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OF AMERICA**

**PROCEEDINGS
OF
THE SIXTY-SIXTH
ANNUAL CONVENTION**

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**CANON LAW SOCIETY OF AMERICA
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TABLE OF CONTENTS

FORWARD	vii

ADDRESSES

The Sacraments: Actions of Christ and Actions of the Church <i>Most Rev. Thomas G. Doran</i>	1
Theology of Marriage: Complementarity Between the Latin and Eastern Codes <i>Mr. Robert Flummerfelt</i>	13
<i>Les Orandi, Lex Credendi, Lex Vivendi</i> in the Rites of Christian Initiation <i>Rev. Msgr. Kevin W. Irwin</i>	27

SEMINARS

Finding Method in the Madness: Writing Sentences in Lack of Due Discretion Cases <i>Rev. John P. Beal</i>	57
The Sacrament of Reconciliation: Issues, Praxis and the Future <i>Rev. Patrick J. Cogan, SA</i>	81
Remuneration, Decent Support and Clerics Removed from the Ministry of the Church <i>Rev. James I. Donlon</i>	93
The Charter and Norms Two Years Later: Towards a Resolution of Recent Canonical Dilemmas <i>Rev. Msgr. Ronny E. Jenkins</i>	115
The Role of the Expert in Tribunal Proceedings <i>Rev. Mr. Gerald T. Jorgensen</i>	137
The RCIA: Canonical Issues <i>Rev. Ronald F. Krisman</i>	153
The Disruptive Religious: Part I: Religious Authority and the Disruptive Religious <i>Sister Elissa A. Rinere, CP</i>	171

Part II: A Focus on the Individual	
<i>Rev. Arthur J. Espelage, OFM</i>	179

Calling God's Special Children to Holiness: Sacramental Access for the Mentally and Cognitively Challenged	
<i>Mr. Peter Vere</i>	195

Sacramental Life of Parishes without a Resident Pastor:

Part I: The Parish	
<i>Rev. Gary D. Yanus</i>	207
Part II: The Role of the Parish Administrator	
<i>Sister Therese Guerin Sullivan, SP</i>	221

OFFICERS' REPORTS

President	
<i>Rev. Msgr. Mark L. Bartchak</i>	243
Treasurer	
<i>Very Rev. William J. King</i>	253
Auditors' Report	257
Budget FY 2004-2005	275
Executive Coordinator	
<i>Rev. Arthur J. Espelage, O.F.M.</i>	287

COMMITTEE REPORTS

STANDING COMMITTEES

Budget	295
Convention Planning	295
Nominations	297
Professional Responsibility	299
Hearing Officers	300
Resolutions	301

ON-GOING COMMITTEES

Advisory Opinions	302
Canonical Aspects of Questions Regarding Sexual Abuse of Minors ...	305
Canon Law Digest	306
Civil and Canon Law	306
Eastern Canon Law	309
Electronic Media	310
Institutes of Consecrated Life and Societies of Apostolic Life Committee	311

Investment Review	312
Lay Canonists	313
Marriage Research	322
Publications	323
Roman Replies	324
Scholarship Fund	325
Translation of Legislative Texts	326

PROJECTS/TASK FORCES

BOG Handbook Review and Revision	327
CLSA Strategic Planning Committee/CLSA Planning Task Force	327
<i>Ex Corde Ecclesiae</i> Application	328
Lay Ministry Handbook	329
Marriage Procedures Handbook	330
Special Task Force on Executive Coordinator's Office	331
Task Force on Issues Related to Marriage and Undocumented Persons ..	332

CONVENTION

Convention Chairperson	334
Convention Liturgies	335
 Tribunal Statistics 2003	 338

BUSINESS MEETING

Minutes	385

MISCELLANEOUS

Homily	
<i>Most Rev. Donald W. Wuerl</i>	397
Citation for the Role of Law Award	
<i>Rev. Msgr. Mark L. Barchak</i>	401
Response, Role of Law Award	
<i>Rev. William H. Woestman, OMI</i>	405
 Contributors	 411
 List of Participants of 2004 Convention	 413
 List of New Members	 422
 Index for <i>Proceedings</i>	 425

FORWARD

I am pleased to present the *Proceedings* of the sixty-sixth annual convention held in Pittsburgh, Pennsylvania, October 11 to 14, 2004. The Canon Law Society of America annually publishes to our members and to others in the canonical community the major address and seminars presented at the annual meeting. Each year an attempt is made to produce the *CLSA Proceedings* as soon as possible after the convention.

In the collection of materials for this manuscript, I wish to express my gratitude to the presenters who provided their final texts in a most timely fashion. Preparation of the texts for publication was facilitated this year by the submission of electronic versions of the presentations. In the preparation of the texts, every attempt was made to maintain consistency by relying on both *The Chicago Manual of Style* and the style of previous issues of *CLSA Proceedings*.

In this year's edition of *CLSA Proceedings*, readers will find the inclusion of a participants list at the Pittsburgh Convention. This adaptation brings the CLSA into a similar format as our fellow societies in Australia, Canada, and Great Britain & Ireland. It responds to the request of those members who can use the material as proof for continuing education credits. Likewise, this year's volume contains a list of new CLSA members who joined the society between October 2003 and 2004. We welcome these new men and women joining the members of the CLSA.

Indexing of past CLSA addresses and seminars is an important research tool. One will find an index for *CLSA Proceedings*, volumes 31 (1969) to 56 (1994) in the *Proceedings of the Fifty-sixth Annual Convention*, October 1994, in Atlanta, Georgia. A new index for volumes 57 (1995) to 66 (2004) will be found in this volume of *CLSA Proceedings*. For readers who wish electronically to access these indices, consult www.clsa.org.

The Canon Law Society of America, established on November 12, 1939 as a professional association dedicated to the promotion of both the study and the application of canon law in the Catholic Church today numbers over 1600 members who reside in the United States and forty other countries. *CLSA Proceedings* 66 (2004) should take its place among previous volumes as a professional resource. The text contains a high degree of consistency and accuracy which should further scholarly research.

Additional copies of this volume of *CLSA Proceedings* may be found at CLSA Publications, P.O. Box 463, Annapolis Junction, MD 20701-0463 or at the CLSA website: www.clsa.org. For telephone or fax orders consult: (Telephone) 301-362-8197 or (Fax) 301-206-9789.

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THE SACRAMENTS: ACTIONS OF CHRIST AND ACTIONS OF THE CHURCH

MOST REV. THOMAS G. DORAN

It is with deep appreciation to the Canon Law Society of America for its invitation to present the keynote address for this convention and I offer these remarks on the sacraments as actions of our Lord Jesus Christ and actions of his holy Catholic Church. This serves as a meditative background and reflection on what we are about in this week of deliberations, the 66th annual convention of our society.

In his encyclical letter of last year, Pope John Paul II referred to the Holy Eucharist as “the heart of the mystery of the Church,”¹ the source of the Christian Life. Bishop Wuerl so nicely underlined how the Mass figured into the history of this city at its inception. In the most Blessed Sacrament, as also in the other sacraments, Jesus Christ offers his life to us.²

In the sacraments, the Lord Jesus Christ bestows on the faithful nothing less than a participation in the divine life of the Trinity. Jesus said of the Eucharist: “As the living Father sent me, and I live because of the Father, so he who eats me will live because of me.”³

As the *Catechism of the Catholic Church* teaches us, “The desire and work of the Holy Spirit in the heart of the Church is that we may live from the life of the risen Christ.”⁴ And “‘Seated at the right hand of the Father’ and pouring out the Holy Spirit on his Body which is the Church, Christ now acts through the sacraments he instituted to communicate his grace and his life.”⁵

These are vital truths indeed. I am grateful for this opportunity to reflect on the Christian sacraments as life-giving actions of Jesus Christ and their relationship with the canonical laws of the Catholic Church which has been commissioned to draw all men into the divine life through the sacraments.

¹ *Ecclesia de Eucharistia*, no. 1.

² *Ibid.*, no. 6.

³ Jn 6:57.

⁴ *Catechism of the Catholic Church*, no. 1091.

⁵ *Ibid.*, no. 1084.

The Situation of the Church

In every age the need for the grace of Christ is apparent. "I am the vine and you are the branches," says our Lord, "apart from me you can do nothing."⁶ Without the life Christ Jesus bestows in the sacraments we cannot enter into communion with God, become new creatures and heirs of heaven, be forgiven of our sins, be united to the sacrifice of Christ Jesus on the cross, be fed with his life-giving Body and Blood, receive the gifts of the Holy Spirit, be comforted when we are sick or dying, enter into marriage as a sacred covenant in Christ, or be made deacons, priests or bishops to serve the Church. None of that is possible without the sacraments.

When we listened a few months ago to the glowing tributes to Ronald Reagan at his recent funeral, we could discern that all his admirers, each and every one, were firmly convinced that he was now in heaven. Their understanding was that he was surely in heaven because he was so good, so humble, so friendly, and so forth. The question thoughtful people might ask is this: If heaven is won by our goodness, then what need does the world have for Jesus Christ? The Catholic Church has the answer to that question. We are convinced of the truth of the Lord's words: apart from him we can do nothing. Only by being joined to the vine that is Christ do we share the divine life by which he saves the world. This is the truth of faith that is constant through the ages.

Every age of the church's life has faced different problems. The Church as it conveys the grace of Christ from one generation to another has to meet those problems. At its origin, the founder of the Church foretold that it would experience evil forces, intent not merely on defeating it but on destroying it, and he promised victory over all of them: "I tell you that you are Peter, and on this rock I will build my Church, and the gates of hell will not prevail against it."⁷

Careful study of the history of our Catholic Church reveals its long struggle against powerful foes; it has passed through one crisis after another; by Christ's grace the Church stands as the most enduring institution the world has ever seen. The troubles facing the Church in our country today cannot perhaps be termed so facilely a crisis, in my opinion, since our difficulties, menacing as they may be, cannot be compared to the monumental and true crises in our history such as Arianism, the Protestant rebellion, the persecution by civil governments that occurred in the 19th century and so on; and to that list, you could add other crises far worse than we face today. Through all its afflictions, the Lord Jesus guided, protected and even strengthened his Church according to his promise. In meeting the difficulties of our day, we ought not so much rely on our human efforts to overcome our troubles – those efforts are important; they are our work, our striving to meet those troubles – but we should rely above all else on the grace of Christ

⁶ Jn 15:5.

⁷ Mt 16:18.

without which we can do nothing. The present times should move us to renew our sacramental life, to make sure that the grace of Christ in the sacraments is given efficaciously, so that each member of the Church is strong with the strength of God. We find courage and hope of victory in our faith that in the sacraments especially, it is Jesus himself – not our paltry efforts but Jesus himself – who casts out demons and acts powerfully in defense of his Church in every age.

Sacraments and the Canons

This year's convention of our society reflects seriously on the Catholic belief that in the sacraments the Lord Jesus Christ is truly present and acting on behalf of his Mystical Body. Canonists rarely if ever consider themselves theologians, and even more rarely have scripture scholars, artists, architects, musicians, missionaries, administrators, or theologians thought of themselves as canonists. Yet the Canon Law Society has a long history of studying the relationship of canon law to the sacraments. Such an interest cannot help but take the science of theology into account.

One of the glories of the new *Code of Canon Law*, in my judgment, is that it has been faithful to the call of the Second Vatican Council to base the Church's law solidly on the Church's faith. The success of the new code in accomplishing this task should be a source of pride for all of us as canonists. It is a major development in the history of canon law as Archbishop Rosalio Castillo Lara noted when the new *Code of Canon Law* was promulgated.⁸

The code presents at critical points a precise definition of the Church's sacraments. For example, in canon 840, when defining the seven sacraments the code expresses the Catholic faith that these seven sacred signs are *actions of Christ and actions of the Church*, the very point of these remarks.

Actions of Christ

It cannot be emphasized enough that Christ's presence and action is what makes the sacraments so essential and important. The idea that the sacraments are actions of Christ has been a fundamental belief of the Church ever since those blessed days when the disciples heard and observed Jesus Christ expressing his priestly and sanctifying office during his public life. The personal presence and action of Christ in the sacraments, however, was not emphasized in the former codifications of the law, which were more concerned with extrinsic matters such as the duties of those administering and receiving the sacraments. The 1917 code, for instance, placed the sacraments among "things," in the book *De Rebus*, as the principal *means* of

⁸ *Communications* 15 (1983) 32.

sanctification and salvation.⁹

Before the Second Vatican Council, it is true, several papal documents drew attention to the presence and activity of the person of Christ in the Church. One of these, the encyclical letter, *Mediator Dei*, of Pope Pius XII, helped the Church to deepen its self-understanding by the doctrine that Jesus Christ, risen and at the right hand of the Father, is inseparable from his mystical Body on earth. He said that “The divine Redeemer has so willed it that the priestly life begun with the supplication and sacrifice of his mortal body should continue without intermission down the ages in his Mystical Body which is the Church.”¹⁰ The pope continued, writing that the Church prolongs the priestly mission of Jesus Christ mainly by means of the sacred liturgy “at the altar . . . and by means of the sacraments.”¹¹

In *Lumen Gentium* the Fathers of the Second Vatican Council portrayed the Church as the universal sacrament in its nature: it is a “sign and instrument” of communion with God and of unity among men.¹² Pope John Paul II writes that the Eucharistic presence of Christ, his “sacramental ‘I am with you’ enables the Church to discover ever more deeply her own mystery.” The pope refers to the “rhythm of the mission of the Son” and also the “rhythm of the mission of the Holy Spirit.” The Son, who had departed in the Paschal Mystery, comes and is continually present in the mystery of the Church Christ comes. Christ works. Christ gives life.¹³

The *Catechism of the Catholic Church* joins the action of the Holy Spirit to the action of Christ: the sacraments are “efficacious because in them Christ himself is at work: it is he who baptizes, he who acts in his sacraments in order to communicate the grace that each sacrament signifies.”¹⁴ It is because of “the power of Christ and his Spirit” that the Church can have confidence that these seven signs are efficacious *ex opere operato*.¹⁵

The meaning of “actions” of Christ

Religious imagination and emotion can form a vague “feeling” about what we call Christ’s action. To some there must be some kind of “experience” of the presence of Christ. But we come closer to the splendid truth of the matter by attending to the basic meaning of “action” as St. Thomas Aquinas explained it.

The Angelic Doctor held that there were two modalities of being, namely act

⁹ *Codex Iuris Canonici PiiX Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (Vatican City: Typis Polyglottis Vaticanis, 1917) canon 731.

¹⁰ *Mediator Dei*, no. 2.

¹¹ *Ibid.*, no. 3.

¹² *Lumen Gentium*, no. 1.

¹³ *Dominum et Vivificantem*, no. 63.

¹⁴ *Catechism of the Catholic Church*, no. 1127.

¹⁵ *Ibid.*, no. 1128.

and potency. *Actus Purus* is Thomas' definition of God in his absolute, eternal, unlimited perfection. Potency is the possibility of a thing truly becoming something else which it was not before and need not by necessity be: *potentia obedientialis*.¹⁶ "Action" in our context means an exercise of power causing a being to change. In the theology of the sacraments, "actions of Christ" is a term understood to mean the exercise of the *virtus Christi*, the power Christ merited by his passion, to cause an individual to be changed by divine grace. The sacrament is an instrumental cause of grace. The principal agent is God himself working through his Incarnate Word, his Son, Jesus Christ. The instrument is some rite of the Church, the Body of Christ on earth. As an instrument, the sacrament adapts the power of Christ to the human form or condition of potency, much as a key transmits the power of our hand to a form that can open a lock. So in the sacraments, St. Thomas taught, Christ exercises his power – that is, he acts – in the form suitable for the human potential to receive grace. The Church's rites make the invisible grace perceptible to the senses.¹⁷

Since the presence and action of Christ is not an imagined feeling or experience, it should be clear that those who administer a sacrament must perform the rite exactly as the Church requires, and not try to stimulate the imagination or the emotions of the recipient by words or music or other means that are not ordered to the valid and licit celebration of the sacrament. The dispositions of the recipients of the sacraments are important to be sure; the preparation given by instruction and the beauty of the setting help the faithful to recognize by faith the presence and activity of Christ in the sacrament.

Some ways the canons protect the sacraments

What do we do as canonists, as legists of the Church, to protect the sacraments?

There have always been a few Christians who accuse the Church of trying to regulate by law the free action of Christ and the Spirit. Father Hans Urs von Balthasar rose bravely to the defense of canon law. In his series of radio programs broadcast in Germany in 1978, he confronted those who regard Christ's action as a purely charismatic event. Von Balthasar rejected the opinion that the Church's canon law was a some sort of "constricting corset" or a stabilization of what actually always ought to be a charismatic event. He insisted that it is the very purpose of canonical law to order and structure the ecclesial community so as to keep it living and open to Christ's action, an ecclesial vessel as it were that contains the eternal youthful presence of Christ, ever acting, ever loving, ever blessing, ever vivifying.¹⁸

¹⁶ *Summa Theologiae*, Ia, q. 115, art. 2 ad 4.

¹⁷ Karl Rahner and Herbert Vorgrimler, *Theological Dictionary* (New York: Herder and Herder, 1965) s.v. "Act."

¹⁸ Hans Urs von Balthasar, *New Elucidations* (San Francisco: Ignatius Press, 1986) 94-96.

Our law serves the faithful by doing what it can to guarantee that in the sacraments it is truly Christ who acts. Canon 834, for example, requires that the minister be lawfully deputed and that he perform only acts authorized by the Church. The subsequent canon 835 reminds bishops that *in primis*, first of all and foremost, they exercise the office of sanctifying, think of that when you open your mail: they moderate, promote and keep guard over the whole liturgical life committed to them.

Our law protects the sacraments too by defining the necessary dispositions of both minister and recipient. Canon 836 states that since Christian worship in which the common priesthood of the faithful is exercised is a work which *a fide procedit et eadem innititur*, sacred ministers are to strive diligently to arouse and enlighten that faith, especially through the ministry of the Word, by which faith is born and nourished, ever true now as it ever was then, *fides est ex auditu*.

The code calls for priests to make a proper preparation for celebrating Mass and to pray in thanksgiving when Mass is completed.¹⁹ Pope John Paul II understands that the codes of both East and West call on priests to regard the celebration of the Holy Eucharist every day as the most important facet of their lives.²⁰ The ancient Roman word for priest was *pontifex*, a bridge builder. That is what we are about, bridges between ourselves and the risen only Lord.

As we know, the Holy See is presently engaged in an effort to correct certain liturgical abuses which some introduced after the Council, when the Church's liturgical practices were being brought into conformity with the standards set forth by the Fathers of the Council. Just how serious is the obligation of a priest to celebrate the sacraments *exactly* as the Church's liturgical norms specify? Here canon law has the answer. Canon 2 says that the norms in our approved liturgical books have the same force as the laws in the code. They are not nothing.

Conscientious observance of the norms or rubrics assures the faithful that the sacraments they receive are truly the sacraments of the Catholic Church and not the work of creative ministers, but rather the life-giving action of Jesus Christ exercising his priestly ministry on behalf of his mystical Body. In the Roman Canon there is that phrase, "in union with the whole Church, we honor" and so on. It is the strict right, *ius*, of our people to worship in union with the whole Church and those who detract them from that do not allow them the use of that right. In *Ecclesia de Eucharistia*, Pope John Paul II calls on priests to preside at the Eucharist *in persona Christi*, which many find a quizzical expression but a beautiful one: the priest at the altar acts *in persona Christi*. Why? So that no abuses may arise from a misguided sense of creativity and adaptation leading to inappropriate and unauthorized innovations which will lead the faithful away from Jesus.²¹ In the

¹⁹ *Codex Iuris Canonici auctoritate Ioannis Paulii PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983) canon 909.

²⁰ *Ecclesia de Eucharistia*, no. 31.

²¹ *Ibid.*, no. 52.

new General Instruction of the Roman Missal we find a measured effort to end inventive adaptation and excessive diversity of liturgical ministry: priests are directed to shun any appearance of individualism or division. That strikes some as odd, but you do not realize what intellectual contortions bishops sometimes are put to, to explain why Father X's Mass is not like Father Y's Mass and Father Y's Mass differs from Father Z. How can this be if we are all Catholics? We, with exquisite education, find those things pedestrian, but to the people they mean a lot and sometimes such things drive people away. I like to tell people that a diocese is just like Baskin and Robbins. We have French Silk, Rocky Road, French Vanilla. Some priests are like that. They are *great!* And we also have some who are "just plain vanilla." And you see the mystery of the Church is that the "plain vanilla" priest serves well as long as he does it within the framework that the Church says we must worship, to the glory of God the Father.

The American Bishops' Committee acknowledges that this norm – that we should shun the appearance of individualism or division – can challenge the "rugged individualism of Americans." We must as canonist be convinced that the mysteries of our redemption transcend the individuals and communities who celebrate the liturgy and rise to the level of the cultus of the Most High God.²²

In his excellent article, "Why Stick to the Book?" in *Homiletic and Pastoral Review* (August-September, 2004, 8ff.), Bishop Thomas J. Paprocki of Chicago noted some "horror stories" of liturgical abuses and addressed the obligation to observe the laws regarding the sacraments.

He cited canon 846, §1: "The liturgical books approved by the competent authority are to be faithfully observed in the celebration of the sacraments; therefore no one on personal authority may add, remove or change anything in them."

The rubrics do permit the celebrant to make adaptations. They must be understood, as the General Instruction of the Roman Missal prescribes, always to require the celebrant to "take care to keep the sense of the text . . . and to express it succinctly" (# 31).

Bishop Paprocki's article pointed out four reasons for the minister to "stick to the book." First is the virtue of justice: clerics are bound to show obedience by submitting to legitimate superiors [and so to the texts they authorize] for the ultimate good of the Church, the salvation of souls. Second is to avoid heresy. I remember being at a Mass in which "Look not on our sins but on the faith of your Church" was replaced with "look not on our sins but the faith of all of us gathered here." No. It is the faith of the *Church!* It may have been an honest mistake, but you see, these things slip in and make it just plain wrong.

Bishop Paprocki says quite correctly that it is too easy for sacred ministers, in their efforts to be original, to fall into making doctrinally unsound or heretical statements. You have all taught classes enough to know that if you say something

²² *Introduction to the Order of Mass* (Washington: United States Conference of Catholic Bishops, 2003) xv.

wrong and later on you think, “Gosh, I shouldn’t have said that.” That is the only thing they remember! They go home and they tell their mother. Then they tell their father and then they tell all their relatives and back they come bringing you grief. It is human nature, I guess, but something that ought to be redeemed by grace.

Thirdly, we stick to the book to preserve tradition, such as the narrative of the institution of the Holy Eucharist. The fourth reason is to respect the right of the faithful to worship God, as canon 214 says, according to the prescriptions of their own rite approved by the legitimate pastors of the Church.

What can one do if one objects? Certainly, it is possible to object. What do we say to the priest who finds it difficult to say, “Happy are those who are called to his supper” when the Latin text reads “*Beati qui ad cenam Agni vocati sunt.*” Those with such complaints are directed by canon 212, §3 to air their differences in an official forum. The spirited discussions of the bishops of the United States over the ICEL translations exemplify such a forum, at least *secundum quid*.

The task of canonists

What is our task as canonists?

The Church should be very grateful for you, all of you, all of the canonists in our country who labor for the protection of Matrimony, the Holy Eucharist, Holy Orders and Penance. I refer to those who work in our diocesan tribunals, those whose work concerns the scandalous behavior we have come to see among the clergy, and those who help communities of consecrated religious life.

Those of you who devote your energies in our tribunals realize that too many people regard the Church’s laws concerning marriage as mere man-made *minutiae* blocking people from doing what they *feel* is right. You are serving the sacraments, you are serving the Church, you are serving the Redeemer when you point out that these laws are expression somehow of His will. Thanks to your efforts, some of your clients come to an understanding of marital obligations such as fidelity, permanence and openness to children, the generation of children requiring always a man and a woman.

Tribunal personnel can find satisfaction in realizing that whenever someone applies for an annulment, almost invariably there is in the picture a Catholic who wants to resume the sacramental life, to receive Holy Communion. Moreover, many of your clients admit the right of the Church to determine the requirements for receiving Holy Communion. These are honest people who sense somehow that the “internal forum solution” can sometimes be a pseudo-permission to bypass the Church’s norms. Bypassing the Church’s norms is bypassing Christ. “Without me you can do nothing.”²³ In your every contact with petitioners and respondents, I encourage you to be conscious of your acting *in persona Christi Judicis*, with justice and with mercy. The old Roman philosopher said it was impossible to

²³ Jn 15:5.

combine those two, but Jesus did it and so successfully. The trouble with most of us is, I think, that when we contemplate the judgment of Christ we are so concerned to see the frown on his face that sometimes we miss the tears in his eyes. You labor on behalf of individuals who ask the Church to declare whether or not their marriage was truly a reality effected by the action of Christ: "what God has joined together."²⁴

There is another group of canonists who deserve the gratitude of the whole Church at this time, when the behavior of a few in sacred orders has caused serious scandal. I refer to the many canonists here and in Rome who work as judges, promoters of justice, advocates or in other capacities in cases of priests accused of crimes.

For centuries our law has taken cognizance of the need to protect the faithful who approach the sacrament of Penance, from any sort of solicitation by their confessor.²⁵ The confessor is forbidden to take advantage of the authority he exercises in that sacrament, or the secrecy of the confessional, to propose cooperation in sins against chastity. Even outside the confessional, the priest is forbidden to violate the trust of the people, especially whose youth makes them altogether more vulnerable. Sadly, it is not unknown that an innocent priest can be falsely accused of sins of unchastity. The canonists who give their time and expertise to cases of this sort are worthy of praise, since they labor to protect the rights of victims and of sacred ministers. Since the promulgation of *Sacramentorum Sanctitatis Tutela*, placing these crimes against the Sixth Precept of the Decalogue under the competency of the Congregation for the Doctrine of the Faith, there is a mounting need for more and more canonists to work in this field.

