so that when this question arises during in-patient treatment, it can be answered directly and specifically and the treatment program moved in such a way as to assist the priest in looking at his fitness for ministry or finding new ministries or occupations.

It is inadequate to treat a sex offender in the diocese on a private psycho therapy model. It should be emphasized that in-patient treatment, preferably with peers, is the most preferable mode and the one which will have the best results.

What About the Families of the Victims

This is a very delicate area. While the welfare of the priest-offender is considered very important to the church officials, the welfare both at the time of the abuse and well into the future of the victims is most important and should be given a priority by Ordinaries. The effects of sexual abuse of children by adults are long lasting and go well into adulthood. This is well documented though it may well be difficult to predict the extent of the

effects in particular cases. We are speaking not only of psychological effects but also the spiritual effects since the perpetrators of the abuse are priests or clerics. This will no doubt have a profound effect on the faith life of the victims, their families and others in the community.

A rather direct approach should be made to the family (in conjunction with consultation with competent civil attorneys). Psychological help and other needed assistance should be offered to the victims and their families. If the family seems disposed to such a move, there should be some form of healing, if possible, between the priest and the family, possibly in terms of monitored communication or perhaps even a family meeting with the priest at some point when the priest, Ordinary and family are disposed to it.

We have been rather ignorant of the effects of sexual abuse of children by Catholic clergy over the years because it has never been investigated or studied in a systematic manner. However from a professional viewpoint, enough adult persons who have been in therapy in the past several years have discussed abuse by priests that it seems clear that such abuse has a profound effect even when it does not come to the attention of parents, family members or the civil or church authorities.

The extent and degree of the sexual abuse, the age of the child at the time of onset of the abuse, when it was discovered and finished, the manner in which it was discovered, any other dimensions of relationship of the priest with the family...these are all factors involved in treating the victims and their families. Special mental health professionals, trained and competent in this particular area, should be called on by the Ordinary to provide help and support as soon as is feasible. This is also a healthy preventive measure with respect to civil litigation since most families are eager to help their children and themselves in these embarrassing and complex psychosocial problems.

SIGNIFICANT CANONICAL CONSIDERATIONS

Because of the nature of canon law, as opposed to Anglo-American Common law, there is a perceived closer relationship between the proposed canon law questions and the following discussion of canonical issues. This discussion is not an attempt to provide definitive answers to these important canonical issues. This information on the canonical dimensions of these problems provides a general context within which to work with each specific case.

CANONICAL ISSUES

1. Investigation of Complaints

When a bishop receives a complaint that a priest or deacon has engaged in sexual misconduct with a minor child, this complaint should be discreetly investigated at once.

a. The obligation rests with the bishop himself and should not be delegated to another person. This bishop may see fit to involve trusted advisors in the process, but he should supervise and directly participate in the investigation himself. (A private response from the prefect of the Congregation for the Clergy in 1983 referred to the bishop's obligation to directly involve himself in disputes regarding priests. The response stated that this duty is not to be delegated.)

b. The Code of Canon law provides a basis for an investigation in chapter I, "The Preliminary Investigation," of Book VII, Part IV, "The Penal Process." These canons (cc. 1717-1719) offer wide discretion to the bishop in the investigation of complaints. The second chapter, "The Course of the Process," (cc. 1720-1728) outlines the manner of proceeding if the preliminary investigation shows that there is probability that a canonical delict was committed.

c. If the bishop follows the basic procedures outlined in cc. 1717-1719 he need not move to the next phase, a trial. He may simply want to go on record indicating that the canons provide for a process whereby complaints may be investigated. Such a course of action could be advantageous if the civil courts require proof of responsible action by the Church authorities in light of complaints. Following the canons to some extent shows two things: the church has a mechanism for protection of the rights of the faithful (cf. canon 221).

d. The notary: canon law allows lay persons and non-ordained to hold the office of ecclesiastical notary. §yet canon 483, 2 stipulates that in any case which could involve the reputation of a priest, the notary must be a priest. Consequently the person keeping the record of a preliminary investigation or indeed any process, including the penal process, involving these cases must be a priest.

2. Canonical Delicts

For those bound to perpetual continence and in sacred orders, a number of canonical delicts (crimes) may be committed in the course of sexual misconduct. Canon 277 refers to the cleric's obligation of perfect continence as well as his obligation to act and relate prudently to persons.

-canon 285, 1: the obligation to shun anything that is unbecoming the clerical state.

-canon 1395: this canon refers to offenses against the sixth commandment by clerics. It deals with concubinage and sexual concourse with women and related scandal in the first paragraph and with other related offenses, including those involving force, threats and offenses with children. The canon sets no specific penalties but merely refers to "just penalties not excluding dismissal from the clerical state."

-canon 1387: solicitation in the confessional. A priest who solicits in the confessional or under the pretext of confession for a sexual act is to be punished with penalties up to and including dismissal from the clerical state.

-canon 1378: this canon refers to canon 977 (the absolution of a partner in a sexual sin is invalid except in case of danger of death). A priest who commits this delict is automatically excommunicated and the absolution is reserved to the Holy See.

-canon 1389: this canon deals with the general abuse of ecclesiastical office or power. The crime is to be punished in relation to its severity.

Clerics who have sexual concourse with women, men or children are obviously liable to canonical penalties since such actions constitute the matter for canonical crimes. There are other issues related to these crimes however and the fact of commission of a crime should not be isolated as the major issue.

The canonical legislation on sexual misconduct indicates that such actions are contrary to the cleric's essential obligations. The law makes no distinction between performance of such acts while carrying out ecclesiastical duties and those perpetrated at other times. These actions are contrary to the cleric's very way of life and consequently he is obliged at all times.

3. Canonical Penalties Applicable

Although canonical penalties are ordinarily applied at the conclusion of a trial or process, the unique nature of certain forms of sexual misconduct, especially sexual abuse of minor children, should preclude such an approach under most circumstances.

In certain cases, the perpetrator might find himself excommunicated automatically, such as when he absolves an accomplice.

The preferred method of applying appropriate canonical penalties in such cases would be by way of administrative decree, issued by the Bishop. The penalty referred to is suspension of the priest from all sacred functions, ecclesiastical offices and duties.

*** a. Administrative Leave: after the initial report has been made and the Ordinary has decided that an investigation is justified, he should proceed according to cc. 1717-1719. The accused is simply that...his guilt has not yet been determined. The canons provide for a kind of "administrative leave" (canon 1722) whereby the priest or deacon may be asked to leave his residence and cease all public ministerial functions. This type of action by the bishop is not only advisable but should be routine. AT THIS POINT THE PRIEST OF DEACON SHOULD NOT BE SUSPENDED. Suspension is a canonical penalty which leads to a presumption of guilt. This could be misconstrued in civil courts and used to the disadvantage of the church. The priest or deacon has been accused of a delict which is actually a manifestation or result of a highly compulsive disorder. Although the actual effects of invoking canon 1722 may be similar to a suspension, the act whereby these effects take place is not a suspension. There is no process required beyond that mentioned in the canon. It would be well to explain to the accused that such action is for his benefit.

Suspension as a canonical penalty may be imposed by decree for a period of time, following the procedures outlined in the Code, or it may be imposed perpetually but not by decree. A perpetual or indefinite suspension can be imposed only after a canonical trial. In any case, suspension should only be used after the priest or deacon's guilt has been determined. If the accused is convicted and imprisoned, he could well be suspended for the duration of his incarceration. Such action might be advisable to avoid the appearance of tolerating the actions of pedophiles (but at the same time treating them with compassion). If it is determined, in conjunction with clinical advisors, that a priest or deacon can and should not exercise the ministry again because of the nature of his affliction or its severity, then laicization must be seriously considered. In the meantime it would be well to suspend the priest or deacon.

b. Removal from office: Although removal from office (associate, pastor, etc.) or transfer is not a penal procedure but an administrative procedure, the law provides for such actions if the ordinary believes that he has sufficient reason and that it redounds to the good of the faithful. Canons 1740-1752 set out in detail this procedure as well as the recourse against a decree or removal or transfer.

The ordinary, upon encountering a case of sexual misconduct, might give consideration to invoking the canons regarding removal in conjunction with those pertaining to penal procedures.

Nevertheless it is imperative to clearly understand that transfer or removal isolated from any other action is far from adequate and could in fact lead to a presumption of irresponsibility or even liability of the diocesan authorities by civil courts. In short, those presumed to be guilty of sexual misconduct, especially if it involves child molestation, must never be transferred to another parish or post as the isolated remedy for the situation.

c. Laicization: Canon 290 states that although sacred ordination, once validly received never becomes invalid, a cleric (priest, deacon or even bishop) loses the clerical state in three instances:

- when a judgement of a court or administrative decree declares the ordination to be invalid
- when laicization is lawfully imposed as a penalty
- when laicization is imposed by rescript of the Holy See.

Declaration of the invalidity of ordination is extremely rare and quite difficult to prove since it involves the intentionality of both the recipient of holy orders and that of the ordaining prelate. Allegations of lack of fitness for celibacy would not constitute solid basis to pursue such a matter.