Next we take note of the many canonists who give their time so generously to the fostering of institutes of consecrated life. How important that is. How much those of us who are as young as I feel the absence of the dedicated religious who taught us from little on up. Religious life has its foundation in two sacraments. It calls for the personal conversion which continues the baptismal liberation from sin and it has in the profession of the evangelical counsels the aim of achieving the perfection of charity, which is the special grace of the Holy Eucharist. Thus canonists who help our religious are thereby working to make more effective the action of Christ in Baptism and the Holy Eucharist.

A new commandment I give to you, that you love one another (John 13:34)

There is to be sure in the Church today a certain tension which can militate against the fraternal charity that should mark all the disciples of Christ. In their praiseworthy efforts to correct liturgical abuses, those liturgists who stand for the faithful observance of liturgical norms can be perceived as in conflict with other

²⁴ Mt 19:6.

²⁵ See *Codex Iuris Canonici* (1983) canon 1387.

liturgists who are convinced that the Catholic people have, for the most part, benefitted spiritually from the new styles of worship introduced after the Second Vatican Council.

Canonists, too, can be at odds with one another. Some are perceived as set on the fastidious observance of the *minutiae* of the law, for example by insisting that certain public sinners be refused Holy Communion, or that clerics who cause scandal be dismissed. Other canonists are concerned that justice is not done by rigorous application of the law without taking into account the nature of the crimes of the accused. These canonists prize the notion of the Church as a community both of justice and of love.

I remember when I went to the Rota; they do things to you there like when you're the new boy at school and they short-sheet your bed. At the Rota, they wait until they get a really hairy case from some remote corner of the world scratched in berry juice on betel leaves and they put it in a box and they say, "Here, Monsignor, this is yours." One case of mine was from one of the countries of propaganda and it was a *mess*! I went to Monsignor Pompedda and I said, "What am I going to do with this? They don't list the witnesses properly, they don't have the proper testimony. It isn't signed. It isn't dated." And he said, "Well, do you think they have done the best they can?" And I said, "Well, yes. They have also just sent a bunch of leaves to Rome!" And he said, "Well then just do the best you can with it." And I think that is sometimes the attitude we should have when we approach a lot of these things with regard to the punctilious observance of the law. Yes, it is important, but not so important that people are destroyed by it.

Television is a wasteland. Newton Minow said it fifty years ago and he has never been proved wrong. I like to watch *Law and Order* and when you watch it you see there is precious little civil law that makes any sense and the only order that is put in it is put in it by the police, not by those characters on the benches. Somehow there is a justice there that we cannot but admire.

Theologians can be polarized also, some emphasizing the legitimate authority exercised by the supreme Pontiff with his curia and the bishops, while others take their lead from scripture texts describing the Church, as the Body of Christ animated by his Spirit, enjoying freedom and embodying the merciful love of the Head of the Church who is Christ the Lord.

In my opinion, the Church in our time has been offered a remedy to counteract the forces that tend to divide us, a remedy if we will use it. I refer to the example of Jesus as we have seen it in concrete form in the attitudes and practice of our Holy Father, Pope John Paul II.

The example of Jesus is of utmost importance, since it is he who acts in the sacraments precisely to transform his people into his own image, so that they put on the mind of Christ as St. Paul said in the second chapter of First Corinthians.

Some here are old enough to remember Father Edward Dhanis, a professor at the Gregorian in Rome, a man of almost *impenetrable* intellect who attempted to teach us how to penetrate it and failed. But he wrote a little set of notes, *De mira personalitate Iesu*, and unlike many of the professors at the Gregorian to whom a

Brazilian rain forest is only fodder for more books, this was very brief. Its thesis was that if you look at Jesus in the Gospels, just look at Jesus, you will love him. Sometimes I think that is the antidote to much difficulty in religion.

Our Lord showed respect for human persons. He credits fathers for having natural goodness: “what father among you, if his son asks for a fish, will instead of a fish give him a serpent?”²⁶ When a man asks Jesus to settle a question of inheritance, Jesus declines, saying, “who made me a judge or divider over you?”²⁷ Jesus allows the woman caught in adultery to escape the penalty laid down in the law, no exceptions, for Jesus said: “Neither do I condemn you.”²⁸

Jesus is the good shepherd who leaves the flock to mind itself while he searches for the lost sheep. When he finds it, he does not punish it for separating itself from the flock, but reunites it to the flock with joy. He says, “it is not the will of my Father who is in heaven that one of these little ones should perish.”²⁹ In the beautiful parable of the prodigal son, we find Jesus’ praise of the merciful love in the heart of his Father who welcomes repentant sinners with a great banquet. But in the story, there is a dark side too as you know. The prodigal’s brother, who had worked hard to observe each little command his father ever gave him, was full of bitter rancor, ugly mean-spirited resentment and anger toward both his father and his brother. He would not share the meal with them. We see the heart of Jesus there. Don’t you see we *have* to rejoice for he was dead and he is alive. He was lost and he is found.³⁰

The mind of Christ is clearly seen, I believe, in his instruction on how the Church is *not* to be governed. He reminded his disciples of the often brutal domination of their subjects by secular authorities, and said: “It shall not be so among you.” Jesus likens the leaders of his future Church to servants and slaves “even as the Son of man came not to be served but to serve and give his life. . . .”³¹

Our Holy Father’s example has shown how powerfully Jesus acts in the sacraments to transform us into the image of Christ our good shepherd. Think of the great respect for the human person that animated the pope’s academic formation before his election as Bishop of Rome. Think of his outstanding respect for young Catholics whose chant, “John Paul II, we love you” interrupted his speeches so many times in so many places all over the world. Think of his welcoming non-Catholic religious persons to pray together in Assisi, or his respectfully meeting the communist Gorbachev, the controversial Bill Clinton, the Russian Orthodox leaders, the Jews in Rome and Jerusalem, the Palestinians, and receiving Yassar Arafat when Beirut was attacked. Think of the tender forgiveness he offered the

²⁶ Lk 11:11.

²⁷ Lk 12:13.

²⁸ Jn 8:11.

²⁹ Mt 8:14.

³⁰ Lk 15:24.

³¹ Cf. Mt 20:25-28.

man who tried to kill him, or the numerous apologies the pope has made for instances of abuse of ecclesial power. Just this summer, while distributing Holy Communion at the Mass during which he bestowed the pallium, the pope broke into a broad smile and patted a little boy on the head when he accompanied his mother to receive Holy Communion from the Holy Father.

In these and in many other ways the Holy Father has shown us all the value he sets on the human person and on the power of the Eucharist. It comes as no surprise to find that, in *Ecclesia de Eucharistia*, the pope expresses his appreciation of the norm which allows Holy Communion to be administered to individuals belonging to ecclesial communities not in full communion with the Catholic Church. And notice his reason: "the intention is to meet a grave spiritual need for the eternal salvation of an individual believer" (no. 45). The Holy Father calls it a "source of joy" that "Catholic ministers are able, in certain particular cases, to administer the sacraments of the Eucharist, Penance and Anointing of the Sick to Christians who are not in full communion with the Catholic Church but who greatly desire to receive those sacraments, freely request them, and manifest the faith which the Catholic Church professes with regard to these sacraments."

I submit that it would be a blessing to the Church if all of us canonists would recall what we were taught about that part of the virtue of justice called *epiekeia* and use it in our practice. We were taught by Aristotle that justice cannot be achieved through the rigorous observance of even the best of human laws. Recall these words of Father Ladislav Örsy:

Legalism is a sickness in the system: it places greater value on the observance of formalities than on the granting of true justice. When it is rampant, it erodes the strength of laws from the inside and it brings them into bad repute from the outside. The best prevention against such disease is the faithful application of the laws in general and the vigorous application of Aristotle's *epiekeia* in particular.³²

Conclusion

Finally, I thank the Canon Law Society of America for giving me this opportunity to address such a vital theme as this, the sacraments as actions of Christ and actions of the Church. I conclude with this expression of hope: By the saving action of Jesus Christ in the sacraments, may he bring about that communion of believers with God and among themselves that will mark the one, holy, Catholic, apostolic Church as the Body of Christ, a community of splendid truth to be sure, but even more as the kingdom of justice, mercy, peace and the love that is from God.

³² Ladislav Örsy, S.J., in *The Code of Canon Law: a Text and Commentary* (New York/Mahwah: Paulist Press, 1985) 42, and see "The Nature, Extent and Style of Authority in the Church," by Daniel J. O'Hanlon, S.J., in *Law for Liberty* (Baltimore: Helicon Press, 1967) 109-118.

THEOLOGY OF MARRIAGE: COMPLEMENTARITY BETWEEN THE LATIN AND EASTERN CODES¹

ROBERT J. FLUMMERFELT

The past hundred years has brought an influx of many Eastern Catholics to the United States. However the recent past shows a dramatically different trend. Many of those Eastern Catholic Churches that were so vibrant and active fifty or forty years ago are currently in serious decline.² Therefore, it is my contention that in order to address the issue of complementarity between the two codes pertaining to marriage, it is necessary to discuss the threshold question of how to prevent further loss in membership from these Eastern Catholic Churches. The real issue then appears to me that we as canonists need to do everything in our power to preserve the Eastern Catholic Churches in the U.S.³ This, I believe, is the threshold issue which can best be addressed in light of marriage and how the two codes interact

¹ This paper omits the first portion of my talk. The reason is that the first portion of my talk drew heavily from the excellent scholarship presented by Fr. George Nedungatt, S.J. and his recent article which addresses the state of the question of the minister of the sacrament of marriage from an interecclesial perspective. See George Nedungatt, S.J., "Minister of the Sacrament of Marriage in the East and the West," *Periodica* 90 (2001) 305-388. For further reading on this topic see Jobe Abbass "Marriage in Codes of Canon Law," *Apollinarius, Commentarium iuris canonici* LXVIII (1995) 521-565; Clarence Gallagher, S.J., "Marriage in the Revised Canon Law for the Eastern Catholic Churches," *Studia Canonica* 24 (1990) 69-90; George Gallaro "The Mystery of Crowning: An Interecclesial Perspective," *CLSA Proceedings* 51 (1989) 185-200; Frederick McManus, "Marriage in the Canons of the Eastern Catholic Churches," *The Jurist* 54 (1994) 56-80; Frederick McManus, "The Ministers of the Sacrament of Marriage in Western Tradition," *Studia Canonica* 20 (1986) 85-104; Victor Pospishil, *Eastern Catholic Marriage Law According to the Code of Canons of the Eastern Churches* (Brooklyn, Saint Maron Publications, 1991); Joseph Vadakumcherry "Marriage Laws in the *Code of Canon Law* and the *Code of Canons of the Eastern Churches*," *Studia Canonica* 26 (1992) 437-460. For a comparative discussion of the canons pertaining to Marriage in the Latin and Eastern codes see George Gallaro "The Sacramental Mystery of Marriage" in *Comparative Sacramental Discipline in the CCEO and CIC: A Handbook for the Pastoral Care of Members of Other Churches Sui Iuris*, ed. Francis J. Marini (Washington: Canon Law Society of America, 2003) 181-198. Henceforth *Handbook*.

² The greatest decline in American eparchies is among those Eastern Catholics from Eastern Europe. Overall, within the United States, trends demonstrate some increase in members, stagnant growth, or declining numbers. For a full statistical overview of Eastern Catholic membership worldwide from 1990 to the present go to <http://www.cnewa.org/Roberson-eastcath-statistics/eastcatholic-stat04.pdf>.

³ For an overview of all of the twenty-two Churches *sui iuris* and to which rite each Church *sui iuris* belongs see Table A. For a current overview of the established hierarchies in the United States and even parishes in the U.S. without an established hierarchy, please see Table B.

with regard to the issue of marriage and ascription.⁴ In preparing for this talk, while I felt that I had to address the difference between the Latin code and Eastern code and their respective requirements for form, I wanted to also discuss something today that normally might not be addressed when dealing with the issue of marriage.

Pertaining to marriage, our rules on ascription imply certain values about membership in a Church *sui iuris*. As opposed to the other canons on ascription which make it relatively difficult for a single person to transfer from one Church *sui iuris* to another, especially from an Eastern Church to the Latin Church given the current praxis of the Congregation for Eastern Churches,⁵ it is interesting to note that married couples are afforded a privilege in law to transfer at the moment of marriage or during the common life to the other spouse's Church *sui iuris*.⁶

However, what concerns me is that by reading these canons on ascription, some might believe that transfer from one Church *sui iuris* to another on the wedding date or during the common life is a move that can be made without much difficulty. From a strict reading of the canon, I suppose this is indeed the case. But to do so, ignores the other relevant canons and the theological emphasis that our Church places on members of Eastern Churches *sui iuris* doing everything in their power to retain and embrace their own Church *sui iuris*' patrimony and remain committed to their specific Church *sui iuris*.⁷

What is my theological justification for this assertion? The fathers of the Second Vatican Council forcefully proclaimed the dignity and equality of all of the Churches in full communion with Rome. No one Church was superior or inferior to another Church. The Eastern Catholic Churches derive from apostolic roots as does the Church of Rome. Their traditions are legitimate because they were founded by the apostles or by their legitimate successors. These Eastern Catholic Churches *sui iuris* and the Latin Church *sui iuris* complement each other and demonstrate the multiplicity of the Universal Church. The Church, which offers a means of salvation for all peoples for all times, cannot and should not be monolithic in terms of its spiritual, theological, canonical, and liturgical traditions.

The Eastern Catholic Churches offer a plurality of worship, theology,

⁴ *CIC* (Code of Canon Law Latin-English edition [Washington: CLSA, 1999] 30-31. Hereafter *CIC*.) canons 111-112 and *CCEO* (Code of Canons of the Eastern Churches Latin-English edition [Washington: CLSA, 2001] 10-13. Hereafter *CCEO*.) canons 29-38 are the relevant canons pertaining to ascription in virtue of baptism. For a discussion of the application of the rules of ascription in virtue of baptism see *Handbook* pages 37-39.

⁵ See *Roman Replies and CLSA Advisory Opinions 2002* (Washington: CLSA, 2002) 47-49 where an Armenian Apostolic Christian is prohibited from transferring from the Armenian Church *sui iuris* to the Latin Church *sui iuris* upon reception into full communion with the Catholic Church.

⁶ *CIC* canon 112, §1, 2° and *CCEO* canon 33 are operative. Note that the Eastern code does not afford Eastern Catholic married men the same privilege to transfer from their Eastern Church *sui iuris* to another Eastern Church *sui iuris* or to the Latin Church *sui iuris*, in the same way that a wife or Latin husband may do so.

⁷ See *CIC* canons 112, §2; 214; 383, §2, and *CCEO* canons 17; 31; 35; 38-41; 193, §1; 1465.

spirituality and even canon law which complements the wisdom and traditions of the Latin Church. In the final section of *Lumen gentium* 23 the text refers to the Eastern Churches and the patriarchates and makes the observation that the diversity of individual churches and groups of churches further enriches the basic unity of the Church and bears witness to the Church's catholicity.⁸ The reality of the many churches, each representing and summing up in itself the totality of the Church, rules out any concept of the Church as a monolithic uniform structure.⁹ This concept leads to the conclusion that there must be room for a certain multiformity and diversity within the unity of the one universal Church. The Church is full of diversity: unity is not uniformity. This disciplinary diversity exists concomitantly with a unity of faith.

In respecting this diversity within the unity of the Church, the Second Vatican Council taught in the Decree on the Eastern Catholic Churches number 6 that all members of the Eastern Catholic Churches should be firmly convinced that they can and ought always to preserve their own liturgical rites and ways of life.¹⁰ In addition, these Eastern Catholics are also to aim always at a more perfect knowledge and practice of their rites. Furthermore, Latin Catholics are obliged to be fully acquainted with the patrimonial treasure that the East offers the Universal Church. The full manifestation of the Church's catholicity needs to be restored not just at the level of the Universal Church, but also at the level of the local church and at the level of the domestic church if applicable.

Here enters the practical side of ascription and transfer. At the time of marriage it may happen that one party decides to begin worshipping exclusively in their spouse's Church *sui iuris*. The person may formally transfer due to a desire to effectuate the false value of uniformity of membership in one Church *sui iuris*, usually the Latin Church, throughout the new family. While both codes allow for people to choose to join different Churches *sui iuris* at the moment of marriage or during the common life, these legal choices should not be seen as enshrining the value that all members of a family must belong to the same Church *sui iuris*. For example, in the situation where a Maronite Catholic man marries a Latin Catholic woman, the law does not require either to conform to the Church *sui iuris* of the other. Such a requirement would constitute inter-ecclesial proselytism which is strictly prohibited by canon 31 of the Eastern code which states, "No one is to presume to induce in any way the Christian faithful to transfer to another Church *sui iuris*."¹¹

This canon flows directly from the Church's theology that there is no superior

⁸ Vatican II, dogmatic constitution *Lumen gentium* 23, November 21, 1964: AAS 57 (1965) 28.

⁹ Seamus Ryan, "The hierarchical structure of the Church," in *Vatican II: The Constitution on the Church A Theological and Pastoral Commentary*, ed. Kevin McNamara (Chicago: Franciscan Herald Press, 1968) 196.

¹⁰ Vatican II, decree *Orientalium ecclesiarum* 6: AAS 57 (1965) 78.

¹¹ CCEO canon 31: "Nemo quemvis christifidelem ad transitum ad aliam Ecclesiam sui iuris ullo modo inducere praesumat."

or inferior Church *sui iuris* within the full communion of the twenty-two Churches *sui iuris*. It must be remembered that the Catholic Church is full of diversity; unity is not uniformity. A disciplinary diversity exists concomitantly with a unity of faith.

In addition, CCEO canon 883, §2 states “In families in which the spouses are ascribed to different Churches *sui iuris*, it is permitted to observe the norms of one or the other Church *sui iuris* in the matter of feast days and days of penance.”¹²

In legislating such a canon, the Holy Father did a great service to ending inter-ecclesial proselytism. As a result, the key reasons to have all family members conform to the same Church *sui iuris* are severely diminished.¹³ This canon permits Catholics of different Churches *sui iuris* to choose which discipline they want to follow regarding holy days of obligation and days of fasting. When comparing the Byzantine Great Lent and Latin Lent we see that there is indeed a divergence of fasting practices. Moreover, there are numerous times during the year that the Byzantine tradition imposes fasting while the Latin tradition does not. As a result of this canonical provision, there can indeed be uniformity in practicing the faith within the family, but not at the expense of forcing or even encouraging family members to forgo their ecclesial identity in a specific Church *sui iuris*. The law values, promotes, and protects legitimate diversity at all levels including the level of the domestic Church. Imposing, encouraging, or even tacitly condoning this false value of uniformity among family members in one Church *sui iuris* confuses uniformity with unity.

Simultaneously, such an action undermines the promotion and restoration of catholicity within the Church. Consequently, when we encounter or are approached by couples for marriage, or who are already married, we should take steps to properly catechize them about the duty that they owe to their own Churches *sui iuris* in the practice of their faith. When couples come in for pre-marriage preparation, in addition to discussing the goods of marriage, communication skills, how to deal with the in-laws, etc., it is also an appropriate opportunity to speak to the issue of how this couple should practice their faith and respect each other’s ecclesial heritage through their weekly Divine Liturgy or Mass attendance. At the same time, beyond just the issue of respecting each other’s ecclesial patrimony in each Church *sui iuris*, it is an appropriate time during the premarital preparation process to present to the couple the issues pertaining to the raising of their children in the faith.

The issues of the divergent sacramental disciplines between the Eastern Churches and the Latin Church should be addressed so that parents can make an informed decision about how they wish to raise their children in which Church *sui*

¹² CCEO canon 883, §2: “*In familiis, in quibus coniuges diversis Ecclesiis sui iuris ascripti sunt, circa dies festos et paenitentiae praescripta unius vel alterius Ecclesiae sui iuris observare licet.*”

¹³ For a thorough presentation on the issue of transfer and ascription see Laszlo Nagy, *Transfer of Ascription in a Church sui iuris: with Particular Application to the Archdiocese of Alba-Iulia, Romania* (Ottawa, Ontario, Canada: St. Paul University, 2002).

iuris.¹⁴ Parents should be made aware of the differences regarding time frames for reception of the sacraments in the Eastern tradition and the Latin tradition. The issue of what Church they decide to raise their children in should be discussed and the person preparing the couple for marriage should also remind both parties that regardless of which Church they wish to raise their children in, the parties should worship regularly in both Churches *sui iuris* in order to become better acquainted with each spouse's ecclesial tradition and to prepare the children as well for a truly Catholic education and formation from mom and dad.

As we all know, parents are the primary educators of the faith for their children.¹⁵ It is our duty, for parents living in inter-ecclesial households, to not only create a healthy environment at home for faith formation, in terms of prayer, spirituality, morality, and the teachings of the Church, but also to properly educate our children about the rich diversity that exists within their own domestic church which reflects in part the diversity that comprises the Universal Church. Naturally, this education in the faith comes in stages appropriate to the child's capacity for learning and absorption.

Moreover, beyond the premarital preparation, parishes should also consider the issue of how to deal with the Eastern Catholics worshiping in their midst who are already married and have children, but have little to no clue about their own ecclesial heritage, other than some remote sense that they possess some connection to an Eastern Catholic Church.

Parishes could offer faith enrichment courses or advertise in their weekly bulletin to best address this issue of the necessity to preserve the Eastern Catholic Churches. In practice, this should be encouraged at the parochial level, where we are on the proverbial front line of pastoral ministry to God's people. And of course, this can be a very difficult and delicate task to respectfully encourage families where at least one member is Eastern Catholic to gain a fuller awareness of their ecclesial heritage, while not making that same individual feel as though this Latin parish is pushing them aside or out of the fold. Encouragement should be offered, especially when there is the same Church *sui iuris* of one of the members of the family in the same city or town. If this is the case, and certainly it would be a best case scenario indeed, pastoral ministers should encourage these Eastern Catholics and their Latin Catholic spouses to worship at the appropriate Eastern Catholic Church regularly and continue to do so as well in the Latin Church regularly. In this way, the couple will have a greater understanding not only for the richness of their own faith, but also have a deeper appreciation and understanding for the diversity that exists within a unity of faith for this Universal Catholic Communion of twenty-two Churches *sui iuris*. Moreover, there can be a real preservation of the Eastern Catholic Churches, or at least a good faith attempt to do so by acting upon

¹⁴ For a thorough discussion of the divergent sacramental practices between the Latin and Eastern codes see *Handbook*.

¹⁵ Confer *CIC* canon 774, §2 and *CCEO* canon 618.

what our law and theology encourages.

Why is all of this important? Why am I beating this drum on a talk on marriage? Let me please offer this one bit of anecdotal evidence from my own background.

My grandmother and her family were from the Scranton, Pennsylvania area. Her parents were both so-called Lemkos from the old country, now modern-day southern Poland and practicing Ukrainian Catholics when they came to America at the turn of the twentieth century. Her family's practice of the Byzantine faith was something that was taught at a very early age and acted upon by all of the family members. However, as she and her ten siblings became adults, something changed. My grandmother and her sister married Ukrainian Catholic men and continued to practice their faith in the Ukrainian Churches until their deaths. They imparted a strong allegiance to the Ukrainian faith to their children and to their grandchildren. However, for all of the other eight boys and one sister in her family, the same result did not take place. Instead, her brothers and sister married Latin Catholic spouses and raised Latin Catholic children who now have more Latin Catholic grandchildren, while many of those grandchildren remain Ukrainian Catholics in the world of canon law only. As a result, entire generations of Eastern Catholics have divorced themselves from their ecclesial roots and have bought into the mistaken notion that Catholic is Catholic and it does not matter which brand of Catholic we practice so long as we remain Catholic.

Unfortunately, this attitude has led to the loss of much Eastern Catholic identity in the United States and caused in practical terms the Eastern Catholic Churches to diminish greatly in numbers. This is the lived reality of many Eastern Catholics who have completely left their Eastern Churches and began worshiping exclusively with the Latin Church. At the present rate, it is questionable what presence if any there will be in the U.S. for some Eastern Catholic Churches in fifty years or so. Because of this unfortunate occurrence and in spite of the great awareness and strides taken by the dominant Latin Church over the past few years, it may all be a little too late. I am not trying to end this wonderful week in Pittsburgh on a major downer here, no, to the contrary. I think it is appropriate to realize what we are up against in real and practical terms. Therefore, I am trying to offer some observations about what direction we can take this to change the trend for the better by fully appreciating the law and the theology which underlies the law.

Consequently, in relation to marriage, the domestic church is indeed the front line in the presentation of the faith to the youngest people of God. Depending on the decision of the parents in an inter-ecclesial household, there may be statues or icons or perhaps a mixture of both within the home. Other issues such as what family prayers to pray together at meals or what devotionals are used in the home will provide the best way to inculcate a healthy and proper faith formation for both parents' ecclesial backgrounds, even though the children will follow one parent in the actual membership in a specific Church *sui iuris*. The foundations and impetus for how to and where to worship are learned early and within the home. Therefore, in order for us to properly prepare couples who are married and who are planning

on marrying, it is necessary that we present to them the importance of respecting each other's ecclesial heritage in their marriages so that situations like from my own family and other Eastern Catholic families will not become the norm, but the exception.