Although the law includes dismissal from the clerical state (laicization) as a possible penalty for the offenses mentioned in canons 1387 and 1395, this penalty may not always be imposed on those guilty of sexual crimes not excluding pedophilia. Canon 1324, 1, 10, 20, 30 indicates that the penalty prescribed by law or precept must be diminished if the culprit had only imperfect use of reason; lacked use of reason because of culpable drunkenness or other mental disturbances of a similar kind; acted in the heat of passion which, while serious, nevertheless did not precede or hinder all mental deliberation and consent of the will, provided that the passion itself was not deliberately stimulated.

As is obvious from the above paragraph, it is possible to dismiss a cleric from the clerical state if he committed canonical crimes involving sexual misconduct. Yet is he acted under the influence of one or more of the conditions mentioned in canon 1324 it is not possible to impose the extreme penalty allowed, namely dismissal.

Dismissal may be prudently considered when it is obvious that the cleric in question will not be able to fulfill the duties of the clerical state and sacred orders, even to a minimal degree, because of his compulsion for illicit sexual activity. In such cases this course of action might prove to be the most beneficial for the person and for the church. It would effectively lighten the liability and responsibility of church authorities for the actions of a cleric who is proven to be completely incorrigible. The decision to proceed toward dismissal should be made in conjunction with expert canonical counsel as well as well-founded clinical advice on the man's suitability for the clerical state.

It may happen that situations arise when dismissal is seen to be the only viable course of action but when, at the same time, a court process is ill-advised or impossible. In such cases only the Holy See has the power to issue a rescript whereby a priest or deacon is reduced from the clerical state. It is possible for the Holy Father to ex officio laicize a man when it appears that no other course of action is advised. In such cases the cleric's local ordinary should prepare the petition for laicization and send it, together with all pertinent material, to the Congregation for the Doctrine of the Faith. The relative urgency of the case will determine the alacrity with which the case is handled in Rome. *** Laicization requests arising from pedophilia will be given serious consideration by the Congregation for the Doctrine of the Faith (for priests) and the Congregation for the Sacraments (for deacons).

*** Canonical Revision 7-28-86.

4. Ecclesiastical Records

Canon law refers to two types of archives or records: the ordinary diocesan archives and the secret archives. In fact, there are numerous types of records kept in most if not all diocesan curias. These include financial records, lay personnel records, insurance records, priest-personnel records, tribunal acts etc. In most dioceses the priest-personnel records are kept in a separate file. What is contained in each priest's file can vary greatly with the dioceses and its policy. Usually seminary records, transfer indications, letters of commendation and complaint and other related matters are kept in the priest's file. In some instances, recorded conscience matters which would include such matters as sexual misconduct, are also contained in the priest's file.

b. The diocesan archives: Canon 487 states that only the bishop and chancellor may have keys to the archives and permission for entry must be obtained from the bishop, moderator of the curia or the chancellor. This is a broad canon which implies that the wide range of materials which could be placed in the archives enjoy a degree of security and confidentiality.

The same canon also states that persons concerned have a right to receive copies of documents which concern their personal status and are by nature public. Thus access to certain documents about persons could be restricted if these are not considered public by nature. Complaints about sexual misconduct would not be considered public by nature.

Canon 488 states that documents may be removed from the archives only for a short time and then with the permission of the bishop, moderator of the curia or chancellor.

While the canon law on diocesan records may be clear and may be presumed to guarantee security of files and confidentiality, the fact remains that in certain civil courts in the U.S. decisions have been handed down which have held that the contents of diocesan records, including priest-personnel files and even tribunal files, are not absolutely confidential and thus may be discovered in a civil court process.

b. The secret archives: Canons 489 and 490 refer to the secret archives of the diocese. The canons describe this as a secure place which is either separate from the other archives or, if this is not possible, is a place in the diocesan archives which is secure. Only the bishop is to have the key to the secret archives.

The canons do not describe in detail what is to be kept in the secret archive. Yet canon 489, 2 states that documents of criminal cases concerning moral matters are to be destroyed if the guilty parties have died or ten years after the sentence in the case has been pronounced. This implies (an implication confirmed by commentaries on the similar canon in the 1917 Code) that cases involving moral and criminal matters are by their very nature the matter of the secret archives. They are secret when actually in the place of the archives or not. Canon 1719 clearly states that the acts of the inves-

tigation of the penal process, the decrees of the ordinary by which the investigation was opened and closed and all other matters which preceded the investigation are to be kept in the secret archives. By this canon it is clear that all documents related to a penal process, even though this process may not be concluded by sentence, are to be kept in the secret archives.

If for instance, complaints of sexual misconduct are investigated by the ordinary, every document pertaining to the complaint could be construed to be related to the preliminary and formal investigation of the penal process and thereby part of the secret archives.

Although the inviolability of the secret archives is clear in canon law, it is not so certain that such is to be respected by the civil law. Random legal opinions indicate that even the serious matters contained in the secret archives could be subpoenaed in the civil courts. The matter is still under research.

As a possible manner of distinguishing between the diocesan archives and the secret archives which pertain to priest-personnel problems, the bishop could have all material related to conscience matters of a moral nature placed in separate files which he personally would keep, at his residence for instance. These could be labelled "conscience" files or something similar which would indicate that they contained matters which only the bishop, in keeping with his unique relationship to the priest, had access to.

c. Recording sexual abuse: Reports of alleged sexual abuse or sexual misconduct as well as records of investigations should be kept in the secret archives and certainly not in the diocesan archives or the ordinary priest-personnel files.

5. The Limits of A Bishop's/Superior's Responsibility

The question involves the limits of a bishop's responsibility for those clerics who are working or living in his diocese. This responsibility is looked upon differently in civil law and canon law, yet the civil law might well look to the canon law to clarify questionable areas.

a. The relationship to incardinated clerics: It is clear that a bishop is responsible for clerics who are incardinated to his diocese. This includes diocesan priests, transient deacons destined for ordination to the priesthood and permanent deacons. Canon 273 states that clerics have a special obligation to show respect and obedience to their own ordinary and to the Supreme Pontiff. The bishop also assigns ecclesiastical offices in his diocese, including pastorates and associate pastorates, by free conferral (canons 157, 523, 547, 682). This means that the bishop alone has the power and the right to confer an ecclesiastical office or, in other words, to make an assignment. In those dioceses which have personnel boards or officers, these have no power nor can they be given the power to make assignments or confer offices. These canons are based on the nature of the episcopal office and the contingent relationship of the bishop to his cleric-subjects.

b. The relationship to visiting clerics: It is common for clerics, especially priests, to work or study in dioceses other than their own by incardination, for temporary periods of time of varying length. The usual custom is to seek the permission of the local bishop for such a cleric to live and work in the host diocese, with the permission of his own bishop. This possibility is outlined in canon 271, 2, 3.

Such a cleric working in a diocese other than his own is responsible to the host bishop for the apostolic work he does and for his actions which carry out his clerical duties. Because the bishop is the head of the local church, his responsibility for all clerics living and working under his jurisdiction is comprehensive as is the responsibility of these clerics to the bishop. Although the law does not mention it, the cleric's proper ordinary would seem to have an obligation in justice to inform the host ordinary of any problems the cleric might have which would possibly have an effect on his life and work in another diocese.

c. Religious clerics: Clerics who are members of religious institutes have their own major superiors as their proper Ordinary. This superior is usually called a "provincial." It is not the local superior of the community in which the religious lives but the superior over the territorial grouping of religious of the same institute. The major superior's responsibility to his clerics is similar to that of the bishop to his clerics.

Religious living and working in a diocese are subject to the local bishop in those matters which involve education, public worship or the apostolate (canon 678). In most cases they are not subject to the bishop in the internal ordering of their lives. This is known as the privilege of exemption which applies to most clerical religious institutes (known also as orders, congregations and in some cases, societies). Nevertheless if the local bishop becomes aware of serious internal abuses he may intervene if appeals to the proper religious superior prove to be ineffectual (canon 683, 2).

In matters of sexual misconduct, a religious cleric is responsible both to his own superior and to the bishop of the diocese in which he lives/works/resides. If the bishop becomes aware of an alleged incident he is within his rights to notify the religious' proper ordinary and also to conduct his own preliminary investigation. The law gives the local bishop the right to impose a suspension on a religious cleric by reason of penalty (canon 1341-42) and by means of an administrative decree or precept (canons 48-58)

A bishop may also forbid a religious to remain in his diocese for grave reasons (and alleged sexual misconduct would certainly be one) provided the cleric's major superior has been informed and has failed to act. The latter is to be reported to the Holy See (canon 679).

d. Suspended clerics: Is the diocesan bishop responsible for priests or deacons whom he has suspended (or someone else has suspended). It is clear that such clerics are merely suspended and are not dismissed, thus they remain clerics and the local bishop is still responsible for vigilance over

such clerics. Similarly the clerics are responsible to their bishop. If for instance, a bishop were aware of an act of sexual misconduct by a suspended cleric, he could not absolve himself of responsibility or possible liability by the fact of the cleric's suspension.

e. The bishop's financial responsibility: The nature of the bishop's relationship to support his clerics has changed from the 1917 Code. The 1983 Code (canon 281, 1, 2) refers to the support of priests and transient deacons and non-married permanent deacons in some circumstances. Essentially a bishop is obliged to provide remuneration to the cleric as befits his condition taking into account both the nature of the cleric's office and the conditions of time and place. The second paragraph states that suitable provision be made for such social welfare as the cleric may need in infirmity, sickness or old age.