If we are to have a truly Catholic Church with living and breathing members of all of the Churches *sui iuris*, it is necessary that we address the problem at its source and try and turn the tide; not only for the sake of preservation of these Churches, but also because it is the right thing to do. Marriage is so crucial and key in properly addressing one serious root cause in how this issue comes about, since it is where most people acquire their eyes of faith for the first time in their lives and where they are nourished on a daily basis with Christian values. We are all well-aware of the battleground states in this year's presidential election. May I make the crude analogy that the domestic church is the battleground for our retaining a truly Catholic Church with great diversity concomitant with a unity of faith?

FINAL REFLECTIONS

The Eastern approach to theology begins with the perspective that God is a *communio* of Three Persons which then moves on to affirm the Divine Unity. We can take a similar communion approach in ecclesiology: by characterizing by a certain liturgical, spiritual, cultural and disciplinary tradition that this specific Church *sui iuris* is in full communion with the other Churches *sui iuris* by sharing the same faith, administering the same seven sacraments (mysteries) under the supreme pastoral care of the Bishop of Rome.

The Vatican II decree *Orientalium ecclesiarum* reads, "The holy Catholic Church, which is the Mystical Body of Christ, is made up of the faithful who are organically united in the Holy Spirit by the same faith, the same sacraments and the same government. They combine into different groups, which are held together by their hierarchy, and so form particular churches or rites. Between those churches there is such a wonderful communion that this variety, so far from diminishing the Church's unity, rather serves to emphasize it."¹⁶

This approach does not give temporal priority or superiority to the Churches *sui iuris*, but is viewing the reality of the Church from a different perspective. No longer is the Catholic Church treated primarily as a totality comprised of communities which were created solely for the purpose of administrative convenience. Rather, the Catholic Church is truly an expression of diversity within unity.¹⁷ The Catholic Church is indeed a communion of twenty-two Churches *sui iuris*. In the inter-ecclesial domestic church, the family can become in some sense

¹⁶ Vatican II decree *Orientalium ecclesiarum* 2, November 21, 1964: AAS 57 (1965) 76. Translation from Austin Flannery, O.P., ed., *Vatican Council II: The Conciliar and Post Conciliar Documents*, rev. ed. (Northport: Costello, 1992) 1: 441.

¹⁷ John D. Faris, *Eastern Catholic Churches: Constitution and Governance* (New York: Saint Maron Publications, 1992) 142.

an iconic representation of the diversity within the Universal Church.

When parties approach us in the parish to marry and one comes from an Eastern background and the other comes from a Latin background, I think it is a great opportunity for us to catechize these Catholics about the importance of respecting each other's membership in each respective Catholic Church *sui iuris* and encouraging this couple to get into the routine once married to worship in both parties' Churches *sui iuris* and to live out their faith lives in both Churches *sui iuris*. During the premarital preparation, it is appropriate that beyond the issues of communication, goods of marriage, dealing with the in-laws to be, we should also discuss the ramifications of living in an inter-ecclesial marital situation in order to try to insure that these parties remain committed to each of their respective Churches *sui iuris* and cement the idea in the minds of these eager spouses-to-be that neither party distances themselves from the Church *sui iuris* of their formative years. Therefore, we can use this key time in the parties' lives to not only talk about important life issues for the couple, but we can also strongly encourage these same parties to remain committed to their respective Churches *sui iuris* for the proverbially long haul.

In conclusion, in presenting this morning, I have certainly not discussed all that could be said about marriage. To the contrary I have only scratched the surface with two separate concepts; one arguably a more traditional topic of marriage: canonical form versus sacred rite, and one less obvious topic about the role that marriage plays in the actual living out of our faith in each Church *sui iuris* and the law's desire to promote, preserve, and protect legitimate diversity within the Catholic Communion.

My purpose today was not to get overly technical with certain Eastern law issues, but rather to offer some canonical food for thought and hopefully provide some impetus for furthering our considerations on how to minister to inter-ecclesial couples in our parishes. I also hoped to offer some appreciation for the divergent approaches that the codes employ regarding what is necessary to validly marry.

I sincerely thank you for your time and consideration in listening this morning and I wish you all a very safe trip home. Thank you!

TABLE A¹⁸

Patriarchal Churches:

Armenian Church	Rite: Armenian
Chaldean Church	Rite: Chaldean
Coptic Church	Rite: Alexandrian
Latin Church	Rite: Latin
Maronite Church	Rite: Antiochian
Greek-Melkite Church	Rite: Constantinopolitan
Syrian Church	Rite: Antiochian

Major Archiepiscopal Churches:

Ukrainian Church	Rite: Constantinopolitan
Syro-Malabar Church	Rite: Chaldean

Metropolitan Churches:

Ethiopian Church	Rite: Alexandrian
Syro-Malankara Church	Rite: Antiochian
Ruthenian Church	Rite: Constantinopolitan

Eparchial and other Churches sui iuris:

Albanian Church	Rite: Constantinopolitan
Belarussian Church	Rite: Constantinopolitan
Bulgarian Church	Rite: Constantinopolitan
Greek Hellenic Church	Rite: Constantinopolitan
Hungarian Church	Rite: Constantinopolitan
Italo-Albanian Church	Rite: Constantinopolitan
a.k.a. Italo-Greek Church	
Krizevci Church	Rite: Constantinopolitan
(a.k.a. Yugoslav Church)	
Romanian Church	Rite: Constantinopolitan
Russian Church	Rite: Constantinopolitan
Slovak Church	Rite: Constantinopolitan

¹⁸ To provide context for the reader, here is an overview of all of the twenty-two Churches *sui iuris* and to which rite each Church *sui iuris* belongs.

TABLE B¹⁹

Ruthenian Catholic Church – four eparchies: Metropolitan Archeparchy in Pittsburgh; eparchies in Passaic, NJ, Parma, OH, and Van Nuys, CA bishop resides in Phoenix, AZ

Ukrainian Catholic Church – four eparchies: Metropolitan Archeparchy in Philadelphia; eparchies in Stamford, CT, Parma, OH, and Chicago, IL

Melkite Catholic Church – one eparchy: Newton, MA

Romanian Catholic Church – one eparchy: Canton, OH

Armenian Catholic Church – apostolic exarchy for US and Canada: New York, NY

Chaldean Catholic Church – two eparchies: Detroit, MI, San Diego, CA

Maronite Catholic Church – two eparchies: Brooklyn, NY, Los Angeles, CA

Syriac Catholic Church – one eparchy for US and Canada: Union City, NJ

Syro-Malabar Catholic Church – one eparchy: Chicago, IL

All twelve other Eastern Catholic Churches do not have hierarchies in the U.S.!

Parishes of Eastern Catholic Churches without hierarchies in the U.S.

Russian Catholic Church: three parishes: San Francisco, LA, and NYC

Italo-Greek Catholic Church: two parishes: NYC and Las Vegas, NV

Coptic Catholic Church: two parishes: NYC and LA

Syro-Malankara Catholic Church: twelve worshiping communities in US and Canada

¹⁹ To provide context for the reader, here is a current overview of the established hierarchies in the United States and even parishes in the U.S. without an established hierarchy.

Slovak Catholic Church: in the United States these Byzantine Catholics are not distinguished from Ruthenian Catholics, much like Ruthenians are not distinguished from Ukrainian Catholics in Canada. However there is a Slovak Eparchy in Toronto, Canada for all of Canada.

Hungarian Catholic Church: there are a few parishes, all of them part of the Ruthenian eparchies

Belarussian Catholic Church: one parish: Chicago, IL

TABLE C²⁰

1. **Hierarchy in the US and parishes in the vicinity of the faithful:** Eastern Catholic faithful falling into this category receive all pastoral care from their own Church *sui iuris*
2. **Hierarchy in the US and no parishes in the vicinity of the faithful:** Eastern Catholic faithful falling under this category receive pastoral care from Latin Church *sui iuris* pastor, but receive all permissions, dispensations from proper hierarchy, and may utilize eparchial tribunal
3. **No hierarchy in the US and a parish in the vicinity of the faithful:** Eastern Catholic faithful falling under this category, receive all pastoral care from Eastern Church *sui iuris* pastor yet all dispensations/permissions from Latin bishop/diocese where person is domiciled including utilizing diocesan tribunal, unless other provisions have been made by Rome
4. **No hierarchy in the US and no parish in the vicinity of the faithful:** Eastern Catholic faithful falling under this category, receive all pastoral care and dispensations/permissions from Latin pastor and Latin bishop/diocese where person is domiciled including utilizing diocesan tribunal

²⁰ While the earlier presentation addresses the issue of how things should be done, what happens if we find ourselves ministering to people of other Churches *sui iuris* in our parishes? Above, I have demarcated four different groups of pastoral care depending on the organization of the person's Church *sui iuris* in the United States. For example, group one would include Ukrainian Catholics who live in Philadelphia, Pennsylvania where there is an abundance of Ukrainian parishes and also the Metropolitan Archeparchy is located. Hence, this is a chart which may be used to determine what pastoral care can be given by the pastor of parishioners of another Church *sui iuris* depending on each of the potential scenarios noted above. For a discussion of pastoral care of Eastern Catholics by Latin Catholic pastors see Robert J. Flummerfelt in *Handbook* at 3-8.

Tribunal Competence: The operative canon is 1673 of the Latin Code and canon 1359 of the Eastern Code which read:²¹

- 1° “the tribunal of the place in which the marriage was celebrated” [*this means when utilizing the tribunal on the basis of place, approach the eparchial/diocesan tribunal of the same Church sui iuris where the marriage was celebrated. Similarly, if the liturgical rite used differs from the Church sui iuris where the marriage was celebrated, approach the eparchial/diocesan tribunal not of the Church sui iuris of the marriage, but the Church sui iuris of the same liturgical rite*]
- 2° “the tribunal of the place in which the respondent has a domicile or quasi-domicile” [*this means when utilizing the tribunal on the basis of the Respondent’s domicile, approach the eparchial/diocesan tribunal of the same Church sui iuris to which the Respondent is ascribed*]
- 3° “the tribunal of the place in which the petitioner has a domicile, provided that both parties live in the territory of the same conference of bishops and the judicial vicar of the domicile of the respondent gives consent after he has heard the respondent” [CCEO uses “territory of the same nation” instead of “conference of bishops”] [*this means when utilizing the tribunal on the basis of the Petitioner’s domicile, approach the eparchial/diocesan tribunal of the same Church sui iuris to which the Petitioner is ascribed. This takes place after that tribunal receives consent from the Respondent’s eparchial/diocesan judicial vicar²² of his/her Church sui iuris after that judicial vicar has heard the Respondent*]
- 4° “the tribunal of the place in which in fact most of the proofs must be collected, provided that consent is given by the judicial vicar of the domicile of the respondent, who is first to ask if the respondent has any exception to make” [*this means when approaching any tribunal whose territory covers an area that comprises the most proofs, that eparchial/diocesan tribunal must receive consent from the Respondent’s eparchial/diocesan judicial vicar²³ of his/her Church sui iuris after said judicial vicar has inquired as to whether the Respondent has an exception to make*].

²¹ Correlative with Table C is Table D which addresses the practical issue of to which Church *sui iuris*’ tribunal a person should approach in pursuing an annulment. This page clarifies how the operative canons from the Latin and Eastern code should be read in order to understand in each scenario if a Latin or Eastern tribunal can or is to be utilized.

²² Note that if there is no operating tribunal in the Respondent’s eparchy, then consent must be obtained from the Respondent’s eparchial bishop after he has heard the Respondent.

²³ Note that if there is no operating tribunal in the Respondent’s eparchy, then consent must be obtained from the Respondent’s eparchial bishop after he has inquired as to whether the Respondent has any exceptions.

**“LEX ORANDI, LEX CREDENDI, LEX VIVENDI
IN THE RITES OF CHRISTIAN INITIATION”**

REV. MSGR. KEVIN W. IRWIN

On December 4, 1963, the Fathers at the Second Vatican Council promulgated the first document to come from their deliberations, the Constitution on the Sacred Liturgy. That it was passed by an overwhelming majority is itself notable and remarkable given the sometimes vigorous debates over its various drafts.¹ That it was entitled *Sacrosanctum Concilium* (“this Sacred Council”) is instructive because it indicates that liturgy was understood to be a chief means towards carrying out the several aims which the Council Fathers enunciated for the Council itself. As the first paragraph of the Constitution says these aims include imparting “an ever increasing vigor to the Christian life of the faithful,” adapting “more suitably to the needs of our own times those institutions that are subject to change;” fostering “whatever can promote union among all who believe in Christ” and strengthening “whatever can help to call the whole of humanity into the household of the Church.”² Thus from the outset the Council Fathers indicated an important principle and premise when dealing with the reform of the liturgy – namely that the liturgy is a chief means towards accomplishing the elusive goal of human sanctification in the Catholic Church and the deepening unity of all believers. The celebration of the sacred liturgy leads to a number of things among which are the building up the Body of Christ and sanctifying the church for its role in witnessing in our world to the paradoxical values of the kingdom of God. The liturgical reforms of Vatican II were not simply about changing and reforming rites; the liturgical reforms of Vatican II were and are about changing minds and hearts and nothing less than reforming and sanctifying lives. From the perspective of the theology of what occurs in the celebration of the liturgy, certainly paragraphs 1-13 of *Sacrosanctum Concilium* are the most important. Here the Constitution describes what the sacred liturgy is and accomplishes – specifically “making the

¹ Among others, see the specific article by Reiner Kaczynski, “Toward the Reform of the Liturgy,” in *A History of Vatican II*. Volume III. Eds., Giuseppe Alberigo and Joseph A. Komonchak. (Leuven: Peeters, 2000) 187-256 as well as the entirety of Volume II of this series subtitled “The Formation of the Council’s Identity, First Period and Intercession” (Leuven: Peeters 1997).

² *Sacrosanctum Concilium* n. 1. [Hereafter cited as SC]. Translation from *Documents on the Liturgy 1963-1979*. Conciliar, Papal and Curial Texts (Collegeville: The Liturgical Press, 1982) 4 edited by Thomas O’Brien for the International Commission on English in the Liturgy. [Hereafter cited as *DOL*.]

work of our redemption a present actuality.”³ In the next section of the Constitution about how the Council Fathers judged that the reform of the Liturgy should be carried out, an important mandate is laid down which is of particular import for our consideration because it concerns method for liturgical study in general and what can be expected from participating in the liturgy.

The Constitution (n. 16) states that “the study of liturgy is to be ranked among the compulsory and major courses in seminaries and religious houses of studies; in theological faculties it is to rank among the principal courses. It is to be taught under its theological, historical, spiritual, pastoral and canonical aspects”⁴ and that “other professors, while striving to expound the mystery of Christ and the history of salvation from the angle proper to each of their own subjects, must nevertheless do so in a way which will clearly bring out the connection between their subjects and the liturgy. . . .”⁵

In light of this text I would like to present something of a *status quaestionis* about what liturgical theology is and tries to accomplish. In particular I will be especially concerned about the role which theology plays (or should play) in the method to be used in the study of liturgy and sacraments in general and to the sacraments of Christian initiation – baptism, confirmation and the Eucharist – in particular.

Import of Method in Liturgical Theology

In the very year that the Constitution on the Sacred Liturgy was promulgated the Anglican liturgist Massey H. Shepherd published a collection of essays entitled *Worship in Scripture and Tradition*. This volume contained a previously published essay by the famous Orthodox liturgical theologian Alexander Schmemmann entitled “Theology and Liturgical Tradition.”⁶ Schmemmann began his essay by stating that “the problem of the relationship between worship and theology is on the theological agenda of our time.” Then he said “although the existence of the problem is certain, it is still difficult to define it.”⁷ Schmemmann’s remark is as true today as it

³ SC 2, DOL, 4.

⁴ Translation from DOL, 8. The Latin reads: “*Disciplina de sacra Liturgia in seminariis et studiorum domibus religiosis inter disciplinas necessarias et potiores, in facultatibus autem theologicis inter disciplinas principales est habenda, et sub aspectu cum theologico et historico, tum spirituali, pastorali et iuridico tradenda. Curent insuper aliarum disciplinarum magistri, imprimis theologiae dogmaticae, sacrae Scripturae, theologiae spiritualis et pastorals ita, ex intrinsecis exigentiis uniuscuiusque objecti, mysterium Christi et historiam salutis, ut exinde earum connexio cum Liturgia et unitas sacerdotialis institutionis aperte clarescant.*”

⁵ The Latin reads: “*Valde cupit Mater Ecclesia ut fideles universi ad plenam illam, consciam atque actuosam liturgicarum celebrationum participationem ducantur, quae ab ipsius Liturgiae natura postulatur et ad quam populus christianus, ‘gens electum, regale sacerdotium, gens sancta, populus acquisitionis’ (1 Petr. 2,9; cf. 2,4-5), vi Baptismatis ius habet et officium.*”

⁶ *Theology and Liturgical Tradition* (New York: Oxford University Press, 1963) 165-178, at 165.

⁷ *Ibid.*, 166.

was forty years ago. And yet in the intervening years liturgical scholars and theologians – especially sacramental theologians – have made significant strides toward seeing liturgical rites as valuable sources for theology and that liturgy and sacrament are essentially theological actions. Therefore any and all attempts to describe what happens in and through the liturgy are vitally important so that Catholic Christians can understand and appreciate what it is that the liturgy *does* in a unique way for our personal and communal sanctification.

Obviously this is not a new challenge for theologians or the magisterium. In many, if not most, theological faculties structured prior to Vatican II almost all of these concerns would have been dealt with in courses on “sacraments in general” and in courses on the theology of individual sacraments. And at times these courses also included treatment of the canon law on sacraments. (In fact it is no exaggeration to say that preconconciliar courses on the theology of marriage were primarily courses on the canon law of marriage.)

Among the topics taught in such a conventionally structured theological curriculum about sacraments included their number, matter and form, validity, liceity, the intention of the minister and how they functioned (*ex opere operato, ex opere operantis*), how they caused grace, their effects and whether they imprinted a character etc. What was treated in courses on liturgy in such curricula often (but not always) concerned two things. One was the historical evolution of the way the liturgy was conducted in the East and in the West, both the liturgy of sacraments as well as other liturgical rites such as the Liturgy of the Hours, dedication of churches, rites of profession, funerals etc. The other was courses in rubrics on how to celebrate the rites and ceremonies of the church. This was in response to the concern of the reform of the liturgy after Trent requiring that the presiding priest or bishop observe the rubrics under pain of sin. This aspect of liturgical study was governed by commentaries like the famous textbook by Fortescue and O’Connell,⁸ which textbook reflects a whole genre of rubrical literature, most of which disappeared until relatively recently. At present there are more some liturgically attuned and accurate commentaries about how to conduct the reformed liturgy⁹ and some that are more mechanical and, regrettably at times, inaccurate in terms of describing what the revised rites actually say.¹⁰

⁸ See Adrian Fortescue and J. O’Connell, *The Ceremonies of the Roman Rite Described* (London: Burnes, Oates and Washbourne, 1937).

⁹ For example, Dennis C. Smolarski’s, *How Not To Celebrate Mass. A Guidebook for All Concerned about Authentic Worship* (New York/Mahwah: Paulist Press, 1986).

¹⁰ For example, Peter Eliot, *Ceremonies of the Modern Roman Rite. The Eucharist and the Liturgy of the Hours* (San Francisco: Ignatius Press, 1995). I am thinking here specifically of his description of the “elevation” of the host and chalice after the words of institution and consecration at Mass, 301-05. In fact the *Missale Romanum* revised after Vatican II sustains the wording of the previous *Missale Romanum* and speaks of the “showing” (*ostensio*) of the sacred species and reserves the term elevation for what occurs at the end of the eucharistic prayer. See General Instruction of the Roman Missal, n. 150, which states that “the priest shows the host and the chalice (*ostensionem*) after the Consecration” and in n. 151 “at the end of the Eucharistic Prayer, the priest takes the paten with the host and the chalice

What occurred in many theological faculties after Vatican II was that much of the material formerly covered in the then distinct courses in sacramental theology and liturgy came to be covered in courses which combined this material on theology and history, often describing these “new” courses as offering a “liturgical theology” of individual sacraments and of other liturgical rites. Descriptions for such courses would note that the course will treat the historical evolution of both the way the liturgy of sacraments was and is enacted as well as the theological meaning of these rites. Here the “traditional” maxim *lex orandi, lex credendi* comes into play.¹¹ If in fact what we pray is what we believe then an historical and systematic study of what has been prayed at the liturgy and what we now pray in and through the reformed liturgy, cannot but be a chief source for any understanding of liturgy in general and sacramental liturgy in particular. At the same time such courses also pay due attention to the spiritual, canonical and pastoral aspects of the liturgy. Not all of this has been accomplished equally well. In particular I wonder whether the relationship of liturgy to spirituality has been sufficiently developed and I wonder whether practical, “celebration” courses help students appreciate the full gamut of what is meant by the pastoral celebration of liturgy in a variety of ecclesial contexts.

However, in light of the conciliar mandate and the present moves in liturgical circles and on many theological faculties toward collapsing the distinction between the study of liturgy and the study of sacramental theology I would argue that a working definition of sacramental theology might be “the systematic study of the sacraments based on reflection on the liturgical celebration of these rites throughout history, on the insights of theologians and other teachers in light of the magisterium. At given historical periods certain theological points have come to be emphasized, sometimes for polemical reasons, and assertions of the magisterium clarified issues of conflict.”¹²

The *lex orandi, lex credendi* couplet deals with nothing less than the heart of theology and the heart of the church’s life – the worship of God and the sanctification of humanity in and through the liturgy. As far back as Prosper of Aquitaine the assertion that what we pray is what we believe has been a truism in our theological tradition. It has been given increased attention by contemporary authors who wish to fulfill the Council’s mandate that among other things the study of liturgy should include its theology. That there are varying methodological approaches evident today that deal with this relationship is clear.¹³ Liturgical theology today is

and elevates (*et utrum elevans*) them both. . . .”

¹¹ See Karl Federer, *Liturgie und Glaube. Eine theologiegeschichtliche Untersuchung. Paradosis IV. Legem credendi lex statuat supplicandi* (Fribourg: Paulusverlag, 1950).

¹² See my own, “Sacramental Theology,” *New Catholic Encyclopedia*, Second Edition (Washington: The Catholic University of America, 2002) Vol. 12, 465.

¹³ For a review of I.H. Dalmais, Cipriano Vagaggini, Salvatore Marsili, Louis Bouyer, Gerard Lukken, Albert Houssiau, Alexander Schmenann, Geoffrey Wainwright, Aidan Kavanagh, Peter Fink, Edward Kilmartin, Mary Collins and David Power, see my own, *Liturgical Theology. A Primer* (Collegeville:

methodologically diverse simply because it encompasses so much of church belief and church life. Contemporary sacramental theology has been noted to be marked by “disciplinary complexity.”¹⁴ Among others the following seven topics arising from the current state of the literature about liturgical theology deserve attention.

1. What is “Liturgical Theology?”

The discipline of liturgical theology involves appropriating what the liturgy says and does; it attempts to reflect on and articulate what the liturgy in its uniqueness does in the life of the church. Some contemporary authors distinguish *theologia prima* from *theologia secunda* with the former being the experience of liturgy and the latter the theology derived from it. *Theologia prima* is the enactment of liturgy through words, gestures, and symbolic actions. *Theologia secunda* is reflection on what occurs in the act of liturgy and the attempt to systematize and articulate what the liturgy means based on what the liturgy itself does.¹⁵

Others writing in the field today distinguish the *theology of liturgy* from the *theology derived from the liturgy*.¹⁶ Here the *theology of the liturgy* unpacks what is meant by liturgy as the ritual actualization of saving mysteries in and for the church. For example, understood as the *theology of liturgy*, liturgical theology would mean exploring what the liturgy “does” in terms of dealing with humankind’s need for salvation, how liturgy is a unique experience of Christ’s paschal mystery (specifically through the anamnesis parts of blessing prayers), how all liturgy is enacted by the power of the Trinity (specifically through the epicletic parts of blessing prayers) and that all liturgy is essentially an experience of and in the church. The *theology derived from the liturgy* concerns articulating aspects of theology as they are experienced and articulated in the celebration of liturgy. Thus a liturgical *theology derived from the liturgy* would consider what the liturgy says and does in terms of theological anthropology, the theology of creation, Christol-

The Liturgical Press, 1990). Among other contemporary voices, see Andrea Grillo, e.g., *Teologia Fondamentale e Liturgia. Il rapporto tra immediatezza e mediazione nella riflessione teologica* (Padova: Edizioni Messaggero, 1996).

¹⁴ See David N. Power, Regis A. Duffy, Kevin W. Irwin, “Sacramental Theology: A Review of Recent Literature,” *Theological Studies* 55:4 (December 1994) 657-705. See the important bibliographic reference reflecting this complexity, Maksimilijan Zitnik, *Sacramenta, Bibliographia Internationalis*, 4 vols. (Rome: Pontificia Universitas Gregoriana, 1992).

¹⁵ See D.N. Power, “Two Expressions of Faith: Worship and Theology,” *Liturgical Experience of Faith* Concilium 82 (New York: Herder and Herder, 1973) 95-103.

¹⁶ My own work *Context and Text Method in Liturgical Theology* (Collegeville: The Liturgical Press, 1994) uses this distinction. For a helpful description of this distinction see Alexander Schmemmann, “Liturgical Theology, Theology of Liturgy, and Liturgical Reform,” in Thomas Fisch, ed., *Liturgy and Tradition. Theological Reflections of Alexander Schmemmann* (Tuckahoe: St. Vladimir’s Seminary Press, 1990) 38-47.

ogy, Trinity, ecclesiology etc.¹⁷ The theology *of* and *from* the liturgy clearly both respect and in fact capitalize on the unique character of the liturgy as a dynamic event, truly a celebration of our salvation for the sake of our individual and communal sanctification. To understand it one needs to be engaged in it. Theological reflection on what the liturgy celebrates and enacts in a unique way is at the heart of what liturgical theology is about.