Also, canon 1350, 1 says "In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support." To arrive at the canonical nature of the bishop's financial responsibility one must study the two canons in context.

First, it is clear that the bishop responsible is the bishop of incardination. Secondly, he is obliged to support his clerics but not unrealistically. The bishop may not withdraw all support from a cleric who is withdrawn from an assignment pending an investigation into sexual misconduct. If the allegation is proven and the cleric is suspended, the bishop must study the cleric's needs and his capacity to support himself and if necessary, he (the bishop) is obliged to assist in supporting the cleric.

This support includes provision for psychiatric and medical care. A bishop cannot waive his obligation to such support by explicitly excluding clerics involved in sexual misconduct. Is the bishop bound to provide legal assistance to clerics in trouble? Strictly speaking his is not, however he may choose to do so out of charity and with a view to the impression that could arise if refused to assist a cleric in trouble in such a manner.

The second paragraph of canon 1350 states that if a cleric is dismissed and is truly in need, then the bishop is obliged to provide for him in the best way possible.

The matter of financial support is most important since clerics involved in sexual misconduct, especially pedophilia will most probably be suspended and will need extensive psychiatric care as well as legal assistance. The cleric may have little means of outside support and will therefore depend on the bishop or diocese for help. Like a cleric suffering from cancer, a pedophiliac suffers from a serious emotional/mental disorder. Unlike the cleric suffering from a physical disease, the symptoms of the pedophiliac's illness are also criminal actions.

f. Responsibility for Permanent Deacons: A permanent deacon, married or not, is a cleric and not a layman. When the code refers to clerics, it includes both deacons and priests with no distinction between transient

and permanent deacons. Married deacons are not obliged to continence but are obliged to chastity which precludes sexual relations with others than their wives. In the event that permanent deacons committed sexual misconduct, the bishop would have a responsibility to investigate the incident and to take appropriate action. The permanent deacon may also be suspended as can a priest. In the event that it is necessary to laicize a permanent (or transient deacon) this too is possible, yet the process is handled through the Congregation for the Sacraments rather than the Congregation for the Doctrine of the Faith which handles laicization of priests.

The bishop is responsible for just remuneration for permanent deacons who work for the church full-time. In the United States most permanent deacons have full-time professions or employment and work for the church on a part-time basis. Canon 281, 3 states that married deacons (and presumably single permanent deacons) whose support themselves and their families from secular employment are not entitled to support from the bishop as well.

It appears from a reading of the canon that a bishop is not obliged to provide for medical or psychiatric care or legal expenses for permanent deacons involved in sexual misconduct.

6. The Canonical Nature of the Bishop-Cleric Relationship

The civil law will look to canon law as well as theology to aid in understanding the nature of a cleric's relationship to his bishop and to his diocese.

A cleric is bound to his diocese through incardination which takes place at the time he received the sacred order of deacon. Under the 1917 Code a cleric became incardinated at the time he received first tonsure, probably two or three years before ordination to the diaconate. By incardination the cleric is bound to the diocese in a special manner. He is not simply a resident but is a kind of ecclesiastical public servant. This pertains to permanent deacons as well as other clerics.

The priest especially is bound in a special way to the diocese because he called by Vatican II a "collaborator" with the bishop. His life's work, calling or occupation is ordered to the work of the church, ordinarily in his diocese. A priest or deacon may live and work in another diocese yet remain incardinated to his own diocese and responsible primarily to his own bishop.

The cleric owes reverence and obedience to his bishop. Here the law (canon 273) refers to the bishop of the diocese of incardination. At the time of ordination to the diaconate and again to the priesthood the cleric make a promise of obedience to his ordinary and the ordinary's successors. By this promise the cleric owes the bishop obedience in all things that are neither sinful nor illegal.

The relationship of the bishop and his priest differs theologically and

canonically from that of the bishop to a deacon. This difference would have little impact in the civil law understanding of the overall relationship of bishop to cleric. Nevertheless since most of the problems exist with priests this special relationship should be well understood.

The bishop-priest relationship is unique. Clearly the bishop is much more than an employerr since the priest is responsible to him for all areas of his life and not merely those hours during which he is exercising priestly ministry. The priest owes complete obedience to his bishop and it is the bishop alone who has the power, by reason of office, to transfer or assign a priest.

The priest is also referred to as a cooperator with the bishop. One of the post-Vatican II documents says "All priests...share and exercise with the bishops the one priesthood of Christ. They are thus constituted providential cooperators of this episcopal order. The diocesan clergy have however, a primary role in the care of souls because, being incardinated in or appointed to a particular church, they are wholly dedicated in its service...and accordingly form one priestly body and one family of which the bishop is the father." (Christus Dominus, n. 28).

Likewise says the conciliar document on the priesthood: "All priests share with the bishops the one identical priesthood and ministry of Christ. Consequently the very unity of their consecration and mission requires their hierarchical union with the Order of Bishops...Bishops will regard them as indispensable helpers in the ministry and in the task of teaching, sanctifying and shepherding the people of God." (Presbyterorum Ordinis, n. 7).

The essential responsibility of a bishop for his priests is rooted in their common sharing of the same priesthood: "On account of this common sharing in this 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." (Ibid., p. 7)

Most priests are either pastors or associate pastors. Others may be teachers, preachers, administrators etc. The canons use a technical term to describe the special and unique authority and responsibility that certain offices hold in relation to the pastoral ministry...cura animarum or "care of souls." This term is directly connected with the office of bishop and the office of pastor. Others share in it or participate in it but do not have it in its fullness. According to canon 519 the pastor "exercises the pastoral care of the community entrusted to him under the authority of the bishop whose ministry of Christ he is called to share..." A pastor must be a priest according to canon 521, 1.

A diocesan priest (pastor, associate pastor etc.) is not automatically a vicar of the bishop, that is, one who represents the bishop and functions on power delegated by the bishop. The law provides for vicars in special places. The pastor has his own authority which he obtains by reason of his office, conferred on him by the bishop. While he may enjoy certain powers delegated him by the bishop, his basic pastoral powers come to him by the very office he holds.

Parish priests are not paid directly by the bishop but are paid from parish funds. The IRS considers priests to be self-employed.

7. The Church's Canonical Understanding of Its Identity

In lawsuits against employees of the Catholic Church it is not uncommon for the person to be named along with other authority figures in the hierarchical structure of the church. This includes local ordinaries, metropolitan archbishops, papal representatives and the Holy Father himself in some cases. Because of this tendency it is helpful to clarify the canonical dimension of the relationship of church entities.

a. The Diocese: canon 368 refers to Particular church, the diocese being the principle example. A particular church is a portion of the people of God entrusted to a bishop (canon 369). Only the Holy Father has the power to establish, alter or suppress a diocese (canon 373) or any other type of ecclesiastical jurisdiction.

The diocesan bishop, also referred to as the local ordinary, has all of the ordinary, proper and immediate power required for the exercise of his office in the diocese except in those matters which the Pope has reserved to himself or to other ecclesiastical authorities.

The diocese is composed of parishes which are erected or suppressed by the authority of the diocesan bishop. He has complete authority in his diocese including the power to enact legislation to a certain extent and according to the norms of the universal canon law. Canon 391 states that the bishop governs the diocese with legislative, executive and judicial power. In all juridical transactions the bishop acts in the person of the diocese (canon 393).

The bishop's immediate superior is the Holy Father. The Pope alone has the authority to name a bishop, appoint him to a diocese, remove him or ask for his resignation.

Each diocese is to have its own administrative offices and organs and its own court, called a tribunal. A diocese is not dependent in any way for its on-going existence on other dioceses. The bishops of the world belong to what is known as the "college of Bishops." This is a union of the bishops as successors of the apostles with the Pope at its head. It functions in solemn form when in ecumenical council.

b. The Metropolitan and the Province: Dioceses are arranged according to geographical areas called provinces. The major entity in a province is called the archdiocese. The other dioceses are called suffragan dioceses. The head of the archdiocese is known as the Metropolitan Archbishop. He has no power of governance over the suffragan dioceses but can celebrate sacred functions in churches in these other dioceses (canon 436).

The metropolitan archbishop is not the superior of the bishops of the

province. He can exercise moral suasion over them but they are not bound to obey him or accept his advice unless the metropolitan is delegated by the Pope in particular occasions. It is clear that the individual bishops do not report to the metropolitan nor is the metropolitan responsible for the decisions or actions of the bishops. The only power given him by law is to appoint an administrator of a diocese if the see is vacant and if the diocesan consultors have failed to duly elect one. Also, he may conduct a visitation of a diocese if needed but only with the permission of the Holy See.

c. The Episcopal Conference: The episcopal conference, an entity which grew out of Vatican II, is the assembly of all of the bishops in a country. Conferences are established, altered or suppressed only by the Holy See. (Canons 447 and 449). The conference can enact legislation or decrees only when this is provided for in the universal law of the church (canon 455). The conference is not a legislative body nor does it have executive or judicial power over the individual bishops of the country. It exists primarily as a service organization to assist the bishops in their pastoral work. The size and complexity of each individual conference's permanent staff varies from country to country.

The Episcopal conference in the United States, as in other countries, does not have authority over the individual bishops nor does it have a right by church law to intervene in diocesan affairs. The president of the conference is elected for a set term by the bishops. He has no authority over the individual bishops nor over the national church as a whole. The law allows the conference or the president to speak in the name of all of the bishops only when each and every bishop gives his consent (canon 455, 4).