One of the sharpest points of discussion among liturgical theologians today, especially ecumenically, concerns where to place the emphasis, on the law of prayer (*orandi*) or on the law of belief (*credendi*). In the English speaking world these issues are helpfully summarized in the frameworks for liturgical theology proposed by Aidan Kavanagh and Geoffrey Wainwright.¹⁸ In his book *On Liturgical Theology* Kavanagh argues passionately that the *lex orandi* is foundational and normative for the church's theology. More specifically he argues that Prosper of Aquitaine's assertion *legem credendi lex statuat supplicandi* does not allow for *orandi* and *credendi* to be understood as equal or even correlatives. Rather he argues that the law of prayer (*orandi*) is always to take pride of place. A counter position is mounted by Dr. Wainwright. In his book *Doxology*, Wainwright argues that the Protestant tradition has given appropriate priority to the *lex credendi* based on the fact that from the time of earliest Christianity doctrinal control had to be exercised over the liturgy. The Reformation problematic about eucharistic sacrifice is a clear case in point. When what became the Protestant churches adjusted the Roman Catholic Mass for their purposes one dominant issue was the elimination of references to the Mass being an act of sacrifice. Clearly this was motivated by a theological concern, made much more problematic at the time because of the wider issue of Mass offerings, stipends, simony, etc.

My own assessment is that Kavanagh, the Roman Catholic, was reacting to the post Reformation era when (at least in his estimation) the liturgy was not regarded as a source for theology, especially sacramental theology, in Catholic circles. Thus he was deeply concerned that the church's *orandi* be restored as the major source for the church's theology. Geoffrey Wainwright, the British Methodist, was concerned to argue equally forcefully that the liturgy's doctrinal content was so important that church authority had every right to evaluate what was to be done in liturgy lest any and every act of public prayer be regarded as theologically sound or normative. By way of example if I were to hazard a guess I would think that Dr. Wainwright would take a dim view of the "mega-church" phenomenon and the lack of liturgical structure and theological depth in their Sunday worship gatherings.

In the end my own position is that there should be a reciprocity between the

¹⁷ In his address to the *Societas Liturgica* meeting in 1999 Paul deClerck was less inclined to accept this distinction and approach. Rather he distinguished the event of liturgy (inherently symbolic and existential) from the rational formulation of these realities. See "Theology of the Liturgy – for the glory of God and the salvation of the world," *Studia Liturgica* 30:1 (2000) 14-21, esp. 18.

¹⁸ For a summary of these positions see my own, *Liturgical Theology*, 44-48.

church's prayer and doctrine.¹⁹ The (recently revised) General Instruction of the Roman Missal says as much when it asserts (in n. 3) that "the Church's rule of prayer (*lex orandi*) corresponds to her perennial rule of belief (*lex credendi*). . . ."²⁰ Methodologically I want to argue that the texts and rites of the liturgy deserve appropriate attention as a privileged witness to the church's rule of faith.

2. Constitutive Elements of Liturgical Theology²¹

Every act of sacramental liturgy comprises the use of (at least) the following four things. As such they also comprise what (most) liturgical theologians reflect on in delineating a liturgical theology of sacraments.

Word.

Certainly one of the distinguishing characteristics of the reformed Roman Catholic liturgy is the breadth and wealth of scripture readings now proclaimed at sacramental liturgy. For Christian initiation this means the list of readings provided in the Lectionaries for the Rite of Baptism for Children, the Rite for Confirmation and the Order for the Christian Initiation of Adults.²² It also means the list of readings provided in the *Lectionary for Mass* when initiation occurs within the context of the Eucharist. A glance at these lectionaries indicates a wealth of scriptural insight that should be brought to bear on delineating a theology of Christian initiation.

In addition a determining factor for the present structuring of the scripture

¹⁹ See *Context and Text*, 52-57.

²⁰ The Latin reads: "*Ita novo Missali lex orandi Ecclesiae respondet legi credendi. . . .*" It is notable that this same assertion appears in the previous, 1970 Latin edition of the GIRM from a section (nn. 1-15) that was called the "Introduction" to the 1970 text. These paragraphs were not found in the 1969 "first" edition of the GIRM and were added to satisfy the criticism of some who found the document wanting. It is almost assured that these paragraphs were written by the Italian liturgical theologian, Cipriano Vagaggini. See my own, "Overview of GIRM," *Liturgical Ministry* 12 (Summer 2003) 121-32, esp. 122-123.

²¹ See *Context and Text* Part Two for a fuller description.

²² Throughout the Latin originals for the rituals cited are from, *De Initiatione Christiana*, "*Praenotanda Generalia*," in Reiner Kaczynski, ed., *Enchiridion Documentorum Institutionis Liturgicae*, Volume One (Casale: Marietti, 1976) 558-564, *Ordo Initiationis Christianae Adultorum*, "*Praenotanda*," *ibid.*, 830-859 and *Institutio Generalis Missalis Romani*, in *Missale Romanum* (Vatican: 2002) 19-86. For English translations see, *The Rites of the Catholic Church*. Volume One (New York: Pueblo Publishing Co., 1990). *Rite of Baptism for Children*. Chapter VII, "Various Texts for Use in the Celebration of Baptism for Children," nn. 186-215, 444-446, *the Rite of Confirmation*. Chapter V, "Texts for the Celebration of Confirmation," nn 61-65, 512-514. Also see the scripture texts in the *Lectionary for Mass* nn. 763-767. The various rites that constitute the Order for the Christian Initiation of Adults contain their specific scripture texts, e.g., "Rite of Acceptance into the Order of Catechumens," Liturgy of the Word, nn. 61-63, indicating the use of Genesis 12:1-4a, Psalm 33:4-5, 12-13, 18-19, 20, 22 and John 1:35-42. Also see, *Lectionary for Mass*, nn. 743-756 for adult initiation, nn. 757-761 for the baptism of children and nn. 763-767 for confirmation.

readings in the Lectionary for Sunday Mass during Lent is the vision of the Liturgy Constitution which stated that in revising the prayers and scriptures for Lent that initiation and reconciliation emphases should prevail (n. 109). Thus one could argue that a liturgical theology of initiation needs to take into consideration the structure of the Lenten scripture readings, specifically those assigned for the "A" cycle on the Sundays of Lent. This means appreciating the Johannine gospels about the Samaritan woman (Jn 4), the man born blind (Jn 9) and the raising of Lazarus (Jn 11). But it also means reflecting on the structure of the first and second readings for this same Lectionary cycle, whose texts have been selected because of their (implied or explicit) connection to initiation. The Old Testament texts all deal with particularly significant events in the history of salvation, specifically the covenant. When read in the Christian assembly these have obvious Christological overtones and meanings, specifically in leading us to appreciate the new covenant in Christ. The second readings on these Sundays from the letters of the apostles are selected to provide a connection between the gospel and the Old Testament texts for that day. More often than not these texts have ramifications for a theology of initiation.²³

Trying to articulate a liturgical theology of initiation on the basis of such a wealth of scripture readings is obviously no easy task. But the very breadth of possibilities opened by proclaiming such texts offers the church an ever richer and more profound appreciation for the many things which the celebration of Christian initiation is and means.

In sacramental liturgy words happen, they effect what we proclaim in and through them. If words matter in theology in general, in sacramental liturgy the proclaimed word matters greatly.

Symbol.

One of the chief characteristics of the Catholic liturgical and sacramental tradition is our use of signs and symbols in sacramental liturgy. In sacramental initiation the use of water has been paramount. Liturgical theologians often capitalize on the properties of water and its multivalence. Water is the only element without which we cannot live. Therefore it is most appropriate that we use water to signify and accomplish our initiation into the new life which we share in and through Christ. Not surprisingly the revised rites all speak of the need to use fresh and clean water in the liturgy of initiation, for the sake of its sign value as life giving and life sustaining. The prayer of blessing over water recalls and explicates images of creation and redemption having to do with the use of water. At the same time we need to be aware that all of water's properties are not positive or life giving or life sustaining. Water can also symbolize death and destruction. Too much water from rains and storms can destroy this good earth by flooding. Attempting

²³ See *Lectionary Introduction*, n. 97.

to swim in waves that are too deep can cause death by drowning. Thus there is a multivalence to the use of water in initiation. In capitalizing on this multivalence liturgical theologians also explore aspects of baptism having to do with the possible negative aspects of the use of water and argue about the fact that water can mean both death and life. The struggle for life over death, symbolized by the use of water in initiation, reflects a major characteristic of baptismal theology – namely that in our daily struggle for life over death we are given hope and strength from the sacraments of initiation which are begun in water baptism, which is itself a symbol of death and life. When used in sacramental initiation water symbolizes and accomplishes our passing from the death of sin to real life in God.

Given our tradition of symbolizing new life through water baptism it is not surprising that each time the revised rites of initiation describe how water is to be used in baptism they refer first to immersion and secondly to infusion.²⁴ The General Introduction to Christian Initiation states: “as for the rite for baptizing, either immersion, which is more suitable as a symbol of participation in the death and resurrection of Christ, or pouring may lawfully be used.”²⁵ This ritual assertion makes a strong statement that maximizing the use of symbols can help to enhance the kind of theological statements being made by the very use of symbols in sacramental liturgy. The struggle between death and life is more fully symbolized and enacted in baptismal immersion. Experiencing the life giving and life sustaining properties of water is more easily seen when water is used profusely in sacramental initiation. If in sacramental theology “matter” always mattered, any baptismal theology derived from the liturgy of baptism must assert that the “matter” of water in baptism matters greatly.

Euchology.

Liturgical theologians often use the term “euchology” to refer to the texts of the prayers of the liturgy, in particular prayers of consecration and of blessing. Especially when compared with the former rites for adult initiation, infant baptism and confirmation the prayers in the post Vatican II reformed rites of initiation offer the same kind of breadth and wealth of images for initiation as those found in their respective scriptural lectionaries. Among others, pride of place goes to the restoration of the use of the prayer to bless water taken from the Gelasian sacramentary.²⁶ This is an example of how historical scholarship on ancient

²⁴ See *Order for Christian Initiation of Adults*, n. 226, “The celebrant baptizes each candidate either by immersion, option A, or by the pouring of water, option B” (*The Rites*, 159) and Rite for Baptism of Children n. 60 “he immerses the child or pours water upon it” (*The Rites*, 387).

²⁵ *General Introduction. Christian Initiation*, n. 22.

²⁶ See Henry Austin Wilson, *Liber Sacramentorum Romanae Ecclesiae* (Oxford: Clarendon Press, 1894) n. 444 ff. See, Jordi Gilbert Tarruell, “Los formularios de la benediction del agua en el ‘Ordo Baptismi Parvulorum’ y en el ‘Ordo Initiationis Christianae Adultorum’,” *Ephemerides Liturgicae* 88 (1974) 275-309 and Dominic E. Serra, “The Blessing of Baptismal Water at the Paschal Vigil in the Post-Vatican

liturgical manuscripts uncovered theologically rich texts from the tradition that have been become part of the revised liturgical rites of the church. From the perspective of articulating what the liturgy of initiation is and does these prayers offer rich fare for theological reflection.

It is important to note the structure and content of such prayers in the reformed Roman liturgy. Almost all consecratory and blessing prayers reflect the structure of the Hebrew prayers of blessing (*berakah*) that recall God's mighty deeds of salvation for his people (*magnalia Dei*). These prayers are essentially anamnestic by their nature because when such texts are proclaimed in the act of liturgy we invoke the same saving action of God on us through their very proclamation. In Christian liturgical tradition, however, each of these blessing and consecratory prayers contains an explicit anamnestic section ("in memory of his death and resurrection . . .") which leads to specific epiclesis invocations of the Holy Spirit to sanctify the object to be blessed and those who will be blessed through this now blessed symbol ("let your Spirit come upon these gifts and make them holy . . ."). All such blessing and consecratory prayers end with a doxology.²⁷

The specific prayer most commonly used for blessing water at baptism conjures up a number of scriptural images, specifically the act of creation in Genesis 1, Noah's ark in Genesis 9, passing through the Red Sea in Exodus 12, Jesus's own baptism in the Jordan in the Synoptic gospels, the blood and water that came from the side of Christ in John 19 (and 1 Jn 5) and the missionary command to go forth to teach and baptize from the end of Matthew's gospel (chapter 28). These examples of the *magnalia Dei* articulated in the first section of the prayer form the basis for the church's request that God the Father send the Spirit on the water to be used in this baptism so that those who are buried with Christ in it may also rise with him to newness of life (a reference to Rom 6).

In addition to the rich biblical background and symbolism inherent in this prayer there are a number of theological themes about initiation that can be adduced from it. These include recreation, being washed from sin, receiving new birth and the promise of achieving "newness of life" in the kingdom for all eternity. The proclamation of such a prayer at baptism cannot but expand one's imagination about what baptism is and does. It certainly moves our theology of baptism away from any particular preoccupation (such as the removal of original sin) to offering a number of powerfully rich images of what water baptism also accomplishes.

Obviously in this connection the accuracy of vernacular translations to reflect what the Latin rites actually say is imperative. If the vernacular texts are less than precise theologically then people will be participating in a liturgy with dubious theological value. (More about this in the section on inculturation below.) Again, words matter.

II Rites," *Ecclesia Orans* 7 (1990) 343-68.

²⁷ See Jean-Marie Tillard, "Blessing, Sacramentality and Epiclesis," *Blessing and Power* Concilium Vol. 178. (Edinburgh: T. and T. Clark, 1985) 96-110.

Among the most challenging and debated aspects of contemporary liturgy are issues concerning music and architecture. The Constitution on the Sacred Liturgy reasserted the value of music and church architecture that would enhance and reflect their place in the celebration of the liturgy²⁸ yet most often it is in subsequent documents from episcopal conferences where these ideals are “fleshed out” for appropriate implementation. In the United States the documents *Music in Catholic Worship* and *Liturgical Music Today* are statements by the USCCB about music which assist in this regard. These documents are to be read in conjunction with what the rites for Christian initiation say about the value of the presiding bishop or priest singing the prayers of blessing water, the consecration of chrism and the Eucharistic prayer as evidences of the high priority which the revised liturgy places on them in terms of their theology. The act of singing is here meant to draw attention to these euchological payers in their theological richness. For the assembly, the singing of acclamations at various parts of the rites of initiation and during the Eucharistic prayer itself again demonstrates theological importance of the church’s rites as they are enacted. From the perspective of liturgical theology, the texts of these prayers, acclamations and other parts of the rites such as responsorial psalms etc. all point to the value of singing the liturgy itself, precisely because it is so important theologically

Clearly American Catholics have been exposed to much variety and evolution in the way music has been and is used in the reformed liturgy. At the same time there is a certain vision which the revised rites offer in the way music is to be used in the liturgy. Simply put the revised rites give pride of place to singing the prayers and texts of the liturgy itself. Other things that may well be sung at liturgy should be regarded as additions which do not convey the same liturgical priority or theological depth of what the liturgical rite itself says and does.

A case in point concerns the *Appendix* to the revised *General Instruction of the Roman Missal* (n. 48) the U.S. bishops approved the following wording, namely that there are “four options for the Entrance Chant: (1) the antiphon from the *Roman Missal* or the Psalm from the *Roman Gradual* as set to music there or in another setting; (2) the seasonal antiphon and Psalm of the *Simple Gradual*; (3) a song from another collection of psalms and antiphons, approved by the Conference of Bishops or the diocesan Bishop, including psalms arranged in responsorial or metrical forms; (4) a suitable liturgical song similarly approved by the Conference of Bishops or the diocesan Bishop.” An important debate is taking place today about what kinds of music should be approved by the episcopal conference and what should be regarded as “suitable.” From the point of view of liturgical theology if what we pray is what we believe, this should be very true of what we sing because simply because this aspect of liturgical participation involves the

²⁸ See *SC* nn. 112-29

community and obviously what they sing can and should have a major impact on what they believe.

In this connection let me return to Geoffrey Wainwright's book *Doxology*. One of the characteristics of this book is the way the author continually relies on hymns sung at liturgy as a theological source. Again, coming from his Methodist tradition, reliance on hymns as a staple of the eucharistic liturgy is quite understandable. Such reliance on hymns at worship is not found in liturgical theologies as argued by contemporary Roman Catholic authors. There are at least two reasons for this. One is that the singing of hymns at Catholic liturgy, other than the Liturgy of the Hours, is a relatively recent addition. In point of fact the Roman liturgy of baptism, confirmation and Eucharist do not envision that hymns are sung at all. Rather, antiphons, responses, psalms and acclamations are presumed – not hymns. A second reason why contemporary Catholic liturgical theologians do not use hymns when developing theology is the fact that since a variety of sources can be used for the texts and music to be sung in the revised rites, it is very difficult (if not in fact impossible) to argue about the liturgical theology of what is sung save for the texts of the liturgy itself. This is at least paradoxical and is a real challenge simply because music is one of the principal ways that people participate in the liturgy. And such sung prayer can and does shape belief, piety and world view.

With regard to architecture the debates over and the process in the USCCB that led to approving *Built of Living Stones* in 2000 to replace the 1978 *Environment and Art in Catholic Worship* exemplify the challenge and importance of building and arranging churches to reflect the demands and opportunities afforded us in implementing the revised liturgical rites. It is particularly true when it comes to baptismal fonts – their location, size, shape and use. Clearly the very construction and use of baptisteries designed for immersion of both adults and infants make important theological statements about putting an end to sin and death by descending into the font and experiencing the new life of grace and sanctification by emerging from the font. Having three steps in the font can symbolize the three days Jesus was in the tomb can lead to a baptismal theology emphasizing how entering, being immersed in and emerging from the font is an experience of being in the tomb with Jesus and emerging from it as from a womb, a new creature in Christ. A circular font can symbolize God, since a circle has no beginning or end, reflecting the God who is, was and will be. An eight sided font can symbolize eschatology, seven days of creation and one more for the new creation. Thus baptism can be appreciated as our initiation into the new creation established in Christ's rising from the dead on the third day and the church's experience of Eucharist every "Lord's Day."²⁹ (Recall here the baptisteries of especially European cathedrals as eight sided buildings next to the cathedrals themselves.)

A baptismal font at the entrance of the church makes holy water fonts

²⁹ See H. Boone Porter, *Day of Light. The Biblical and Liturgical Meaning of Sunday* (London: SCM Press, 1960).

redundant. One enters the church for Eucharist and blesses oneself with water from the very font where at initiation we are brought into the church for the first time. The rite of blessing and sprinkling with holy water on Sundays, especially during the Easter season makes the important theological connection between water baptism and the Eucharist. The place where consecrated chrism and the blessed oil of the catechumens are stored in cathedrals and in parish churches makes a theological statement about the reverence due to these important oils used in initiation.

Clearly the post conciliar liturgy has made the location of the ambo and presider's chair as well as the altar important for communal participation in the Eucharist. The words of *Built of Living Stones* to describe a sanctuary area are instructive. "The sanctuary is the space where the altar and the ambo stand, and 'where the priest, deacon and other ministers exercise their offices.' The special character of the sanctuary is emphasized and enhanced by the distinctiveness of its design and furnishings, or by its elevation."³⁰

Visibility, audibility and symbolic engagement are all factors that support liturgies that are fully participated in by the entire assembly. These are obviously enhanced when church buildings are designed with participation understood as a major goal in the celebration of liturgy. Such configurations and buildings make theological statements about the importance of baptism as well as Eucharist as regularly celebrated sacraments for the parish's sanctification.

Architecture and the arts make statements. Liturgical arts and architecture for the liturgy make theological statements. The liturgical arts matter.

3. Present Reformed Liturgy

Given the revision of the liturgy after Vatican II in the West and the use of the vernacular for popular participation, it may be asserted that the liturgy today has the potential to be a source for the kind of liturgical theology experienced and presumed in the patristic era. But what needs to be avoided is the impression that in reforming the liturgy we engage in anachronism whereby "older is better" is a presumed maxim.

In the year 2000 the ecumenical journal entitled *Liturgy* published a series of essays across the ecumenical spectrum regarding a reappraisal of some aspects of the liturgies reformed and implemented in the various churches in the past thirty years. The editor of the collection, Frank Senn had this to say by way of introducing this volume.

The essays in this issue of *Liturgy* do not add up to a program or even a direction for further liturgical revision. They do sound a note of self-criticism within the liturgical establishment that brought us our present

³⁰ *Built of Living Stones* (Washington: USCCB, 2000) n. 54, 22.

liturgical orders and rites. We sometimes acted too precipitously on too little information or on insufficient digging. Churches that use the historic liturgy certainly have to pay attention to history. But it is inadequate to pay attention only for the purpose of replicating ancient orders and retrieving ancient texts in contemporary patterns and books of worship. Those ancient orders and texts were used in a social context just as our orders and texts are – the context of an assembly that was as much enmeshed in the culture of which they were a part as we are enmeshed in our own contemporary cultures. If we use an ancient text or follow an ancient pattern today it should not be just because it is ancient but because it expresses a world view that we share with those who have gone before us in the faith or that we are in the process of recovering.³¹

While affirming the theological value and normativity of the liturgical rites revised after Vatican II, the present reformed liturgy, like any liturgy in the history of the church, deserves some critique lest what we experience today be perceived to be the only or best possible way to celebrate these rites. Without a *critical function* to liturgical theology we can fall into a liturgical fundamentalism which argues only from the present rites and does not distinguish what is of more or less value theologically within them or what would be better theologically in terms of structure and content. There is a delicate balance between accepting and using the reformed liturgy as a basis for liturgical theology and at the same time arguing where and how some aspects of the present reformed rites may be debated in terms of their theology, or where certain texts should be read and appreciated in light of other texts, and where the very structure of some rites could be improved.

One of the particular features of the restoration of the order for the Christian Initiation for Adults is that it is clearly modeled on patristic structures and texts. However the process of revising this rite was unique among the post Vatican II rites because it was tried in several locations and adjusted before it was promulgated as the revised order for adult initiation in 1972.³² The fact that the original proposed order was tried in places like Japan, Mexico and Europe and that it was adjusted prior to its publication in 1972 in light of the reaction of those who used it points to the fact that in the revision of the liturgy after Vatican II a certain critical eye was cast upon traditional liturgical structures. In particular the great flexibility now found in the period of the precatechumenate and mystagogy resulted from the feedback of those who judged the first version of the adult order to be too strict and programmed.

When it comes to the present revised rite for infant baptism some have debated the value of asking parents four times during the ritual whether they understand

³¹ From Frank Senn, "Liturgical Reconnaissance 2000," *Liturgy. Journal of the Liturgical Conference. What's New About the Past?* 16:1 (Summer, 2000) 4-5.

³² See Andre Aubry, "Le projet pastoral du Rituel de l'initiation des adultes," *Ephemerides Liturgicae* 88 (1974) 174-191.

what they are undertaking in asking to have their children baptized. Admitting that the former rite had no such question (principally because we had no rite for infant baptism until 1970) the fact that we repeat the same question raises the issue of overkill.

Paying attention to a certain critical function need not diminish the value of the reformed liturgy. But without a critical stance liturgical theology can fall into the danger of fundamentalism (which in fact is the polar opposite of what Catholicism is as a theological tradition).³³

4. *Theology and Inculturation*

Among the more important debates underway today regarding the reform of the liturgy is inculturation, one aspect of which concerns the translation of prayer texts. That prayer texts receive a certain emphasis should not be surprising given the fact that words convey ideas and that ritual language conveys the beliefs of the community that celebrates. Clearly part of the contemporary debate about inculturation of the liturgy is trying to determine the best (or least inadequate?) vernacular idiom to express the church's faith in and through the liturgy. Here it would seem obvious that church authority should be brought to bear in a capacity of oversight to evaluate such texts to determine that they reflect orthodox teaching. (That eucharology bears and reflects the church's teaching differently from the codification of church teaching in other sources of theology, e.g. conciliar texts, is presumed here.)

For English speaking countries this raises the important question of accuracy in English language translations, and in particular the work of the International Commission on English in the Liturgy (ICEL) to propose them and of episcopal conferences in approving them.

The process which the American bishops engaged in when evaluating ICEL's proposed second edition of *The Roman Missal* is a case in point. While some criticized the process (largely spanning the decade of the 1990s) as too cumbersome and as too long and drawn out, others counter (and I would say rightly) that bishops had and have every right, not to say responsibility, to evaluate vernacular translations of the liturgy – largely because of the principle that what we pray is what we believe. That the ICEL proposed 1998 revised *Roman Missal* was a decided improvement over the 1975 texts in the *Sacramentary for Mass* is clear. For example, the opening prayer for Mass on the First Sunday of Advent in the *Sacramentary for Mass* still in use asks God to “increase our strength of will for doing good, that Christ may find an eager welcome at his coming. . . .” The proposed revision stated:

³³ See the very helpful summary of the evolution of the revised eucharistic rite in the work of the post Vatican Concilium on the Liturgy in Maurizio Barba's *La riforma conciliare dell 'Ordo Missae'*. Il percorso stroico-redazionale dei riti d'ingresso, di offertorio e di comunione (Rome: Edizioni Liturgiche, 2002).