The national conference of bishops is not the equivalent of a national Catholic Church. The dioceses do not form a federation. Their identity in the law would remain the same with or without the conference.

d. Juridic persons: Aggregates of persons or things which are directed to the church's mission in some way may be given the status of a juridic person either by provision of the law itself or by an act of a superior or competent to create a juridic person. A juridic person is similar but not entirely analogous to a corporation. Dioceses are juridic persons.

e. The Apostolic Pro-Nuncio: The papal representative in the United States is known as the Apostolic Pro-nuncio. He is the personal representative of the Holy Father to the American Church and the ambassador of the Holy See to the United States. He enjoys power or authority which is given to him by law (since he usually is an archbishop) or is delegated by the Holy See.

The papal representative has no direct authority over the individual bishops. He assists the bishops by action and advice while leaving intact the exercise of their lawful power. The papal representative may act only upon instructions of the Holy See. He may not interfere in the internal workings of a diocese nor may he remove or censure bishops in any way.

Similarly bishops are not bound to report to the Papal representatives

concerning their personnel nor the internal workings of the diocese except in cases specifically defined by law. By weight of his office, the papal representative can exercise a certain degree of moral authority over the individual bishops but has no direct, canonical authority.

Finally, the papal representative enjoys diplomatic immunity. While he may be a citizen of this or that country, he carries a Vatican diplomatic passport for the duration of his service with the Holy See.

8. The Advisability of Reporting Incidents to Church Authorities

Although the diocesan bishop is bound to report only to the Holy See in just about every case, it is advisable that incidents of sexual misconduct among the clergy be reported to certain ecclesiastical authorities. This of course would depend on the nature of the incident, the amount of publicity attending it and the possible civil law ramifications. Naturally there is a difference between an action which has moral culpability only and an action which is morally wrong but also constitutes matter for criminal prosecution or civil liability.

When an incident of alleged child molestation is reported to a bishop he may have an obligation in civil law to report it to civil authorities. No such obligations exists in canon law. Nevertheless, if the incident and the cleric's identity remain confidential, the bishop may wisely refrain from widespread reporting. It may be advisable in every instance to report the incident to the Papal representative in the event of a subsequent inquiry from the Holy See. Rather than communicate directly to the Holy See, a bishop should communicate through the papal representative.

A bishop is not bound to report incidents to the Metropolitan archbishop nor to the President of the episcopal conference or the conference staff, including the office of the general counsel.

9. Vigilance in the Seminaries

No man has a right to enter a seminary nor a right to remain in the seminary. The law states that the bishop is to admit to a seminary only those candidates whose human, moral, spiritual and intellectual gifts as well as physical and psychological health show that they are capable of dedicating themselves permanently to ministry (canon 241, 1).

The bishop who sponsors the candidate is responsible for him. Yet the seminary may not be in the same diocese. The bishop then depends on the seminary rector and staff to assist him in determining if the candidate is suitable for ordination. A seminary rector or staff may dismiss a candidate yet a bishop still may place him in another seminary or ordain him.

Seminaries fall under the authority of the bishop of the diocese in which they exist. If the seminary is an inter-diocesan seminary by decree of the Holy See, all of the bishops involved share authority.

A seminarian may be dismissed from a seminary by the rector if the statutes of the seminary provide for this, or by the bishop. He need not be told why he is being dismissed and he has no right of appeal of any kind. Canon 10129 stipulates that those who are to be ordained must, in the judgment of the bishop, be motivated by the right intention, enjoy a good reputation, have moral probity and the physical and psychological qualities appropriate to the order to be received. If the bishop even suspects deficiencies in a candidate he may refuse to ordain him even without indicating why. There is no recourse or appeal since there is no right to ordination.

Canon 1041, 1° states that one who suffers from any form of insanity or from another psychological infirmity is "irregular" for receiving orders. Experts are to be consulted to determine if the person's infirmity will make him incapable of exercising orders properly. By irregularity is meant a kind of impediment that must be dispensed from either by the bishop or the Holy See depending on the circumstances.

10. Religious Clerics

The canonical considerations listed above pertain equally to clerics who are members of religious institutes. Since there are different kinds of religious communities, it is important to understand the differences:

a. Religious institutes: this is the canonical term for groups of men or women who take public vows and are recognized and erected as a religious institute. These were commonly known as Orders, Congregations or Societies in the past and still are to a certain extent.

b. Secular institutes: these are recognized organization of clerics or laity who belong without taking public vows nor living a common life.

c. Societies of Apostolic Life: these organizations lead a common life, pursue an apostolate but do not take public vows.

The major superiors of religious institutes of men are known as Ordinaries." Their power and authority as well as responsibility for their subjects is similar to that of a bishop. In some ways, because of the vow of obedience, the religious superior may have even greater authority over his subjects.

Religious institutes are usually divided geographically into provinces with members living in religious houses. A religious ordinary is responsible for those subjects assigned to his province or those assigned to another province but living in his province. The method of assignation and the terms used differs from one community to another.

SELECTED SPIRITUAL CONCERNS

In addition to the other effects of sexual abuse on children and their families, since the perpetrators are priests or members of the clergy, there will also be serious "spiritual" consequences. Those affected include the victims, their immediate families as well as others in their circle of friends and acquaintances. There will also be serious spiritual consequences for the wider church community. Spiritual concerns also encompass the cleric-offenders and other members of the clergy in the diocese and in other areas.

1. Sexual abuse of a child by a cleric, especially a priest, can have a devastating effect on the child's short and long term perception of the church and its clergy. How will the child be able to perceive the clergy as authentic, unselfish ministers of the Gospel and the Church as the Body of Christ.
2. The victim's capacity to develop trusting relationships with adult clergy will be impaired.
3. The abused child's faith in the sacraments as sources of grace and communications with Christ, through the ministry of a priest, will be seriously weakened.
4. Depending on the manner with which Church authorities deal with the case, the victim and others may quickly develop a perception of Church's leadership as ineffective and unauthentic

vis-a-vis its commitment to all of its members and not simply its commitment to its leaders and the clergy.

5. Church attendance by the victims their families and other members of the faithful may decline.

6. Help must be given to priest-offenders to discern the nature of their commitment to the priesthood, the reasons for their choice of this vocation, their hopes and plans for the future and the real possibility that they are almost totally unfit to be priests.

7. Other priests and clerics who are not affected with sexual problems may perceive a severe hampering in their ability to minister, particularly to and with children. They might become very fearful of even touching children such as blessing them, making normal signs of affection etc.

8. In addition to the overall problem of the image of the Church as a haven for homosexuals and sexual perverts, the image of the priesthood is severely hampered and the faith of many in the priesthood is threatened by the fact of priests who are sex offenders as well as by the way the problems are handled or mishandled by Church authorities.

9. The victims and possibly even their families may develop unwarranted feelings of guilt because of the contact with priests. This can be complicated by an unwillingness to accept a priest as the minister of forgiveness and absolution with consequent inability

to alleviate the guilt feelings through the traditional channels of
absolution.

PUBLIC RELATIONS CONSIDERATIONS

1. The necessity for careful consideration of this aspect of the problem is self-evident. The negative impact of widespread sexual abuse of children and involvement in other forms of illicit sexual activity by Catholic clergy and religious cannot be underestimated nor the full import be realistically assessed. One initial indicator is provided by the most recent attention given to the problem in the secular press as well as the National Catholic Reporter.

2. The first objective, of which one must never lose sight, is to maintain, preserve and seek to enhance the credibility of the Church as a Christian community. The Church should be presented as a sensitive, caring and responsible entity which gives unquestioned attention and concern to the victims of misconduct by priests. The Church should not be presented as or identified with only the hierarchy or the governing structures or the clergy. The P.R. approach can emphasize positive programs utilizing imaginative and creative thinking converting adversity to advantage.

3. A second objective of the media policy should be the public separation of the offender from the church authorities. In appropriate cases the offender must be made to accept the consequences of his actions and the public must be made to understand that the offender's acceptance of this respons-

ibility indicates that the church authorities could not have done anything to prevent the incident (in cases wherein this assertion is true). Separation does not mean that the church authorities abandon the offender. It means that his action will be portrayed not as an action of the church or an action even indifferently condoned by the Church but an action which the church views as profoundly unfortunate.

4. A third objective is to adopt a policy which in all cases will carefully control and monitor the tonal quality of all public statements made about particular cases or the general problem. This will include statements to and in the secular and Catholic press, letters of bishops to their clergy and faithful, remarks of Church authorities, pulpit announcements etc. All statements including written legal pleadings must be entirely consistent and aligned with the image of the Church in the minds of the general public, the Catholic community, jurors, judges, prosecutors and plaintiffs. The church cannot step out of character at any stage of the process through any action including the action of legal counsel.
5. The church must remain open and avoid the appearance of being under seige or drawn into battle. All tired and worn policies utilized by bureacracies must be avoided and

cliches such as "no comment" must be cast away. In this sophisticated society a media policy of silence implies either necessary secrecy or cover-up.

6. Policy analysts and media consultants can construct sound, specific targeted policies to be utilized in response to localized or regional publicity which may be adverse to the Church's best interests. Broad general policies of a national scope can be put in place. Most important, very specific thematic policies can be developed for each phase of a developing problem from its discovery to its conclusion.