Almighty God,
strengthen the resolve of your faithful people
to prepare for the coming of your Christ
by works of justice and mercy,
so that when we go forth to meet him
he may call us to sit at his right hand
and possess the kingdom of heaven.³⁴

However, the problem with both translations is that neither reflects the strength of the Latin original which asks:

*Da, quaesumus, omnipotens Deus,
hanc tuis fidelibus voluntatem . . .*

Both English translations can be criticized for being Pelagian (the *Sacramentary for Mass*) or semi Pelagian (1998 *Roman Missal* proposal). In addition to the important, central value of accuracy in translating Latin texts into the vernacular, my own sense is that more work needs to be done on wedding the value of accuracy for the sake of theology with the proclaimability of vernacular prayer texts so that people can comprehend what the prayers are meant to “say” when prayed aloud in the liturgy.

It has been legitimately argued that in the present *Sacramentary for Mass* the title “Father” has been overused and in fact in over three hundred cases is a mistranslation for Latin terms such as *Deus, Domine, Omnipotens et aeternae Deus* etc. Some presiders have taken to replace such “Father” language and often use the phrase “Good and gracious God.” However, to replace the variety of names for God inherent in the liturgy with “good and gracious” simply flies in the face of the normativity of theological language in the liturgy and the multivalence of the God language inherent in the liturgy. While there is a very legitimate critique of the over use of “Father” language in the present ICEL translations of many of the presidential prayers at Mass, this does not mean that the traditional beginning to the preface in the Roman Rite at Mass, *Domine, sancte Pater, omnipotens aeternae Deus* (presently translated “Father, all powerful and ever living God. . .”) needs to or should be changed. In effect this cluster of terms reflects a wealth of scriptural imagery about God and deserves to be kept for the very breadth and depth of expression inherent in this succinct phrase. In the words of the liturgical rhetorician Gail Ramshaw Schmidt:

Thus at the beginning of the great Thanksgiving, we pray along with Abraham, who obeyed the call (Gn 12:4), with Moses, who received the Torah (Ex 19:20), and with Jesus who was the Word (Jn 1:1). As we eat

³⁴ ICEL, *Sacramentary*, 1998 (text from CD Rom furnished the author by ICEL).

bread and wine, we recall Abraham, who shared his food with three mysterious visitors (Gn 18:8), Moses, who ate and drank with God on Sinai and did not die (Ex 24:11), and Jesus, who breaking bread on Sunday evening, showed forth his wounds (Lk 24:31). The entire tradition of word and sacrament opens now to us as we call on almighty God, Lord and Father.³⁵

A particularly egregious theological misstep occurs when such rich language about God is jettisoned for a phrase like “good and gracious” simply because while obviously intending to be inclusive it winds up itself being exclusive of the breadth of what the Latin original says and means to say about God and by what it says about us by the way we name and describe our calling upon and our need for God through liturgical prayer.

In addition to the difficulties caused by changing the liturgy I would also argue that some thirty years after introducing the vernacular into the liturgy is still a comparatively short time for liturgical theologians to explore the theological richness of what the present revised rites enact. Any expectation of a wholesale change in liturgical structures, texts or rites can mitigate putting appropriate energies into interpreting what we say and do in the reformed liturgy if in fact people expect additional and repeated changes in it. The most extreme example from the opposite side of inculturation would be any wholesale restoration to regular celebration of the liturgy as celebrated after Trent. The perceived flaws in the rites celebrated from after Trent to the reformed liturgy after Vatican were adjusted in the reformed rites. That the reformed rites are liturgically and theologically normative should be presumed. We cannot and should not give way to any possible perception that two ways of celebrating Mass (one the Tridentine and the other the *novus Ordo* of Pope Paul VI) offer variety and flexibility. Rather, on the contrary, the celebration of Mass from two sets of texts and rubrics introduces another motive for not taking seriously the theology inherent in the present reformed rites of the Catholic Church in the revised Mass from Pope Paul VI.

The question of accurate vernacular translations of euchology leads to the question about the adequacy of the revised translations in the American edition of the *Lectionary for Mass*. By way of example I will use two texts that are part of the celebration of Easter. The first concerns the gospel proclaimed at the Easter Vigil in the “C” cycle, namely Luke 24:1-12, the dialogue between the women who came to the empty tomb and the two men who appeared to them. In the previous *Lectionary* at vs. 5 we read “The men said to them, ‘Why do you search for the Living One among the dead.’” The present, revised text in the *Lectionary* reads “they said to them ‘Why do you seek . . .’” The problem is that in oral proclama-

³⁵ *Reviving Sacred Speech. The Meaning of Liturgical Language. Second Thoughts on Christ in Sacred Speech* (Akron: OSL Publications, 2000) 44.

tion in the vernacular it is confusing as to who the “they” are. Without the insertion of noun “men” we are at a loss as to understand who is saying what to whom. The revised text may be more accurate literally, but it is certainly less inadequate when proclaimed because it does not convey who is saying what in the dialogue.

A similar issue occurs when the Nicodemus dialogue from John 3 is proclaimed in a *lectio continua* as the gospel from Monday to Thursday of the weekday *Lectionary* for the second week of Easter. On Monday and Tuesday it is clear that this is the dialogue between Jesus and Nicodemus. However on Wednesday and Thursday the gospels simply take up where the previous day’s pericope’s left off and there is no reference to the fact that these texts continue what Jesus was saying to Nicodemus. The former *Lectionary* inserted the helpful introductory phrase “Jesus said to Nicodemus.” The addition of this same phrase can help those listening to this text from the revised translation understand that the gospel’s words are from this time honored and cherished Johannine gospel about the implications of being born again. When proclaimed at the Christian Eucharist during the Easter season such a text carries obvious overtones of the meaning of sacramental initiation. Without such an introduction these meanings are easily lost.

When it comes to the (admittedly complex and) larger issue of inculturating the structure and contents of the liturgical rites themselves Church authorities have the responsibility to insure that the church’s *lex credendi* is safeguarded in the *lex orandi*. This is stated specifically in the *General Instruction of the Roman Missal* (n. 397) that “the doctrine of the faith and sacramental signs” of the liturgy of “each particular Church must be in accord with the universal Church. . . .” “These are to be maintained not only so that errors may be avoided, but also so that the faith may be passed on in its integrity, since the Church’s rule of prayer (*lex orandi*) corresponds to her rule of belief (*lex credendi*).” Certainly there is something of a dialectic at work here in relating the present reform of the liturgy to ongoing inculturation and of placing *lex orandi* and *lex credendi* in a proper relationship.

With regard to the specific issue of the inculturation of the present rites for initiation in the United States the clearest example is the inclusion of the “National Statutes for the Catechumenate” in the Order for the Christian Initiation of Adults as approved by the American bishops in 1986.³⁶ Whether or not this document is eventually revised remains to be seen. For liturgical theologians these Norms need to be taken seriously because what they describe as ritual forms and structures need to be seen as acts of theology.

5. Liturgy, Spirituality and Ethics

That the celebration of the liturgy always implies and presumes that its celebration will necessarily have effects in the way we live our lives is reflected in

³⁶ See *The Rites*, Appendix III, 341-356.

the way contemporary liturgical theologians discuss the terms *lex agendi*³⁷ or *lex vivendi*. My own preference is for the term *lex vivendi* indicating that liturgical theology always has inherent implications for the way we live our lives. That the classical mystagogical catecheses contained such life shaping and spiritually challenging elements is clear. That every act of liturgy has implied imperatives and spiritual dimensions is also clearly reflected in much contemporary writing on relating *lex orandi*, *lex credendi*.³⁸ One clear advantage to articulating ethical imperatives from the *lex orandi* is to insure that one of the clearly enunciated aims of all liturgy is not lost – namely “making the work of our redemption a present actuality.”³⁹ The aim of liturgy is not to get the liturgy right. The aim of liturgy is to put life into perspective from the lens offered by the paschal mystery experienced uniquely in and through the liturgy.

Contemporary authors refer to the implied life relation of all liturgy as its *spirituality*. One of the more counter cultural aspects of all liturgy is that in essence it is about being a part of the community of the church. It is never about individuals. It is always about the whole body, about corporate responsibility, and about communal self transcendence. That every act of liturgy is about the whole church can be a real challenge to American Catholics today for at least two reasons. The first is that a particularly American ethos concerns individual freedoms, rights and responsibilities. I would argue that there is a certain tension between this and the presumption that all liturgical celebration is about the common good. Second, at this particular time in American culture with its emphasis on the self, the very celebration of liturgy can be counter cultural and a decided challenge.

One of liturgy’s challenges is to allow it to shape how we look at the world and our corporate and personal lives within it. Among the pioneers in emphasizing this aspect of liturgical theology is Aidan Kavanagh. His oft repeated remark that “liturgy does us” rings true in terms of cogency and challenge. Clearly what the liturgy always does is to offer, articulate and celebrate a vision of the Christian life in our world that is often at variance with the assumptions and presumptions of the contemporary culture.

When it comes to the celebration of the sacraments of initiation it is clear that the entire scope and process of initiating adults reflects a communal experience. The entire Order for the Christian Initiation of Adults is predicated on the

³⁷ Interestingly the *Lineamenta* for the October 2005 Synod of Bishops on the Eucharist contains the triad: *lex orandi*, *lex credendi*, *lex agenda* with the latter asserted to refer to “the Church’s life and mission.” See, www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20040528_lineamenta.

³⁸ Among the most helpful articulations of the relationship of liturgy, theology and spirituality is Jean Corbon’s *The Wellspring of Worship*. Trans., Matthew O’Connell (Mahwah/New York: Paulist Press, 1988). The recent publication of Bruce Morrill’s doctoral dissertation linking the premier liturgical theologian Alexander Schmemmann with J. B. Metz, a premier political theologian (written under the direction of Saliers himself) indicates an evolution in contemporary liturgical theology about this necessary and implied integration. See *Anamnesis As Dangerous Memory* (Collegeville: The Liturgical Press, 2001).

³⁹ SC 2, DOL, 4.

understanding that we are initiated into the community of the faithful. All of the periods of this Order are essentially communal: precatechumenate and inquiry, catechumenate, celebration of the sacraments of initiation and mystagogy. And throughout this whole process helping candidates to understand what it means to lead an apostolic life is one of its essential characteristics.

The celebration of liturgy is integral to and integrating of the Christian life. This is to say that the “law of prayer” enshrined in the enactment of the liturgy always has implications for the “law of belief” in terms of what we believe about the liturgy being celebrated and in terms of the “law of living” about the way we live our lives in relation to what we pray and believe. Liturgy should always be understood to be the axis and anchor that gives the Christian life its purpose, shape and meaning. Life lived before and after the liturgy is celebrated is really what matters. The real object of liturgy is not getting the rituals right; the real object of liturgy is that it puts nothing less than our lives into proper order and perspective.

Succinctly put liturgy is both a means and an end. It is a means of integrating the various aspects of our lives, with all our strengths, weaknesses, successes, failures, possibilities and limitations. We bring our real lives to the enactment of the mystery of faith so that our faith in God can guide the way we deal with all that makes life a challenge. Liturgy is also an end in the sense that it is a glimpse here and now of the eternal “day of the Lord” when God will be all in all and we will be united in the Triune God forever. Liturgy is thus a privileged but provisional experience of God. It is also a unique but not an exclusive experience of God. It is in fact the summit and source of the Christian life when we appreciate that it comes from real life and leads us back to real life. It is a key focal point for the Christian spiritual life.

Thus, to my way of thinking, spirituality derived from liturgy is essentially *integrative* and that the *integral* vision of the Christian life experienced in liturgy derives from and leads to continuing to experience that integration in all of life. This is to say that liturgy derives from the context of human life and daily living. It also returns participants back to daily living with their vision of the Christian life sharpened and the challenge of living that vision the more clear. It relies on, and at times will articulate, aspects of what can be termed a “catholic,” liturgical and sacramental vision of life (understanding, of course, that this vision is not particular to Roman Catholicism). In this view, sacramentality derived from Christ’s incarnation includes the discoverability of God in the human and that all of creation and human life is (at least potentially) a source of revealing the divine. This integral vision of life is presumed and celebrated in liturgy. That the rest of life still needs to achieve the harmony expressed and experienced in liturgy is among the more precise tasks of spirituality. To put life in this kind of perspective presumes regular engagement in the church’s liturgy. But for our purposes here it presumes regular engagement in the Eucharist in particular. The familiar phrase from the early Christians “without the Eucharist we cannot exist” is also true for us in every succeeding generation of the church’s life.

The words of the GIRM 2002 (n. 16) put the relationship among church

belonging, liturgical participation and Christian spirituality (my own term) in this way:

The celebration of Mass, as the action of Christ and the People of God arrayed hierarchically, is the center of the whole Christian life for the Church both universal and local, as well as for each of the faithful individually. In it is found the high point both of the action by which God sanctifies the world in Christ and of the worship that the human race offers to the Father, adoring him through Christ, the Son of God, in the Holy Spirit. In it, moreover, during the course of the year, the mysteries of redemption are recalled so as in some way to be made present. Furthermore, the other sacred actions and all the activities of the Christian life are bound up with it, flow from it, and are ordered to it.

6. *Liturgy as Ritual*

Certainly one of the more challenging aspects of establishing a proper method for liturgical theology today concerns the fact that liturgy is essentially an event, an experience – or to use the customary phrase, a celebration of our redemption. Hence it is unlike (some) other sources that reflect the church's belief simply because to interpret it properly some legitimately argue that one must experience it, and not “simply” objectify it or interpret only its texts. Liturgy is an ensemble of words, symbols and gestures, all of which together comprise a dynamic experience of communal prayer for the sake of personal and communal sanctification. In recent years a number of liturgists have worked towards refining an approach to liturgical studies that incorporates the social sciences as tools to help reflect on the meaning of liturgy as a ritual action.⁴⁰ My own sense is that methodologically this is still a work in progress. In my own method for liturgical theology I argue the value of appreciating the way the liturgy is conducted and call this the *lex agendi*. For me part of the challenge in arguing the value of liturgical theology is respecting that not all celebrations of the reformed liturgy are in fact in conformity with what the published rites set forth. In no way do I want to suggest a rubrical preoccupation here. My point is that liturgy is a ritual and as such has constitutive elements which should be presumed upon both as bases for its enactment and for the theology that derives from its celebration. The reformed liturgy allows for variation and options within a stable, ritual structure. My concern is when what should be regarded as stable elements of the ritual are changed, sometimes at the whim of those who prepare, celebrate or preside the liturgy, or when rubrics which have been established for some three decades are being “adjusted” today, sometimes for less than compelling theological reasons.

⁴⁰ See Joyce Ann Zimmermann, *Liturgy and Hermeneutics*. American Essays in Liturgy (Collegeville: The Liturgical Press, 1999) and Nathan Mitchell, *Liturgy and the Social Sciences*. American Essays in Liturgy (Collegeville: The Liturgical Press, 1999).

In implementing the reformed liturgy from the early 1970s on, pastoral ministers applied great energy as to how best to do this. While some of these energies may have led to a fascination with the changeability of liturgy I wonder whether this may have left an impression and presumption that the liturgy ought to keep changing. My own sense is that engaging in less ritual change today can mean greater appreciation for what the outward signs, symbols, words and gestures of liturgy are meant to accomplish. One of the advantages of the familiarity of ritual is that this stability invites less attention to be drawn to the externals of the liturgy and greater emphasis on what God is accomplishing among us through these external signs, sounds and gestures. Let me give two examples, one about texts and one about gestures.

At present ICEL is at work on revising the translation of the *Ordo Missae*, that is the invariable parts of the Mass texts. A first draft of these texts was widely circulated and widely critiqued.⁴¹ Hence ICEL has decided to offer a second proposed draft translation for study and critique before proposing it for the approval of the English speaking bishops conferences. Clearly one of the more pressing issues concerns the insistence in *Liturgiam Authenticam* that the English translation in the Order of Mass for *et cum spiritu tuo* use “any with your spirit” as opposed to the present response “and also with you.”⁴² At the same time the famous theologian and preacher Walter Burghardt has lamented that the translation of another part of the preface dialogue – *dignum et iustum est* should be retranslated. As it now stands “it is right to give him thanks and praise” leaves out the single instance in the Order of Mass where the people have the opportunity to voice their concern about what is “right and just” which term “just” is central to Burghardt’s “The Just Word Project.” My concern in these debates is pastoral. To change the people’s parts of the Mass can cause ritual instability and confusion. Liturgical texts are ritual texts and as such should not change often. If they are changed there should be very important reasons – both liturgical and theological. Prior to any (additional) changes there should be appropriate catechesis. My own sense is that there are theological reasons why “and with your spirit” is decidedly preferable to “and also with you.” The fact that “and with your spirit” has been retained in almost all other vernacular translations of the Mass argues in favor of changing it in English. But the legitimate pastoral, ritual question that should be asked is whether this is worth the effort at this point in the church’s (liturgical) life.

The second example concerns the protocol to be followed in the distribution of

⁴¹ See the London *Tablet* (May 22, 2004) Supplement 1-8. This publication was unprecedented. Normally (initial) draft texts are sent to bishops’ conferences and are not made available to the wider public.

⁴² This is among the more controversial “requirements” of English language translations of the Order of Mass found in *Liturgiam Authenticam*. *Fifth Instruction For the Right Implementation of the Constitution on the Sacred Liturgy of the Second Vatican Council* “On the Use of Vernacular Languages in the Publication of the Books of the Roman Liturgy” April 25, 2001. Full text available: www.vatican.va/roman_curia/congregations/ccdds/documents.

holy communion. That the revised GIRM has increased the opportunities when communion under both species can be distributed (n. 283) has been legitimately highlighted as an advance on the former GIRM text. However in the United States the former norms for communion under both species, *This Holy and Living Sacrifice* had already broadened those opportunities and the revised *Norms for the Distribution of Holy Communion* continue to offer a broad use of two species. However, when the revised GIRM was first published in June 2000 it stated that only an ordained priest or deacon could pour consecrated wine into chalices for distribution. Thus caused concern here in the United States given our fairly common practice of distributing two species and having special ministers of the Eucharist assist with pouring the consecrated species into additional chalices. To deal with this the American bishops asked the Congregation for Divine Worship whether lay persons could pour consecrated wine into “auxiliary chalices” for distribution. In July 2000 Archbishop Tamburrino, then Secretary of the Congregation indicated that yes, lay persons could perform this ministry.⁴³ However, in April 2004 the document *Redemptionis Sacramentum* (n. 106) reverses this practice when it says that “the pouring of the Blood of Christ after the consecration from one vessel to another is completely to be avoided, lest anything should happen that would be to the detriment of so great a mystery. Never to be used for containing the Blood of the Lord are flagons, bowls, or other vessels that are not fully in accord with the established norms.” Then towards its end the document includes the pouring of consecrated wine among a list of “grave matters” having to do with the celebration of Mass (n. 173). There are a number of issues to be addressed here.⁴⁴ But for me a compelling one about not changing the practices we have been using for distributing communion concerns the difficulty of changing a ritual, not to mention training the number of volunteer extraordinary ministers of communion who have assisted in implementing a wide experience of administering communion under both forms to American Catholics. My concern today is that the practical problems involved in implementing this provision of *Redemptionis Sacramentum* may lead to a diminishment of offering communion under both forms. The possibility of receiving under both forms for laity as well as the clergy has gone a long way toward heightening our communal experience of dining at the table of the Lord as part of the ritual enactment of the eucharistic

⁴³ The letter was reprinted in the Bishops’ “Committee on the Liturgy,” *Newsletter* 36 (August 2000) 35.

⁴⁴ See, among others, the recent commentaries by Anthony Ward, “The Discipline of the Eucharist: The Instruction ‘Redemptionis Sacramentum’,” *Ephemerides Liturgicae* 118 (2004) 209-243 and John M. Huels, “Canonical Observations on Redemptionis Sacramentum,” *Worship* 78:5 (September 2004) 404-420. Also see the Statement issued by Cardinal Roger Mahony of Los Angeles on September 4, 2004 in which he asserts his willingness “to grant exceptions to no. 106 of *Redemptionis Sacramentum* for legitimate reasons, such as the following: where the altar table is too small to accommodate many chalices, thus creating a great danger for spillage; and where the number of chalices is so large that they would visibly detract from the important sign of One Bread and One Cup, as well as increase the danger of tipping over the chalice.”

sacrifice. To change the rite of communion and to restrict communion under both forms might well lead to a new phase of “liturgy wars” where rubrical details become preoccupying when in fact liturgy is less about getting “the rites” right, or getting the right “rites.” It is far more about how liturgical ritual impacts on our lives. Ritual familiarity can and should allow for greater emphasis on personal appropriation of what the liturgy enacts and means, especially theologically and spiritually.

7. Baptismal and Ministerial Priesthood

In n. 14 the Liturgy Constitution states that the “Church earnestly desires that all the faithful be led to that full, conscious, and active participation in liturgical celebrations called for by the very nature of the liturgy. Such participation by the Christian people as ‘a chosen race, a royal priesthood, a holy nation, God’s own people’ (1 Pt 2:9, see 2:4-5) is their right and duty by reason of their baptism.”⁴⁵ It then states that “this full and active participation by all the people is the aim to be considered before all else; for it is the primary and indispensable source from which the faithful are to derive the true Christian spirit.”⁴⁶ The Constitution also states (n. 27): “It is to be stressed that whenever rites, according to their specific nature, make provision for communal celebration involving the presence and active participation of the faithful, this way of celebrating them is to be preferred, as far as possible, to a celebration that is individual and quasi-private.”⁴⁷

This data from the Liturgy Constitution reveals that “active participation” is a chief aim of the liturgical reform, that such participation reflects the ecclesiology of all liturgy, and that in the Eucharist, while respecting the role of the ordained, that the baptized lay faithful should offer the Immaculate Victim to the Father with the priest. When it comes to exploring what “active participation” in the liturgy means, many commentators since Vatican II have stressed the adjective – active – and explored the ways in which all members of the liturgical assembly should be active in what they do in conducting the liturgy itself.

However, some more recent writing among liturgical theologians has taken a different tack. Namely what does the noun “participation” mean? If one is, literally, “to take part” in the liturgy as a means of human sanctification then one must understand that the liturgy is a privileged means of “taking part in” the life of

⁴⁵ The Latin reads: “*Valde cupit Mater Ecclesia ut fideles universi ad plenam illam, consciam atque actuosam liturgicarum celebrationum participationem ducantur, quae ab ipsius Liturgiae natura postulatur et ad quam populus christianus, ‘gens electum, regale sacerdotium, gens sancta, populus acquisitionis’ (1 Petr. 2,9; cf. 2,4-5), vi Baptismatis ius habet et officium.*”

⁴⁶ The Latin reads: “*Quae totius populi plena et actiosa participatio in instauranda et fovenda sacra Liturgia summopere est attendenda....*”

⁴⁷ The Latin reads: “*Quoties ritus, iuxta propriam cuiusque naturam, secum ferunt celebrationem communem, cum frequentia et actiosa participationem fidelium, inculcetur hanc, in quantum fieri potest, esse praeferendam celebrationi eorundem singulari et quasi privatae.*”

the triune God. This is to say that in a theological sense “liturgy” and “participation” are so intertwined as to be redundant. Clearly the Council’s call that all participate “actively” is a reaction to centuries of what one might call “passive” liturgical participation when congregations watched what liturgical ministers did in the sanctuary and read along from hand missals vernacular translations of what the presiding bishop or priest was saying at the altar. Obviously any act of sacramental liturgy implies the participation of the baptized and the ordained in this unique act of common prayer which is, by its nature, a participation in the life of God. Hence it is important to note what both the Liturgy Constitution and the Constitution on the Church have to say about this interrelationship.

In n. 48 the Liturgy Constitution refers explicitly to the participation which “Christ’s faithful” should be engaged in, namely “they should participate knowingly, devoutly, and actively.”⁴⁸ It goes on to say that the faithful “should give thanks to God; by offering the Immaculate Victim, not only through the hands of the priest, but also with him (*una cum ipso offerentes*) they should learn to offer themselves too.”⁴⁹ The relationship of the ordained and the lay faithful at liturgy is also described in the Constitution on the Church. In n. 10 it states:

Though they differ from one another in essence and not only in degree, the common priesthood of the faithful and the ministerial or hierarchical priesthood are nonetheless interrelated. Each of them in its own way is a participation in the one priesthood of Christ. The ministerial priest, by the sacred power he enjoys, molds and rules the priestly people. Acting in the person of Christ, he brings about the Eucharistic Sacrifice, and offers it to God in the name of all the people. For their part, the faithful join in the offering of the Eucharist by virtue of their royal priesthood. They likewise exercise that priesthood by receiving the sacraments, by prayer and thanksgiving, by the witness of a holy life, and by self-denial and active charity.”⁵⁰

Both of these texts from the Liturgy Constitution n. 48 and the Constitution on the Church n. 10 have received abundant commentary since the Council, and not always with the equanimity and irenicism which mark the originals.

While some have stressed the newness of these texts about active participation of the baptized and the relationship among Christ’s high priesthood, the baptismal

⁴⁸ The Latin reads: “*conscie, pie et actuose participant....*”

⁴⁹ The Latin reads: “*non tantum per sacerdotis manus, sed etiam una cum ipso offerentes, seipsos offerre discant, et de die in diem consummentur, Christo Mediatore....*”

⁵⁰ The Latin reads: “*Sacerdotium autem commune fidelium et sacerdotium ministeriale seu hierarchicum, licet essentia et non gradu tantum differant, ad invicem tamen ordinatur; unum enim et alterum suo peculiari modo de uno Christi sacerdotio participant. Sacerdos quidem ministerialis, potestate sacra qua gaudet, pocius in persona Christi conficit illudque nomine totius populi Deo offert; fideles vero, vi regalis sui sacerdotii, in oblationem Eucharistiae concurrunt.*”

priesthood and the ministerial priesthood what is asserted in these conciliar texts has been a chief and distinguishing characteristic of the Catholic magisterium in the twentieth century about liturgical participation. The conciliar documents themselves refer to the writings of Pope Pius XI and Pius XII in this regard.⁵¹

At the same time one of the more intriguing documents to come from the post Vatican II magisterium that refers to the ways in which the baptized and the ordained participate in the liturgy is in the 1974 document from Paul VI on "Mass stipends."⁵² In approving the practice of offering stipends for Mass Paul VI explores what such offerings mean in terms of liturgical participation. He says "... that the faithful desiring in a religious and ecclesial spirit to participate more intimately in the Eucharistic Sacrifice, add to it a form of sacrifice of their own by which they contribute in a particular way to the needs of the Church and especially to the sustenance of its ministers." "This practice by which the faithful unite themselves more closely with Christ offering himself as a victim, thus deriving more abundant fruit from the sacrifice, has not merely been approved but has been positively encouraged by the Church. It is regarded as a sign of the union of the baptized person with Christ and of the faithful with the priest who exercises his ministry for their good."⁵³

That there are points of tension concerning the identity of the baptized and the ordained and their self understanding in liturgical ministering is clear in some contemporary liturgical writing. My own sense is that Congar had it right. If we can imagine three concentric circles dealing with priesthood the widest circle is Christ's high priesthood. The first circle within that one is the baptismal priesthood shared in by all the baptized. The second circle within that is comprised of ordained priests. In fact conciliar texts allow for such an image. Pope John Paul II himself repeatedly refers to the ordained and the baptized in relation to Christ the High Priest. In fairness liturgical theologians do well to read conciliar texts about the baptized and the ordained in relation to each other – and always in relation to Christ's unique high priesthood.

Let me turn now to what liturgical documents "say" about how the baptized and the ordained take part in the life of God in the act of sacramental initiation. The sources for what follows are the "General Introduction" to Christian Initiation, the "Introduction" to the Rite for the Baptism of Children, the "Introduction" to the Rite of Christian Initiation of Adults and the "General Instruction of the Roman Missal." The reason why I have chosen the (General) Introductions to the rites for the sacraments of initiation is that these are important sources that describe, among other things, the theological rationale for the rites that follow. Thus these comprise

⁵¹ See, Pius XI, *Miserentissimus Redemptor*, May 8, 1928, AAS 20 (1928) 171 ff., Pius XII, *Mediator Dei* Nov. 20, 1947, AAS 39 (1947) 555, *Magnificate Dominum*, Nov. 2, 1954, AAS 46 (1954) 669 and *Vous nous avez*, Sept. 22, 1956, AAS 48 (1956) 714.

⁵² *Firma in Traditione*, trans from English language *L'Osservatore Romano*, July 11, 1974, reprinted in Austin Flannery *Vatican II and Post Conciliar Documents* (Grand Rapids: Eerdmans, 1984) 277.

⁵³ *Ibid.*

a comparatively new genre of liturgical literature. They deserve pride of place in any theological description of what the liturgy is and does. In much of what follows our concern will be what these documents say about the “offices and ministries” that are exercised in the sacraments of initiation.

General Introduction. Christian Initiation.

It is clearly stated here (in n. 7) that the “preparation for baptism and Christian instruction are both of vital concern to God’s people, the Church.” In the celebration of initiation “the people of God (represented not only by the parents, godparents, and relatives, but also, as far as possible, by friends, neighbors, and some members of the local Church) should take an active part.” It is the responsibility of “the parish priest (pastor) . . .” to see that those who will serve as godparents are qualified (n. 10). “The ordinary ministers of baptism are bishops, priests, and deacons” (n. 11). “They act in the Church in the name of Christ and by the power of the Holy Spirit” (n. 11, 1). That the parish is the presumed location of sacramental initiation is reflected in texts which speak of the involvement of the bishop and pastors in the celebration of baptism (e.g., n. 12). Where “other priests and deacons” are referred to as helping to prepare candidates and to preside at baptism the text states that this is “by the invitation or consent of the bishop or pastor to *confer* the sacrament” (n. 14, italics added, the Latin uses *conferre*). Baptism is “administered” (the Latin here is *ministrare*) by “any member of the faithful in danger of death” (n. 16).

Introduction. Rite for Baptism for Children.

In introducing the various “ministries and roles in the celebration of baptism” (*de ministeriis et officiis in celebratione Baptismi*) the text (n. 4) states that “the people of God, that is, the Church, made present by the local community, has an important part to play in the baptism of both children and adults.” “Before and after the celebration of the sacrament, the child has a right to the love and help of the community. During the rite, in addition to . . . congregational participation . . . (*congregatio praestanda enumerata sunt*) the community exercises (*communitas munus suum exercet*) its duty when it expresses its assent together with the celebrant (*cum celebrante proferendo*). . . . In this way it is clear that the faith in which the children are baptized is not the private possession of the individual family, but the common treasure of the whole Church of Christ.”

The role of parents is emphasized over the role of godparents (n. 5). They “should prepare to take part in the rite with understanding (*ad consciam celebrationem se praeparent*) . . .” while one of the duties of the pastor (*parochus*) is “to prepare them for the coming celebration.” Their active participation in the liturgy of baptism is called “a genuine ministry” (*verum praestant ministerium*) and after baptism it is their responsibility (n. 5, 5) “to assist the child to know God . . . to prepare the child to receive confirmation and participate in the holy eucharist

(*ad Confirmationem suscipiendam et Sanctissimam Eucharistiam participandam praeparare*).⁵⁴ (Interestingly the word “receive” is used of confirmation while “participate” is used of the Eucharist.) It is the duty of pastors (*pastorum*)⁵⁵ (n. 7, 1) “to prepare families for the baptism of their children” and (n. 7, 2) “to arrange that baptism is always celebrated with proper dignity . . .” (*celebratio debita fiat cum dignitate*). In one place in the Introduction (n. 18) the minister is referred to as “the celebrant” (*tum celebrantis*). The ministers specified when baptism is celebrated in danger of death (n. 22) are noted as “the priest (*sacerdos*) or deacon” and that when confirmation is celebrated “the pastor (*parochus*) or other priest (*vel autem alius sacerdos*) enjoying the same faculty should not fail to confer confirmation. . . .”

Introduction. Rite for Christian Initiation of Adults.

In pride of place throughout this Introduction the emphasis is placed on the way “the initiation of adults is the responsibility of all the baptized” (n. 9)⁵⁶ who are also noted as “the people of God, represented by the local church.” Given the scope of the anticipated preparation for sacramental initiation it is not surprising that the introduction emphasizes the role(s) of sponsor and godparents (nn. 10, 11). And that presbyters (the Latin is *presbyterorum*) must approve the choice of godparents (n. 13), who are admonished (n. 11) to “fulfill this office” (*munus suum publice exercet*). The role of the (diocesan) bishop is emphasized from the rite of election to the Easter vigil (n. 12). If the bishop is absent then (n. 14) “the priest (*presbyter*) who baptizes . . . should also confer confirmation” (*Confirmationem quoque conferat*). The rite also states (n. 14) that “the minister of confirmation may associate priests (*presbyteros*) with himself to administer the sacrament” (*ad sacramentum ministrandum*). Deacons are urged (n. 15) to be “ready to assist in the ministry to catechumens” as are “catechists” (n. 16). The “sacraments of initiation” are regularly referred to as “celebrations” (specifically n. 23 “the celebration” and n. 26 “will be celebrated”). Baptism is referred to as a sacrament that one validly receives (*iam valide acceptorum attenti*) while their eventual celebration of the Eucharist (n. 75, 3) is termed “participation” (*participationem*). That these sacraments have a distinct paschal character is underscored by references (n. 138) to Lent as a time to prepare “to celebrate the paschal mystery” (*ad festa paschalia et ad sacramentorum initiationem se praeparent*). When the Introduction describes the actual liturgy of initiation it regularly uses variations on the term the term “celebration” (*celebretur, celebratio*) (nn. 206, 209, 210 etc.) although in this connection it also uses the phrase “the conferral of the sacraments” (*conferuntur*).

⁵⁴ Note the absence of “most holy” in the translation.

⁵⁵ The choice of “pastor” here is deliberate. Unfortunately the English translation is “priest” and is deliberately not quoted here.

⁵⁶ The enumeration of the paragraphs is different in the English and Latin editions. The English enumeration will be used here.

It is notable, especially when comparing this Introduction with the other two, that the theological descriptions of what these liturgical celebrations “accomplish” are cited (n. 210) as sharing “in Christ’s own death and resurrection” (*mortis et resurrectionis Christi . . . participiamus*), that the baptized receive “adoption” (*filios adoptionis*), that the anointing with chrism (n. 214) “is a sign of the royal priesthood of the baptized” (*significat sacerdotium regale baptizatorum*) and that when they take an “active part” in the Eucharist (*celebratio Eucharistiae*) this signifies that they have been raised “to the ranks of the royal priesthood” (n. 217) (*ad dignitatem sacerdotii regalis*) and that from this eucharistic participation they “are given a foretaste of the eternal banquet” (n. 217) (*et aeterna praelibant*).

During the period of mystagogy the Introduction reiterates how sacramental initiation leads to “deepening their grasp of the paschal mystery” (n. 244) (*in mysterio paschali*) and that their “new participation in the sacraments enlightens” them (n. 246) (*Nove sacramentorum frequentatio, sicut illuminat sacrum Scripturarum intellectum*).

What the liturgy enacts and celebrates is our communal incorporation into Christ’s paschal dying and rising and the dying and rising of all of us – baptized and ordained. We do this through, with and in Christ our eternal high priest. There should be no such thing as a liturgical “turf war.” Our liturgical and ecclesial roles as baptized and ordained derive from Christ himself whose life, death and resurrection are actualized again and again for the whole church in and through the liturgy.

Conclusion

It has been my intention to offer a *status quaestionis* about the craft of liturgical theology today. It is my conviction that establishing a proper method for the study of liturgy in general and for liturgical theology specifically is still a work in progress. For me relating each of the individual parts of the triad *lex orandi, lex credendi, lex vivendi* to each other is key to delineating a proper theological appreciation for the liturgy and for the kind of theology that can be derived from the liturgy. As I stated at the outset: the celebration of the sacred liturgy leads to a number of things among which are the building up of the Body of Christ and sanctifying the church for its role in witnessing in our world to the paradoxical values of the kingdom of God. The liturgical reforms of Vatican II were not simply about changing and reforming rites; the liturgical reforms of Vatican II were and are about changing minds and hearts and nothing less than reforming and sanctifying lives. Among other things liturgical theology should help us get beyond any kind of rubrical or even ritual self-consciousness. It ought to be one of the means we use to understand that liturgy is ultimately not about getting rites right. Rather it is about putting our Christian lives in order by an ever deepening conversion to Christ. Liturgy is about helping us to do nothing less than getting life right. Or at least to get life less wrong.

FINDING METHOD IN THE MADNESS: WRITING SENTENCES IN LACK OF DUE DISCRETION CASES

REV. JOHN P. BEAL

Lack of due discretion about the essential matrimonial rights and obligations to be mutually handed over and accepted (c. 1095, 2°) has long been the most frequently chosen ground for nullity in formal marriage cases decided by tribunals in North America. Indeed, the disproportionately large number of cases decided on the ground of lack of due discretion has not infrequently prompted gentle – and sometimes not so gentle – rebukes from the Apostolic Signatura and prodding from both Roman officials and scholars for North American tribunals to explore other, especially more “traditional,” *capita nullitatis* in their adjudication of marriage cases. As a result of the frequency with which tribunals resort to lack of due discretion as the ground for investigating and deciding marriage cases, tribunal practitioners have developed considerable expertise in instructing cases on this ground and ferreting out the evidence needed to prove it. Unfortunately, the skills honed in investigating lack of due discretion cases do not seem to have translated automatically into comparable skills in drafting cogent arguments in the definitive sentences in these cases.

The “In Facto” sections of our decisions in marriage cases are to be genuine, logical arguments in which the relevant facts are ascertained, the law previously elaborated in the “In Iure” sections of the sentences is applied to these facts, and conclusions for or against the invalidity of the marriage flows smoothly and naturally from the judge’s reasoning. The sentences published by Lawrence Wrenn are models of such clarity and logical rigor.¹ Unfortunately, many, if not most, of the decisions issued by our tribunals in lack of due discretion cases do not fare especially well when they are measured against the exacting standard set by Wrenn. Instead of coherent arguments, our tribunal decisions often seem to consist of little more than narrative histories of the marriages under review, with or without an attempt to separate the wheat from the chaff or to explain why some evidence is reliable and relevant and some is not. These sometimes rambling narratives frequently conclude rather abruptly with the assertion that the invalidity of the marriage has been (or, more rarely, has not been) proved. Sentences of this kind read like the inventory from the haul from the dragnet, which, when cast into the

¹ See Lawrence G. Wrenn, *Decisions*, 2nd edition revised (Washington: CLSA, 1983) 16-45 and Id., *Judging Invalidity* (Washington: CLSA, 2002) 7-11.

sea, collects fish of every kind. Such an undifferentiated catch may be inevitable in the instruction of lack of due discretion cases where the investigative net needs to be cast wide and far. However, the task of judges is to be like fishermen in drafting their decisions by performing the necessary but sometimes tedious task of sorting through what has been caught in their net. “When it is full, they haul it ashore and sit down to put what is good in buckets” and decisions and throw away the rest.²

Criticism of the quality of sentences in lack of due discretion cases is not meant to suggest that, as a result of poorly crafted decisions, our tribunals regularly reach erroneous conclusions in these cases by declaring invalid marriages whose validity should be upheld. Even those untutored in the subtleties of canonical jurisprudence can, when made aware of the facts of particular cases, conclude spontaneously and intuitively, “That was not a real marriage.” Nevertheless, tribunal judges are expected to give greater precision and logical rigor to these intuitive judgments, and their failure to do so can have serious consequences. Failure to present cogent arguments justifying decisions in lack of due discretion cases thwarts effective review of decisions by appellate courts and may result in protracted delays in second instance proceedings or even reversals of decisions when even sympathetic appellate judges cannot discern the thread of reasoning that led the lower tribunal to its conclusion. The absence of reasoned arguments also makes it difficult to explain to the parties to marriage cases why their marriage was (or was not) declared invalid and thereby handicaps them in their efforts to exercise intelligently their right to challenge the sentence. More generally, failure to provide carefully reasoned arguments in sentences perpetuates the old canard that matrimonial jurisprudence is little more than “Catholic gobble-de-gook.”

Pope John Paul II has pointed out that one of the functions of the Roman Rota is to assist lower tribunals by its decisions.³ Tribunals have long relied on the “In Iure” sections of Rotal decisions for deeper insights into and sometimes innovative elaborations of the practical implications of the lapidary formulas of the code. The law sections of our own decisions with their frequent references to the sentences of Rotal judges from Anné and Felici to Stankiewicz and Funghini are eloquent testimony to our indebtedness to the wisdom of Rotal judges for our understanding of jurisprudence. However, our reliance on the actual arguments advanced by the Rotal judges as they apply this law to the often messy facts of concrete cases has been less frequent. Nevertheless, these arguments are an invaluable resource on which tribunal practitioners can “go to school” to learn the art of writing good sentences in lack of due discretion cases.

To illustrate what we can learn from the Rota about writing sentences, I propose to examine three relatively recent published Rotal decisions in lack of due

² Mt 13: 47-48.

³ John Paul II, apostolic constitution *Pastor bonus*, §126.

discretion cases: a decision *coram* Monier issued on June 21, 1996,⁴ a decision *coram* Boccafola issued on January 25, 1996,⁵ and a decision *coram* Boccafola issued on November 21, 1996.⁶ All three decisions were published in the official Rotal anthology *Romanae Rotae Decisiones seu Sententiae* for the judicial year 1996. None of these decisions involve cases with bizarre or even unusual fact situations. The stories related in these cases are scenarios so familiar to our tribunals that practitioners may wonder how such “easy” cases ever found their way to the Rota. Nor is there any evidence that the *ponentes* had any intention of presenting an innovative, cutting-edge law section. Their “In Iure” sections lay out mainstream jurisprudence, although they do contain some interesting observations on assessing psychological factors in lack of due discretion cases and on the use of experts. These three decisions were chosen for examination because the cases arose in the English-speaking world (although not in North America) and the testimony of the parties and witnesses is, therefore, in English, because they all studied the facts at least partially through the lens of possible lack of due discretion, and because all three ultimately concluded for nullity. Thus, these three decisions are the solid, workmanlike products of Rotal judges whose efforts are worthy of our emulation.

I. *Coram* Monier, June 21, 1996

A. The Facts

The fact in this case originating in Dublin and decided by the Rotal turnus with Monier as *ponens* joined by Serrano and Burke are as follows:

Emily, 23 and a Catholic, met Augustine, 30 and a non-Catholic, in 1978 and began to date. They became engaged at Christmas of 1979. Shortly before the wedding, Augustine was received into the Catholic Church. Emily and Augustine were married in the Catholic Church in Dublin on March 20, 1981. They separated on June 22, 1985 not long after the birth of their first and only child. Emily introduced a petition for a declaration of nullity in the Tribunal of Dublin on November 12, 1985. The issues were joined on December 17, 1985 on the ground of Augustine’s lack of due discretion or inability to assume the essential obligations of marriage. The Tribunal of Dublin issued a negative decision on both grounds on May 8, 1990. Emily appealed this negative decision, and, with no additional instruction of the case, the appellate tribunal issued an affirmative decision solely on the ground of Augustine’s lack of due discretion on May 2, 1991.

⁴ *Coram* Monier, June 21, 1996, *Romanae Rotae Decisiones seu Sententiae* 88 (1996) 486-493.

⁵ *Coram* Boccafola, January 25, 1996, *Romanae Rotae Decisiones seu Sententiae* 88 (1996) 62-70.

⁶ *Coram* Boccafola, November 21, 1996, *Romanae Rotae Decisiones seu Sententiae* 88 (1996) 733-734.

Since conformity of decisions was lacking, the case was deferred to the Roman Rota for a third instance decision.

B. A Point of Law: The Source of Lack of Due Discretion

Since the appellate tribunal in Ireland had issued an affirmative decision only the issue of Augustine's lack of due discretion, this ground was the sole issue to be resolved by the Rota. Monier noted in the "In Iure" section that since, the legislator has not defined the possible cause or causes of this defect of consent, he has entrusted to ecclesiastical judges the responsibility for identifying and assessing factors that impinge on a person's discretionary capacity. Consequently, Rotal jurisprudence is accustomed to finding the roots of lack of due discretion not only in "mental illness" in the strict sense in which this phrase might be used and understood by psychiatrists, but also in a wide variety of "anomalies of the personality" either taken singly or in their coalescence in the same person.⁷ What is important is not whether the psychological cause of the incapacity is a psychosis, a psychic anomaly, a personality disorder, or even the mere fact of an immature personality, but whether the condition rendered the person's exercise of discretion not merely difficult but impossible, at least at the time of consent. When making these determinations, judges will find the evaluations of psychological experts helpful and, at times, indispensable, but the responsibility for decisions about the gravity of the impact of psychological disturbances on discretionary capacity rests with the ecclesiastical judge who must make this assessment in the light of the facts assembled in the acts of the case.⁸

C. The Question of Credibility

Monier began the argument proper with a brief assessment of the relative credibility of Emily and Augustine. This assessment was particularly important since most of the information about the courtship and marriage in the acts of the case is derived from Emily's own testimony, testimony which was not entirely in harmony with the account offered by Augustine in his declaration to the Dublin tribunal. In particular, Augustine seemed to have been completely silent about some crucial points alleged by Emily and to have generally minimized the significance of his own behavior for the failure of the marriage. To reach a just decision in the face of conflicting evidence, the judges needed to articulate their reasons for finding Emily a truthful and reliable reporter of events. The first phase in the assessment of the relative credibility of the parties took a positive approach. Emily is deemed credible by the Rotal judges because her honesty and integrity is

⁷ *Coram Monier*, §5, 489. Here and hereinafter the Rotal decisions under discussion will be cited by the paragraph and page number in *Decisiones*.

⁸ *Ibid.*, §6, 489.

attested by all the witnesses who were heard in the case. Moreover, the psychological expert employed by the Dublin tribunal, who had administered a personality inventory to Emily, reported: "An extreme score was obtained on the factor indicative of naivete."⁹ The relevance of this test result was that it inclined the judges to deem Emily truthful when she testified about Augustine's somewhat bizarre behavior (e.g., his transvestite tendencies) during the marriage, behavior for which there is little or no independent corroborative evidence. In brief, Emily's documented naiveté made it unlikely, at least in the opinion of the Rotal judges, that she fabricated her testimony about matters of which she had no knowledge or experience prior to her contact with Augustine.

The assessment of Augustine's credibility took a more negative approach. Witnesses questioned in connection with the case were decidedly negative about Augustine's truthfulness. A friend Tom testified: "He was a man who didn't know what the truth was. To achieve what he wanted he never hesitated to tell lies." Their parish priest, Father C., to whose written affidavit the Rotal judges attributed great weight, observed: "The impression he gives is of being a feckless, immature, probably alcoholic sort. He sounded a bit slurred. . . . His thinking is not coherent. I even got the impression of a slight toucher. . . . I am convinced he's either got a personality problem or is an alcoholic." This decidedly negative assessment of Augustine's credibility was underscored, at least in the eyes of the Rotal judges, by the fact that Augustine was received into the Catholic Church on the eve of the wedding, but never subsequently practiced the faith. This evidence of a superficial or perhaps insincere conversion suggested to them a man who does not take his religious and moral commitments with great seriousness.¹⁰ The result of this assessment of the relative credibility of the parties was to bolster the Rotal judges' confidence that they could rely on the events reported by Emily as "the facts" of the case, while discounting and, at times, ignoring Augustine's sometimes contrary testimony.

D. Evidence of the Respondent's Disordered Personality

The testimony in the acts forwarded to the Rota suggested that, in his family environment, at school, and more generally in his general shirking of adult responsibilities, Augustine exhibited signs of a less than well developed personality.¹¹ Although these suggestions of emotional instability did not appear to have been well fleshed out in the testimony assembled by the Dublin tribunal, they were sufficiently well documented to attract the notice of the Rotal judges. The judges found it somewhat surprising that Emily reported no particular problems or conflicts during her and Augustine's courtship or of any pressures on either of

⁹ *Ibid.*, §7, 489.

¹⁰ *Ibid.*

¹¹ *Ibid.*, §8, 489.

them to marry. Nevertheless, friends did have concerns, even before the wedding, about Augustine's rather cavalier attitude about responsibilities. His longtime friend Pat testified:

Augustine wanted to carry on his bachelor life and just have Emily to come home to. He was selfish, aggressive and abusive and had no idea of the obligations of marriage. I felt that he married because most of his pals were married or getting married and it was a boost for his moral [sic] to marry this very attractive, good looking girl.¹²

Friends were especially concerned about Augustine's excessive drinking even in the period prior to the marriage. Emily's mother testified: "Drink was Augustine's way of life." Pat added: "Before the marriage Augustine did drink to excess. . . . He would go home drunk many a night." The witnesses confirm that excessive use of alcohol put an additional edge on his already abrasive personality and led him into aggressive and sometimes boorish behavior.¹³

Summarizing the testimony before them, the Rotal judges observed: "Already from the beginning of the conjugal life serious and weighty difficulties emerged."¹⁴ Three of these difficulties are especially worthy of note: his alcoholism, his transvestite tendencies, and his rejection of parental responsibility.

1. Augustine's alcoholic drinking pattern and its disruptive impact on common life was well attested by witnesses. Emily herself testified: "Three month after we got married, in June of 1981, he moved out. He said he felt trapped in marriage, that he never should have got married." She also recalled: "Augustine was spending the money on drink, and no savings were being made. . . . He would stay at the pub until his money run out."¹⁵ Augustine conceded that his drinking was a source of friction in the marriage: "I've been accused of drink. I suppose I had a bit too much. . . . Being home late – that had some bearing."¹⁶ Witnesses attested that he drank more than "a bit too much" and that his late hours had more than "some bearing" on the failure of the marriage. His friend Tom testified: "Augustine was a selfish man. . . . He spent most of his free time in the pub and went there immediately after work. He spent the best part of his money in the pub and Emily had to provide for herself."¹⁷ This account was confirmed by Pat who said: "After the marriage he still continued to drink and come and go as he liked in the marital

¹² Ibid., §8, 490.

¹³ Ibid.

¹⁴ Ibid., §9, 490.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid., §9, 490-491.

home.”¹⁸ From this evidence the Rotal judges conclude that Augustine suffered from “chronic alcoholism.”¹⁹

2. Emily testified: “About four months after the wedding, he asked me to use my clothes, and I discovered he was a transvestite. . . . The tendency to dress up was always there after that and it got worse.”²⁰ Although Augustine did not admit to these tendencies in his own declaration before the Dublin tribunal, his friend Pat reported that “many of his friends suggested that he was a transvestite and Emily confirmed this and told me on one occasion that several times he had worn her clothing.”²¹ Treating Emily’s conversation with Pat as a sort of extrajudicial declaration at a non suspect time, the Rotal judges accepted as fact Emily’s allegations of Augustine’s transvestitism and saw it as an additional sign of Augustine’s disordered personality and lack of moral sensibility.²²

3. For the Rotal judges, the most telling indicator of Augustine’s disordered personality was his reaction to Emily’s pregnancy and the eventual birth of their child. Emily recalled: “When I was pregnant, Augustine did not want the baby. He wanted the baby to be adopted. Then he wanted me to go home to my parents as I was pregnant. . . . When I was about six weeks pregnant. . . , he wanted me to have an abortion.” After their daughter was born, Augustine wanted nothing to do with her and gave Emily “no money ever to dress or feed the baby.”²³ The Rotal judges then quoted snippets from the testimony of various witnesses as confirmation of Augustine’s utter lack of responsibility in caring for his family.²⁴

E. The Contribution of Expert Testimony

Despite this evidence of defects in Augustine’s character, the Rotal judges were reluctant to move to a decision without first submitting the acts of the case to the evaluation of a psychological expert. In fact, they were rather critical of the failure of the first instance tribunal to commission such an evaluation not because this failure was a violation of the law, but because local experts “could easily have recognized the disorders (*deordinationes*) of the man” and obviated the need for a third instance proceeding. In other words, consultation with an expert would have enabled the Dublin tribunal to reach the correct decision in the first instance. The Rotal judges’ reluctance to move directly to a decision on Augustine’s lack of due

¹⁸ *Ibid.*, §9, 491.

¹⁹ *Ibid.*, §9, 490.

²⁰ *Ibid.*, §10, 491.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

discretion was prompted less by their doubts about the seriousness of the defects in Augustine's character chronicled in the acts than by their uncertainty about antecedence of these personality deficits to the marriage. The report of Doctor B., the psychiatric expert appointed by the Rota to examine the acts of the case, called particular attention to Augustine's alcoholism and transvestitism as well as his grave affective immaturity. This expert opined: "This grave and multi-faceted disturbance of the personality of the respondent, of very early onset . . . , had a strongly negative, even deleterious, effect on the respondent's capacity to evaluate conjugal obligations competently, both on the part of the reason and on the part of affectivity."²⁵ This report removed any lingering doubts the Rotal judges may have had about the antecedence of Augustine's troubled emotional state. In short, although his difficulties prior to the marriage were only vaguely sketched in the testimony in the acts, "these disturbances," which became painfully evident during the brief period of common life, "were not created *ex nihilo*."²⁶ They could only have achieved such salience during the marriage if they had been deeply rooted in Augustine's personality beforehand.

F. Reasoning to a Conclusion for Invalidity

The Rotal judges did not move directly from the expert's finding of serious personality problems in the respondent to a conclusion for nullity. Instead, they proceeded from the expert's finding of pre-marital roots for Augustine's disturbed personality to a conclusion about the issue before them by the mediation of what they call "an apt proof through the accumulation of indices."²⁷ In particular, they highlighted

the fickle character of the husband who did not take seriously his own conversion to the Catholic faith on the eve of the wedding; the same man's surrender to excessive drinking; his immaturity and utter irresponsibility in caring for family matters; his overt tendency to transvestitism and transexualism with a deficient moral sense; the brief time of cohabitation; some suspicions of the existence of a prior grave disorder, all of which are confirmed with sufficient clarity by the parties and witnesses worthy of trust.²⁸

While any one of these indices taken alone might not have been sufficient to prove that Augustine lacked the due discretion for marriage, taken together they were, for the Rotal judges, conclusive proof of the invalidity of the marriage. In short, the

²⁵ Ibid., §11, 492.

²⁶ Ibid.

²⁷ Ibid., §11, 492.

²⁸ Ibid.

only reasonable explanation for the convergence of all of these indices was that Augustine lacked the due discretion for marriage. Thus, the judges decided that the nullity of the marriage had been proven.

II. *Coram* Boccafolà, January 25, 1996

A. The Facts

The basic facts in this case decided by the Rotal turnus with Boccafolà as *ponens* joined by Faltin and Civili are as follows:

Brigid, 20 and an Irish Catholic, and Anthony, 33 and a Dutch national, met at the bank in Dublin where she was employed and where he had come on business for his employer in the Netherlands. Almost immediately, they began a torrid affair. Brigid quit her job at the bank and moved in with Anthony. When his business in Ireland was completed, Brigid accompanied him back to the Netherlands where they continued to cohabit. Brigid soon grew tired of Anthony and was planning to leave him and return to Ireland when she discovered she was pregnant. Anthony gallantly offered to pay for Brigid to have an abortion or to marry her. Brigid returned to Ireland ostensibly to make wedding plans, but secretly to try to explore her options. When her parents made it clear that keeping her baby but not marrying was not an option they would tolerate, Brigid proceeded with wedding plans. The marriage was celebrated in her parish church in Cork on April 16, 1979.

The marriage of Brigid and Anthony was as brief and tumultuous as their courtship. They separated in 1981 and this separation was made definitive by the civil court in 1983. Brigid petitioned the tribunal of Nullity for a declaration of nullity on February 5, 1985. The petition was accepted and, on May 1, 1989, the doubt was formulated as follows: whether this marriage was invalid because of the lack of due discretion or the inability to assume the obligation of marriage on the part of one or both parties. Prior to this joinder of issues, Anthony had been properly cited and responded to the citation by submitting himself to the justice of the court but retaining his right to examine the acts of the case and be informed of the progress of the process. On July 12, 1989, Anthony was declared absent from the trial and, on November 21 of the same year, the Dublin tribunal unilaterally altered the dubium to read simply: whether this marriage was invalid because of force and fear inflicted on the woman. Anthony was not informed of this change of grounds.

On January 23, 1990, the Dublin tribunal issued an affirmative decision on the ground of force and fear. When informed of this decision, Anthony addressed a complaint to the Apostolic Signatura which transmitted the

complaint to the Rota. On July 23, 1991, the Dublin sentence was declared irremediably null by a turnus *coram* Burke. This decree was confirmed by a second Rotal turnus *coram* Boccafola which was then granted a special commission to hear the case in first instance. This turnus reformulated the doubt as follows: whether this marriage was invalid because of lack of due discretion on the part of the petitioner and, if not, because of force and fear inflicted on the petitioner by her parents.

B. The Principal Focus: Brigid's Immaturity

The turnus *coram* Boccafola began its discussion of the case by noting the fact that the two grounds proposed in the new joinder of the issues are incompatible. If one is lacking the due discretion for marriage as Brigid is alleged to have been, one is incapable of matrimonial consent altogether. Once a lack of due discretion has been established, there is no basis for inquiring further about a possible defect in the consent ostensibly given. Thus, the Rotal turnus proposed to examine first the question of Brigid's lack of due discretion and then to move on to consider the impact of reverential fear perhaps inflicted by Brigid's parents only if they had come to a negative decision on the ground of lack of due discretion.²⁹

The testimony of Brigid herself and all witnesses about Brigid's immaturity was so clear and unequivocal that there was no reason for the Rotal judges to linger long over issues of relative credibility or apparent conflicts in the evidence. Instead, they took over and made their own the summary of the witness testimony made by the first instance tribunal in Dublin:

Among the witnesses there is almost universal agreement concerning the personality of Brigid at the time of the marriage. She is described as immature, wild, highly-strung, flighty, mixed-up, emotional and erratic, not mature or stable. Those who know her well speak of Brigid as a difficult child. She became demanding and manipulative, and always had to get her way. She describes herself as emotionally immature at the time of the marriage and distraught and upset because of her situation.³⁰

Although this summary strongly suggested that Brigid's immaturity long antedated her marriage to Anthony, the Rotal judges cited the statement of her sister Rosemary to underscore the fact that Brigid's erratic behavior had deep roots in her childhood and adolescence. Rosemary testified: "She was particularly immature at the time because of going back to the relationship with my mother – she had a dependence on my mother – a love/hate conflict that exists to this day. . . . She was

²⁹ *Coram* Boccafola, January 15, 1996, *RRDecisiones* 88 (1996) §13, 67.

³⁰ *Ibid.*, §14, 67.

more immature than you would normally expect to find in a girl of 19 years.”³¹ In case further confirmation of Brigid’s fragile emotional state was needed, the Rotal judges noted that Brigid was hospitalized briefly, although at the time the marriage was coming apart, for nervous exhaustion and depression.³²

C. An Aggravating Factor: Brigid’s Pregnancy

While Brigid’s immaturity was sufficiently well attested in the acts of the case to raise prudent doubts about her discretionary capacity even under the best of circumstances, Brigid did not come to marriage under the best of circumstances. For the Rotal judges, this pregnancy was the critical factor that tipped, if indeed such tipping were necessary, an immature young woman over the edge and deprived her of the due discretion for marriage. To highlight the significance of this circumstance, they quoted extensively from Brigid’s own declaration to the Dublin tribunal. Brigid reported that, before she learned she was pregnant, she had grown disenchanted with Anthony and was planning to leave him. When she returned to Ireland pregnant, she did not seek advice from family and friends (as the Rotal judges believe a mature person would have done), but concealed the fact of her pregnancy as she went through the motions of preparing for a wedding she did not really want. When she finally revealed to her family that she was pregnant, she did so in the hope that they would support her in a decision to keep the baby but not to marry Anthony. This hope was, however, quickly dashed:

I said that I did not love him and the only thing was I was pregnant and I wanted to keep the baby. But my father said that I could marry and keep the baby or go and have the baby adopted, but I would not be welcome home again if I kept the baby and did not marry. That was a terrible blow and I felt even more insecure and that [i.e., marriage] was the choice.³³

For a young woman as immature and dependent on the approval and emotional support of her parents as Brigid was, the threat of being physically and emotionally disowned by them was more than she could bear. Although the prospect of parental rejection and indignation may or may not have constituted a sufficiently grave external threat to justify an affirmative decision on the ground of force and fear, the Rotal judges focused more on the destructive impact of this threat on the internal liberty of this obviously immature young woman.

Brigid’s internal upheaval manifested itself in increasingly erratic behavior as the wedding approached. She herself reports that she “used to cry a lot,” was

³¹ *Ibid.*, §14, 67-68.

³² *Ibid.*, §14, 68.

³³ *Ibid.*, §15, 68.

“nervous and emotional,” and “was totally indecisive.”³⁴ Brigid’s account of her behavior was amply confirmed by her friend Helena, her brother, and her friend Joan. The testimony of these three witnesses was deftly excerpted and woven into the argument by the judges to make their own Joan’s conclusion: “It was just force of circumstances that drove her to consider marriage hastily as a solution to the problem she had. She had no real appreciation of marriage.”³⁵

D. The Contribution of Experts

Although many tribunals might have been satisfied that the facts presented sufficiently proved Brigid’s lack of due discretion without recourse to an evaluation by a psychological expert, the Rota was not. The reluctance of the Rotal judges to move ahead without the assistance of an expert was prompted, in part, by the fact that the tribunal in Dublin had already incorporated observations from three experts into the acts and, in part, by the strong objection, probably by the defender of the bond, that “these testimonies concerning the Petitioner’s immaturity and abulia and constriction at the time of the wedding are only vague and generic statements which are usually made in such cases by witnesses who are hardly truly learned.”³⁶ To counter this objection, the Rotal judges cited the reports prepared by the experts.

The first of these experts was Sister S., a religious, who had no credentials as a psychiatrist or even as psychologist but who possessed pastoral experience which the Rotal judges were willing to count as genuine expertise. Sister S. testified: “Bridget was immature for her age. . . . I do not consider that Bridget was sufficiently mature at the time of her marriage to appreciate what was involved.”³⁷ Doctor A, a psychiatrist who treated Brigid for emotional exhaustion and depression as an in-patient in the latter stages of the marriage, had a more technical assessment of Brigid’s “pre-morbid personality.” He opined: “Bridget would appear to have always been a rather anxious, insecure and immature girl. . . . The nature of Petitioner’s nervous condition was that of a depressive anxiety state in a rather anxious immature personality. . . . The origins would date back to childhood.”³⁸ The psychological expert consulted by the Dublin tribunal administered a variety of psychological tests to Brigid. These tests revealed “an immature, rigid personality with weak defences. . . . She has poor resources or sense of self worth. Her sense of identity is at a childish level of development.”³⁹

These expert opinions were deemed by the Rotal judges to be sufficiently weighty to refute the objection apparently raised by the defender of the bond that

³⁴ Ibid.

³⁵ Ibid., §16, 68-69.

³⁶ Ibid., §17, 69.

³⁷ Ibid., §17, 69.

³⁸ Ibid.

³⁹ Ibid.

the testimony of witnesses was too vague and generic to support a decision for nullity. Since the experts said in somewhat more learned language the same thing that the unschooled witnesses had reported, the Rotal judges made their own the argument of the petitioner's advocate:

The entire evidence shows her to have . . . been permanently imprudent in her action (home, school, job, and having committed herself to someone who loved her not before marriage), to have been totally confused about consenting or otherwise to marriage, . . . to have been emotionally and psychologically immature, and to have suffered at the time of consenting to marry from a grave defect of judgment concerning the essential rights and duties of marriage and to have lacked the required evaluative ability to have made an informed act of consent to a Christian marriage.⁴⁰

After concluding that Brigid was incapable of consent because of her lack of due discretion, the Rotal judges had no reason to move on to consider whether her consent was defective because of force and fear inflicted on her from without.

III. *Coram* Boccafolà, November 21, 1996

A. The Facts

The basic facts in this case originating in Leeds and decided by the Rotal turnus with Boccafolà as *ponens* joined by Burke and Alawan are as follows:

Brigid, 21, and Conrad, 24, married in Leeds on May 26, 1956. They had met about a year earlier at the hospital where they were both employed. Early in their relationship, Conrad forced himself on Brigid in what would today be called "date rape." Brigid felt terribly guilty about what had happened and, especially after she believed she was pregnant, pressed for marriage despite the opposition of her mother and her friends. Although common life endured for twenty-one years, it was never happy despite the birth of seven children. Conrad drank excessively, squandered money on alcohol and left the family destitute. On several occasions, he disappeared for months at a time. Conrad left the family to go to make his fortune in Australia in February of 1975 while Brigid was in the hospital giving birth to their last child. A civil divorce was granted on October 20, 1979.

Brigid filed a petition for a declaration of nullity of her marriage to Conrad with the tribunal of Leeds on August 7, 1978. A negative decision was granted on the grounds of lack of due discretion on the part of one or

⁴⁰ *Ibid.*, §18, 69-70.

both parties on October 25, 1983 and this decision was confirmed on September 6, 1985. Brigid then sought a new hearing of the case from the Rota. After a supplementary instruction of the case, which included consultation with an additional psychological expert, the favor of a new hearing was granted on December 4, 1991. A new joinder of the issues was held on March 23, 1992. At that time, the ground of inability to assume the essential obligations of marriage on the part of one or both parties was added to the previous ground of lack of due discretion.

B. Evaluating the Facts

1. The Question of Credibility

The Rotal judges began their argument by noting that accounts of the marriage related by Brigid and Conrad were quite different. Conrad tended to be laconic and to minimize, if not deny, the difficulties he and Brigid encountered during their life together as well as his responsibility for them; on the other hand, Brigid tended to be histrionic, to exaggerate and to view events from a rigid, black-and-white perspective. Thus, the judges had first to assess the relative credibility of the parties. On the whole, they were inclined to share the considered judgment of the appellate tribunal in Liverpool that Brigid was the more credible of the two: "In favor of the Petitioner it has to be said that the preponderance of evidence is weighed in favor of her substantial credibility."⁴¹ In fact, the Rotal judges believed the weight of evidence tipped even more in favor of Brigid's credibility when full value was given to the testimony of Brigid's mother and a certain Father B. The lower tribunal had discounted the importance of the testimony of these two witnesses because they appeared prejudiced against the Respondent. While these witnesses did evidence a certain hostility toward Conrad, they both reported essentially the same facts as the other witnesses but in greater detail. Their ability to supply this detail was the result of their more intimate involvement than the other witnesses in the difficulties in the marriage occasioned by Conrad's chronic irresponsibility.⁴² Thus, the Rotal judges held them to be worthy of credence.

In their assessment of the relative credibility of the parties, the Rotal judges were particularly impressed by the testimony of Conrad's brother Charles. Of Brigid, Charles said, "She seems to be quite truthful;"⁴³ but of his own brother he said, "Oh, he exaggerates all right, never stops. . . . He's not truthful . . . I know my brother would [tell a lie]."⁴⁴ Charles' opinion was shared, sometimes with considerable venom, by all the witnesses, snippets of whose testimony the Rotal

⁴¹ *Coram Boccafola*, November 21, 1996, *RRotae Decisiones* 88 (1996) §11, 738.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

judges wove together to buttress their decision to believe the account of the marriage provided by Brigid and to discount the one offered by Conrad.⁴⁵

2. The Question of Relevance

Having resolved to their satisfaction the issue of the relative credibility of the parties, the Rotal judges moved on to identify three salient facts critical to the resolution of the issues before them. First, early in their pre-marital relationship Brigid was a victim of “date rape” perpetrated by Conrad. Irrationally blaming herself for what happened, Brigid resolved, despite the protests of her family and friends, to marry Conrad in a desperate attempt to expiate her deep sense of guilt and shame. She testified: “I was very frightened and shocked. . . . I felt a mixture of shame, fear, pain and compassion for Conrad and I decided I must try and face the consequences.”⁴⁶ For this rather naive and clearly traumatized young woman, the only way to “face the consequences” was to marry Conrad. As Father B. in whom she had confided explained, “[B]ecause of this sexual intercourse she felt that she was committed to him for life.”⁴⁷ Brigid’s account of this “date rape” and its impact on her is confirmed by the testimony of her friend Mary and Father B., with whom Brigid had shared her story at non-suspect times. Even Conrad acknowledged that the incident occurred, although he minimized its significance and almost portrayed himself as a victim of circumstances.⁴⁸

A second salient fact beyond dispute was that Brigid and the children lived in a state of extreme poverty throughout the course of the common life, and that this indigence was the direct result of the debts Conrad incurred and his general lack of a sense of responsibility for his wife and children. Father B. recalled that, on a pastoral visit he made to the home, he “found out that she was in complete and total poverty and . . . gave her one of the St. Vincent de Paul parcels.”⁴⁹ The chronic poverty in which Brigid and the children were forced to live is further corroborated by the testimony of Brigid’s mother who “was having to give her money to support her” and her friend Mary.⁵⁰ Even Conrad concedes grudgingly that they had “financial problems [and] they got the bailiff to come” and that, when he took off for Australia, he left behind unpaid rent and utility bills.⁵¹ Most telling, however, was the testimony of Conrad’s brother Charles: “[H]e was always jumping from job to job. They were very poor of course and we helped them every way we could.”⁵²

⁴⁵ *Ibid.*, §11, 738-739.

⁴⁶ *Ibid.*, §12, 739.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, §13, 739.

⁵⁰ *Ibid.*, §13, 740.

⁵¹ *Ibid.*

⁵² *Ibid.*

A third fact was that Conrad was a philanderer. One witness John claims that Conrad was having such a torrid and notorious affair with his wife and that he sought the intervention of the police to keep Conrad away from his wife. Although Conrad denied being unfaithful to Brigid, the Rotal judges, for reasons that are not immediately apparent, dismissed Conrad's denial and accepted John's testimony about Conrad's extramarital adventures as factual.

These critical facts had already been recognized by the lower tribunals, but the tribunals in Leeds and Liverpool had not considered them sufficiently serious to justify declaring invalid a marriage that had somehow endured for twenty-one years. Even at the Rota, the objection had been raised, probably by the defender of the bond, that "the more principle facts in the case have hardly been truly demonstrated and proved with the necessary moral certainty."⁵³ To this objection, the Rotal judges responded: "there is no uncertainty about the facts themselves emerging from the acts, but rather uncertainty remains about what just estimation and interpretation must be given to these facts."⁵⁴ After framing the issue in this way, the Rotal judges proposed to explore with the help of psychological experts "the significance of the facts and the conclusions to be drawn from them."⁵⁵

C. Evaluation of the Facts

Before drawing of the resources of psychology and psychology to tease out the significance of the facts now established for an assessment of the parties' consensual capacity, the Rotal judges paused to clarify the grounds of nullity to be answered. At the tribunal of Leeds negative decisions had been given on the ground of lack of due discretion both on the part of the Petitioner and on the part of the Respondent. Since these negative decision were confirmed at second instance by the tribunal of Liverpool, there are now two conformed decisions on this ground. Nevertheless, it was clear to the Rotal judges during their examination of the case in response to the petitioner's request for a new hearing that she had always intended to accuse the marriage of invalidity on the grounds of both lack of due discretion and of incapacity to assume the essential obligations of marriage. It was a "confusion or error of law" by the lower courts to conflate these two distinct grounds.⁵⁶ As a result of this error, the Leeds tribunal gave inadequate attention to Conrad's possible inability to assume the obligations of marriage, an incapacity that is relatively independent of any lack of due discretion. Thus, at its joinder of the issues, the Rota added the ground of incapacity to assume the obligations of marriage on the part of one or both parties not so much as a wholly new ground but as one that has been lurking in the background of this case all along

⁵³ *Ibid.*, §14, 740.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, §15, 740.

but that had not yet received the judicial attention it deserved.

Three psychological experts were consulted in connection with the case: Doctor Q. who had advised the Leeds tribunal during its first instance process, Doctor O., who had examined the acts of the case at the request of the Leeds tribunal in connection with Brigid's petition for a new hearing of the case, and Doctor I., who was nominated by the Rota for the present instance. Since their expert reports shed little if any light on Brigid's possible inability to assume the obligations of marriage or on Conrad's possible lack of due discretion, the Rotal judges proposed to shelve these two grounds and to concentrate instead on Brigid's possible lack of due discretion and Conrad's possible inability to assume the obligations of marriage.

1. Lack of Due Discretion on the Part of Brigid

It was clear from the testimony of witnesses that, at the time of her marriage, Brigid was a naive, emotionally fragile young woman who had recently undergone a serious physical and psychological trauma. The consequences of this emotional fragility for her ability was raised during the first instance process by Doctor Q., who asserted generically that she was "immature, shy, and laboring under a number of inexorable pressures" at the time of the marriage. However, instead of attempting a more exacting assessment of Brigid's emotional state at the time of the marriage, the expert focused on her level of functioning at the time of his examination of her and concluded, "No diagnosis necessary. This lady is not ill."⁵⁷ During the consideration of Brigid's petition for a new hearing of the case, Dr. O. noted: "To a lesser degree, the Petitioner also shows an insecure personality disorder. . . . She is plagued by indecision and uncertainty, fearful, overconscientious, obsessional and scrupulous." However, these observations also focused more on Brigid's level of functioning at the present than at the time of the marriage. Moreover, they were, quite frankly, something of an afterthought in Dr. O.'s report, since Conrad offered a much more fertile ground for the application of his diagnostic skills. During the third instance process of the Rota, Dr. I. Diagnosed Brigid as suffering from "a grave neurotic disturbance or a personality with an obsessive-compulsive structure."⁵⁸

The Rotal judges did not find these psychological reports, either individually or taken together, altogether convincing proof that Brigid lacked the due discretion for marriage. In particular, they were troubled by the fact that all three reports dealt with Brigid and her emotional state in a rather cursory manner and concentrated their attention primarily on Conrad. Moreover, the Rotal judges were confused by the experts tendency to shift their attention back and forth from Brigid's overall personality structure to the impact of more transitory disturbances on her decision-

⁵⁷ Ibid., §16, 741.

⁵⁸ Ibid.

making capacity at the time of consent.⁵⁹ As a result, the Rotal judges concluded that the experts' reports "had not sufficiently removed all reasonable doubt about the discretionary capacity of the woman."⁶⁰ Nevertheless, they reached this conclusion with obvious reluctance and "especially because there exists another new caput having greater convincing force,"⁶¹ i.e., Conrad's inability to assume the obligations of marriage. Although the Rotal judges rendered a negative decision on the ground of Brigid's lack of due discretion, one wonders whether they would have reached the same conclusion had another more convincing ground not been available.

2. Inability to Assume the Obligations of Marriage on the Part of Conrad

The Rotal judges began their consideration of Conrad's possible inability to assume the essential obligations of marriage by reproducing a long segment of the report of Doctor I., the expert appointed by the Rota. This citation portrayed Conrad as an irresponsible scoundrel, but it does so without using a word of psychological jargon or offering a clinical diagnosis. Nevertheless, the Rotal judges saw in Conrad's habitual pattern of behavior sketched in this rather non-professional professional assessment an superable obstacle to a reasonably tolerable marriage. They concluded:

The undersigned auditors consider the described pattern of behavior (*modum agendi et se gerendi*) on the part of the male respondent to be a grave and impossible obstacle to attaining the ends of marriage, especially of the creation of a true partnership of life and love ordered to the good of the spouse and of the children. Indeed it constituted a grave wound to the essential obligation of providing for the education and prospering of the children, i.e., in particular in providing for their economic needs. Such a constant pattern of behavior of the man truly render the conjugal community intolerable and so (*ac*) impossible. The long duration of the partnership and the birth of seven children, hence, are only explained by the Catholic piety of the woman as well as by her scrupulosity and the obsessional nature of her character. However, in the end even for her it became morally impossible to sustain such a type of common life.⁶²

Satisfied that Conrad's chronic irresponsibility rendered conjugal life "not only difficult but intolerable and so impossible" (*non tantummodo difficile sed intollerabile ac impossibile*) for Brigid and the children, the Rotal judges had only

⁵⁹ Ibid., §16, 741-742.

⁶⁰ Ibid., §16, 742.

⁶¹ Ibid.

⁶² Ibid., §17, 742.

one outstanding issue to resolve: whether this pattern of behavior was the result of a psychic cause over which Conrad had no control or of his freely willed moral failure.⁶³

To answer this critical question, the Rotal judges turned first not to the opinions of psychological experts but to the opinions of lay people with no training in psychiatry. They are impressed by the fact that these unschooled observers unanimously attribute Conrad's restless pattern of behavior to the deeply ingrained constitution of his character rather than to his voluntary moral failings. After stringing together quotations from several witnesses who considered Conrad's deficiencies as a husband and father to be "part and parcel of his character,"⁶⁴ the Rotal judges concluded:

These testimonies, without any doubt, lead to an image of the Respondent's personality as affected by a grave psycho pathology which impeded his assumption and fulfillment of the essential obligations of marriage. The Respondent does not appear at all insane, but, on the contrary, endowed with good intelligence and, therefore, able to understand substantially the obligations of marriage, but only theoretically. For his asocial personality. . . caused him to act in such a way that he had no conscience.⁶⁵

In fact, they opined, even lay people could see that Conrad fully and abundantly met the criteria for "Anti-Social Personality Disorder." It was not surprising then (*nil mirum*) to the Rotal judges that the psychological experts whose reports had been incorporated into the acts confirmed this amateur diagnosis.⁶⁶ From their study of the acts of the case, all three experts reached the conclusion already reached by lay people from their observation of Conrad's behavior in real life, i.e., that Conrad suffered from the anti-social personality disorder. Thus, the Rotal turnus found in the affirmative, that is, that the marriage was invalid because of Conrad's inability to assume the essential obligations of marriage because of causes of a psychic nature.

IV. Conclusion

The three Rotal sentences that have been studied here deal with fact situations that would not give most North American tribunals many sleepless nights. After studying the arguments advanced in these sentences, the attentive reader is left with little doubts about what facts the Rotal judges deemed critical to a resolution of the issues before them and why and how they applied the law to the facts in order to

⁶³ Ibid., §18, 742.

⁶⁴ Ibid., §18, 742-743.

⁶⁵ Ibid., §18, 743.

⁶⁶ Ibid., §19, 743.

reach their decisions in the cases. One can disagree with their evaluations of the facts or identify blind spots in their assessments or even note occasional weaknesses in their argumentation, but one cannot finish reading these sentences and say, “I do not know how they reached the result that they did.” In short, one can disagree with the conclusion of a Rotal sentence but one always knows why he or she disagrees. Such clarity and logical rigor is not always the hallmark of our tribunals’ decision, and we can learn from these Rotal decisions, even those with which we disagree, how to write better sentences.

1. Evaluating the Evidence

Since a judge’s decision is only as sound as the evidence on which it is based, Rotal judges invariably open their arguments with an evaluation of the quality of the evidence in the acts before them. Sometimes these evaluations are so brief that a casual observer might not notice them, e.g., when Boccafolà ratified the judgment of the lower tribunal that there were no noteworthy discrepancies in the testimonies of the parties and the witnesses simply by making its summary of the unanimous testimony of witnesses his own.⁶⁷ However, when there are conflicts in the testimony, especially conflicts in the versions of events reported respectively by the petitioner and the respondent. Rotal judges try to assess the relative credibility of the parties. Toward this end, they examine whether there was conformity between the testimony of the parties and that of the witnesses and the degree of concordance among the witnesses, whether some witnesses exhibit such antipathy toward one of the parties that their testimony should be dismissed or at least discounted, whether the witnesses were in a position to witness the events about which the testify themselves and, if not, how and when they became aware of them, and whether the witnesses consider the parties truthful and reliable and why. At the end of this assessment, the student of Rotal jurisprudence knows what evidence the judges consider reliable and unreliable and why. Since it is rare case in which there are no conflicts in the evidence, our tribunal decisions would benefit from more explicit and extended assessments of the evidence available.

It is clear that Rotal judges are able to make these assessments only because witnesses were either asked directly or encouraged indirectly to express their views about the truthfulness of the parties. To assist the judge who will eventually have to evaluate the evidence collected, our instruction of cases should include questions or at least opportunities for witnesses to express their views on the relative honesty and integrity of the parties. Where decisions in cases hinge in critical degree on an assessment of the credibility of the petitioner, tribunals should not neglect to use testimonial witnesses to attempt to place his or her own testimony above impeachment (c. 1679). Questioning witnesses more carefully than we often do about when and how they learned about certain things relevant to the case can provide judges

⁶⁷ *Coram Boccafolà*, January 25, 1996, §14, 67.

with the information they need to give each witnesses' testimony its appropriate weight.

2. Zeroing In on the Critical Facts

It often comes as a surprise to North American canonists that Rotal decisions almost never include narrative histories of the marriages whose validity has been challenged. While the absence of plots and sub-plots make Rotal decisions less gripping reader than the most recent potboilers, it does allow the judges to cut through the lush underbrush of interesting (and, at times, titillating) but largely irrelevant details and anecdotes to reach what they consider the facts critical to a just resolution of the case. Thus, in the case of Emily and Augustine, Monier ignored the sordid details of Augustine's drinking career and of his transvestite proclivities and focused instead on the issues themselves. He marshaled the testimony available with considerable terseness and economy to establish as fact that Augustine was addicted to drink before and during the marriage, that he had transvestite tendencies, and that he was averse to assuming the role and responsibility of father. In the same way, in the case of Brigid and Anthony, Boccafola resisted the temptation to regale his readers with examples that illustrate what a "ditzzy air head" Brigid was and contented himself with establishing the fact that everyone considered her much more immature than the average twenty year old. Most tellingly, in the case of Brigid and Conrad, Boccafola provided no extended narration of Conrad's chronically irresponsible behavior over the duration of the twenty-year marriage. Instead, he briefly established as fact that Conrad was an irresponsible lout who left his wife and children indigent as he pursued his own, sometimes romantic, agenda. Our decisions in lack of due discretion would be enhanced by similar a concision, focus, and instinct for the jugular.

3. Judicious Use of Experts

In all three cases under study here, the Rotal judges had recourse to the opinions of psychological experts. Indeed, it is hard to remember or even imagine a Rotal decision in a case in which the grounds are lack of due discretion or inability to assume the obligations of marriage but in which one or more psychological experts were not consulted. However, the roles these expert reports play in the judges ratiocination can be, as these three decisions illustrate, quite different. Since it seems to have become mainstream Rotal jurisprudence that, as Monier noted, lack of due discretion need not result from a "mental illness" in the strict clinical sense of the term but may arise as a result of factors more circumstantial and transient in nature,⁶⁸ one can even wonder whether consultation with an expert is necessarily required in all lack of due discretion cases without exception.

⁶⁸ *Coram Monier*, June 21, 1996, §5, 488-489.

In the case of Emily and Augustine, Monier reproached the lower tribunals in Ireland for their failure to consult with psychological experts before rendering their decisions. However, he criticized their omission not because it constituted a violation of the law but because it resulted in the lower tribunals' failure to properly assess the significance of factors suggesting Augustine's lack of due discretion. "An expert would have easily been able to recognize the man's *deordinationes*,"⁶⁹ he complained, and thus would have prevented the lower tribunals from reaching an unwarranted negative decision. Monier turned to an expert for assistance not because Augustine's *deordinationes* during the marriage were not clearly established by the testimony of the parties and witnesses, but because their antecedence to the marriage and, therefore, their impact on Augustine's discretionary capacity was not sufficiently clear. Once the expert appointed at the Rota had satisfied him that these *deordinationes* were not created *ex nihilo* but long antedated the marriage, Monier moved on to construct an argument for nullity from the convergence of moral indices that is largely independent of the findings of the court appointed psychiatrist. One even wonders whether Monier would have felt the need to consult an expert had the lower tribunal's instruction of the case not failed to flesh out some rather vague suggestions that Augustine's unstable personality had its roots in his childhood and adolescence.

In the case of Brigid and Anthony, Boccafola relied on the report of an expert to refute the objection, probably of the defender of the bond, that the testimony about Brigid's immaturity was rather vague and general and did not prove a truly serious disturbance capable of depriving her of the capacity for due discretion. Although Boccafola dutifully cites the opinions of three experts, one of whom was more an expert in pastoral ministry than in psychology, to answer the objection, one must admit that these experts are not much more precise and specific about Brigid's immaturity than were the lay witnesses – and Brigid herself. In many respects, the experts' opinions are rather peripheral to Boccafola's argument which hinges not so much on the degree of immaturity from which Brigid suffered as on the consequences of the impact of a pre-marital pregnancy and its fall-out on her rather immature personality for her ability to make a prudent and free decision about marriage.

In the case of Brigid and Conrad, the role of the reports of experts was essentially to confirm and give a professional veneer to the evaluation of Conrad's character by lay witnesses. Boccafola drew upon the opinions of experts at two distinct moments in his argument. First, he cited the report of Dr. I., the expert appointed by the Rota, to confirm the unanimous judgment of the witnesses that Conrad's loutish irresponsibility throughout the course of the marriage had rendered common life not just difficult but intolerable and so impossible for Brigid and the children. Second, he cited the opinions of all three experts to confirm the judgment of all the witnesses that Conrad's pattern of irresponsible behavior was a result of

⁶⁹ *Ibid.*, §11, 491.

a constitutional defect in his character and not of his morally culpable sinfulness. In fact, Boccafola himself summed up the testimony of the lay witnesses by saying that even they saw clearly that Conrad met all the diagnostic criteria for anti-social personality disorder. After reaching this diagnosis himself, Boccafola introduced the diagnoses of the experts by saying that the evidence of Conrad's psychopathic personality is so clear that it is no wonder (*nil mirum*) that the experts agree.

4. Making the Argument

All three of these Rotal sentences contain tightly reasoned arguments. In the case of Emily and Augustine, Monier moved from incontrovertible evidence of Augustine's *deordinationes* of personality, to professional assurances of their antedecence to the marriage, and through an argument from convergent indices to a decision for nullity. In the case of Brigid and Anthony, Boccafola proceeded from Brigid's obvious immaturity through the impact of her pregnancy on her decision-making process to a decision for nullity. In the case of Brigid and Conrad, the argument ran from the establishment of the chronic pattern of Conrad's irresponsible behavior that rendered married life intolerable and so impossible for Brigid and the children through an argument for rooting this pattern of behavior in a constitutional defect of personality rather than a moral failure to a decision for nullity. If the North American tribunals were to emulate the transparency and logical rigor of these Rotal decisions, their own decisions in lack of due discretion cases would be shorter and sweeter.

THE SACRAMENT OF RECONCILIATION: ISSUES, PRAXIS AND THE FUTURE

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Introduction

The sacrament of reconciliation may perhaps be the sacrament which receives the most canonical attention after marriage. This does not mean there is an abundance of canonical/juridical documentation, but recent issues in the Church, notably the clerical misconduct issues, have precipitated increased attention on this sacrament from the Holy See and from other lower levels. In the world of scholarship, while there have not been numerous extensive studies on the sacrament of penance in recent years, certain topics, i.e., general absolution, first penance/first communion, have occupied the attention of canonists and theologians alike. A review of the canonical journals will not reveal an abundance of studies on the sacrament of reconciliation, but it is examined on a regular basis. The CLSA has also periodically dedicated some attention to this sacrament. At the 1986 CLSA convention, Rev. Ladislav Örsy presented a rather comprehensive view of theological and canonical issues which arise from the 1983 code.¹ In 2000, a special CLSA committee completed its report on the Third Rite of Penance and its use in the USA, i.e., general absolution.² This report has not received the attention it deserves.

The theme of this year's convention "*Vita sacramentorum*: Worship and Sanctification" provides an appropriate moment to return to some ongoing reflections on both current theological and canonical discussions and recent canonical activity from the Roman Curia on this sacrament. As is often echoed, the *novus habitus mentis* – at the heart of the rehabilitation of canon law as demonstrated in the new universal codes – directs us to an alertness to the theological foundations of the law. This is particularly significant for sacramental law.

As with any large area of study, it is necessary to be selective of certain themes

¹ Ladislav Örsy, S.J., "The Sacrament of Penance: Problem Areas and Disputed Questions," *CLSA Proceedings* 48 (1986) 29-45.

² Chris Moore and Roch Pagé, "Use of the Third Form of the Rite of Penance: Final Report," *CLSA Proceedings* 62 (2000) 426-443.

and examples which will best promote the conversation. This examination of the sacrament of reconciliation will be constructed as follows: 1) identification of several current theological themes regarding the sacrament and the potential implications for its praxis; 2) some specific comments drawn from various documents on general absolution; 3) the seal of confession; 4) recent documentation regarding the grill in the confessional, 5) sacramental absolution by schismatic priests; 6) a brief comment on sacraments administered thru the internet, followed by concluding reflections.

1. Current Theological Themes

There are several emerging foundational theological themes, if not actual consensus, regarding an evolving understanding of the sacrament. Some of these themes create a certain tension with the *ius vigens* for the sacrament. It is easy to collapse a substantial portion of theological and canonical discussion into the debate surrounding the Third Rite – general absolution. In fact, it is the Third Rite which has promoted rather significant discussion on the sacrament itself. But while general absolution is a significant arena of discussion for the sacrament, it is not the only one of significant interest and implication. Theologians have directed their attention also to more fundamental themes of the sacrament, especially the understanding of sin, *ius divinum*, and the understanding of integral confession which is understood to be a divine law imperative.

David Coffey, an Australian theologian who teaches at Marquette University in Milwaukee, published in 2001 a very useful and insightful study, *The Sacrament of Reconciliation*.³ This volume is an analysis of the theology of the sacrament as presented in the *Rite of Penance* (1974) in dialogue with other theologians who have reflected on this sacrament. He offers abundant theological reflection not only on the ritual itself, but on the larger contextual issues which canonists should also be aware of. He has great respect for the sacrament of penance and its evolution. As a theologian of the sacrament, he raises very important observations which also have consequences for the discipline of the sacrament.

In order to set the *status questionis*, Coffey observes the following with regard to the three rites of the celebration of the sacrament:

1. Rite 1 is greatly neglected.
2. Rite 2 has declined in popularity, and is not always celebrated *in toto* as envisioned by the *Rite of Penance*.

³ David M. Coffey, *The Sacrament of Reconciliation*, Lex Orandi Series (Collegeville: The Liturgical Press, 2001). This discussion will make significant use of this insightful study.

3. Rite 3 is the most popular rite, but is also the most rarely celebrated.⁴

When the revised *Rite of Penance* was issued in 1974, it was then observed that Rite 3 would become the most popular rite. Thus Franco Sottocornola, secretary of the commission which prepared the new ritual espoused this position in his commentary on the ritual.⁵ However, the flow of documents from the Holy See continues to emphasize the exceptional character of Rite 3. Here the question may be raised: the revised *Rite of Penance* was already in use for nearly a decade prior to the promulgation of the 1983 code. Perhaps perceived abuses of Rite 3 promoted the formulation of certain canons in the 1983 code which restricted its use?⁶

Given this context, Coffey identifies several areas of theological reflection which continue to occupy sacramental theologians and others which hopefully will promote a revitalization of the sacrament among the People of God.

1.1 – A Renewed Theology of Sin⁷

Any discussion about the sacrament of reconciliation cannot avoid the foundational issue of the theological understanding of sin. It is united with the praxis of the sacrament itself. The *Rite of Penance (RP)* 5 states that sin “is an offense against God which disrupts our friendship with him.” This disruption of our relationship with God is person – centered, and speaks about “personal” sin. It is personal sin which is forgiven by the sacrament.

Coffey emphasizes several times in his study that there needs to be a renewed sense of sin; a movement from an “act-centered” morality towards a more “person-centered” one. This would be consistent with the definition of sin as presented in the ritual itself. This even is more than hinted at in the *Catechism of the Catholic Church*, n. 2352. This emphasis on a renewed understanding of sin would promote a greater sense of personal sin, which is then allied with a communal and ecclesial experience of the sacrament. The healthier is our sense of sin, the greater will be the attraction to approach the sacrament.

In this direction, Coffey also observes that in regards to the seriousness of sins, the classic distinctions of “mortal” (serious/grave) and “venial” sin are not so easily determined in these contemporary times. At the time of Trent, which taught the necessity for auricular/integral confession of grave sins – understood to be of divine

⁴ Coffey, 166-167.

⁵ Franco Sottocornola, “Les nouveaux rites de la pénitence,” *Questions liturgiques* 55 (1974) 89-136.

⁶ See Sacred Congregation for Sacraments and Divine Worship, “Variationes in novas editiones Librorum liturgicorum, ad normam Codicis iuris canonici nuper promulgati, introducendae statuuntur,” *Notitiae* 19:9 (1983) 540-555. English text is located in: International Commission on English in the Liturgy, *Emendations in the Liturgical Books Following Upon the New Code of Canon Law* (Washington: ICEL, 1974) especially pp. 17-20, which largely concern emendations to the norms for general absolution.

⁷ Coffey, 5-31.

law and continues to be a controlling theological and canonical norm – such distinctions between these categories of sinful acts were then more easily deduced.

This is not the case today, and thus this awareness or mentality has direct impact upon one's personal sense of sin. This is easily illustrated by the present state of the sacrament itself and its widespread neglect or at least diminished usage.

Today many people live with a diminished sense of sin. This is not a surprising statement. While Coffey does not hesitate to recognize that theologians and the Church must respond to this search as to what is actually "sin," he has a very consequential opinion, especially for the canonical norms for the sacrament of reconciliation: he suggests that grave sins are probably not as common as once thought.⁸ There can be many mitigating factors regarding responsibility for sinful actions. And furthermore, any renewed theology of sin must take into account the findings not only of theology and the Church's doctrine as presented in various documents, but also the conclusions of the behavioral sciences. Coffey's conclusion about the less than frequent occurrence of grave sin is at first startling not only to the canonist, but to religious educators, church leaders and the majority of the faithful. But Coffey is not alone in such an observation; he also refers to Karl Rahner's observation that we can never know with ultimate certainty if we are really sinners. (This is related to Rahner's theology of the fundamental option, which helps the person not so much to distinguish between grave and venial sin, but what is actually "grave" sin.)⁹ Since the obligation to confess is only for serious sins (see c. 988, §1: "*peccata gravia*"), this observation would have significant consequences for the discipline of the sacrament.

Coffey admits that current inadequate magisterial understanding of sin is not the only challenge confronting the sacrament today, but unless the necessary renewal takes place, there can be no recovery from the present malaise.¹⁰

1.2 – *Ius Divinum*

Canon 960 is the principal canon which reflects the provision from the Council of Trent on the necessity of individual integral/auricular confession as the "sole ordinary means" by which grave sin is forgiven. This norm for integral confession was understood by Trent to be of divine law. Theologians continue to reflect on what is exactly understood as divine law.¹¹ A fundamental question to be raised in this regard is the following: What are the indispensable requirements for this principle in order that something can be correctly characterized in this way?

⁸ *Ibid.*, 27.

⁹ *Ibid.*, 16 ff.

¹⁰ *Ibid.*, 178-179.

¹¹ Carl Peter, "Auricular Confession and the Council of Trent," *CTSA Proceedings* (1967) 185-200; *ibid.*, "Dimensions of *Ius Divinum* in Roman Catholic Theology," *Theological Studies* 34 (1973) 227-50; Karl Rahner, "Reflections on the Concept of 'Ius Divinum' in Catholic Thought," *Theological Investigations*, vol. 5 (Baltimore: Helicon Press, 1966) 219-43.

Coffey says that the teachings of Trent and the *Ritual of Penance* about the constitutive parts of the sacrament must to be observed and respected. But at the same time, Coffey believes the teaching can be respected and also continue to evolve.¹² This observation is very nuanced and deserves careful attention. This is applied to the four parts of what is considered of divine law for the sacrament: contrition, confession, priestly absolution and satisfaction. Also, this requirement applies only to grave sins, since confession is not necessary for non-grave sins.

What does the duty of “integral” confession really mean? After all, canon 960 provides an exception for physical or moral impossibility (e.g., incapacities on the part of the penitent, e.g., deafness, fear of confessor, etc.). The provision of canon 988 stipulates the duty to confess in kind and number all grave sins of which the penitent is aware of and which have not yet been confessed and pardoned. This emphasis on a “list of sins” has been considered by some theologians also to be a factor in the decline of the sacrament. Yet it continues to be emphasized by recent Roman documents, i.e., *Misericordia Dei*, art. A.3 – exhorting the obligation to confess “according to kind and number, all grave sins committed after Baptism of which they are conscious after careful examination . . . any practice which restricts confession to a generic accusation of sin or of only one or two sins judged to be more important is to be reprov[er]ed.”¹³

The practice of integral confession, a stumbling block for many faithful and exaggerated interpretations of what “integral” may mean, presents a challenge to the pastoral, theological and canonical agent. To say that integral confession has a divine law character and is a necessary element of the sacrament is one thing, but it must be placed in its correct perspective. Here Coffey is very instructive. He refers to the position of theologian Clement Tierney¹⁴ as one who best captures the required nuance here. It is to be neither exaggerated nor downplayed. The integral confession is important because it symbolizes the sincerity of the penitent. Citing the French theologian Louis Monden, the experience of confession brings sins to verbal expression; it is not the sins themselves nor is it identical with the person who is responsible for these sins. Rather, it is a “sign of the sins that are the true object of pardon and of the person who is ultimately forgiven in the sacrament.”¹⁵

Thus, there should not be an exaggerated concentration on the actual sins by either the confessor or the penitent. Monden believes there is an imbalance here, often on the part of the penitent, and most probably due to unbalanced catechesis. Trent was helpful here, when it required only “formal” vs “material” integrity. But

¹² Coffey, 52.

¹³ John Paul II, apostolic letter *motu proprio*, *Misericordia Dei* (April 7, 2002), AAS 94 (2002) 452-459. English translation available in William Woestman, *Sacraments. Initiation, Penance, Anointing of the Sick*, Third edition, revised and updated (Ottawa: Saint Paul University, 2004) 459-465.

¹⁴ Coffey, 103-104, citing Clement Tierney, *The Sacrament of Repentance and Reconciliation* (New York: Costello, 1983) 72.

¹⁵ Coffey, 104, citing the classic work of Louis Monden, *Sin, Liberty and Law* (New York: Sheed and Ward, 1965) 46-47.

because there was detailed attention to the precise matter to be confessed, it contributed to the imbalanced emphasis on objective precision, i.e., a “listing” that is so prevalent today.

This is an important observation for canonists to hear, articulated by several theologians. So the challenge is to preserve the teaching of Trent, believed to be *iure divino*, but also to continue to allow this principle to develop. But again, at the same time, recent curial documents exhort the faithful of this obligation to confess sins in a precise manner. So there exists a tension between theological discourse and various magisterial documents which represent the more traditional understandings of sin and the mode of their confession in the sacrament of reconciliation.

Of course, the question continues to be raised: how can the obligation of integral confession be of divine law, and at the same time, admit of exceptions as in canon 960? Authors often refer to Carl Peter’s response to this question:

[Trent] . . . asserted integrity as a value, recognized that the latter exists concretely in the midst of other values that taken together form a hierarchy. Sometimes those other values take precedence; sometimes they do not. Which ones do and which ones do not? To make Trent decide that is to do violence to its teaching. To assert that integral confession is required by a purely disciplinary law is the other extreme and no less prejudicial. If divine revelation points out a religious value as obligatory, let us not pretend the case is otherwise. If it recognizes that value as coexistent with others, let us not make that value obligatory in all circumstances or without any further consideration.¹⁶

Thus, integral confession is viewed as one value among others, despite its divine law character. It is repentance and conversion, and their articulation in the sacrament which Trent has taught to be demonstrated in the ritual of the sacrament.¹⁷ The ritual’s invitation to the penitent to open one’s heart to the confessor is even more demanding than Trent with its personalistic approach to confessing sins.

2. The Third Rite – General Absolution

Coffey and other theologians, e.g., Franco Sottocornola, are of the belief that the Rite 3 will be eventually the more common experience of the sacrament of reconciliation. As canon 961, §1, 2° stipulates, general absolution can be administered for a grave necessity when the number of penitents is very large and there are not enough confessors to hear confessions within an appropriate time and, thru no fault of their own, the penitents will be without the grace of the sacrament

¹⁶ Carl Peter, “Auricular Confession,” 199-200, as cited in Coffey, 105.

¹⁷ See *RP* 6b, as referenced in Coffey, 107.

penance and holy communion “for a long time” (*diu*). Several questions are thus inevitably raised in the discussion of general absolution.

What is to be understood by the qualification “for a long time?” Frederick McManus, in the CLSA commentary (2000) notes that even one day is sufficient to legitimate the use of general absolution.¹⁸ The USCCB in 1989 said that it can be interpreted to mean generally “one month,” although this is not a decree or complementary norm. It is more like a recommendation.¹⁹ The Nigerian conference of bishops interpret it to mean “three months,”²⁰ while the Philippine conference interprets it with the example that a priest may go to a certain region only once a year or seldom due to distance, weather, or geographical reasons.²¹ The 2002 apostolic letter m.p *Misericordia Dei* art. 4.d asserted that “*diu*” must be for a long time. This will involve a prudential judgment. But such a judgment is not prudential if it distorts the sense of physical or moral impossibility, as would be the case, for example, if it was thought that a period of less than a month means remaining in such a state of privation.

The criterion of “grave necessity” should not be contrived thru failure to implement the norms given earlier on the making the sacrament available, and still less because of the penitents’ preference for general absolution. Rite 3 is not to be viewed as a normal option in comparison with Rites One and Two. But it is now a rite, and not only an exceptional emergency provision as with the instruction of 1944 during World War II. But as recently as 2002 with *Misericordia Dei*, Rite 3 continues to be viewed as exceptional.

Canon 961, §2 reserves to the diocesan bishop to judge whether the conditions for general absolution in §1, 1° are present, taking into consideration the norms of the conference of bishops. Several documents have reminded the diocesan bishops of their duty not “to change the required conditions, to substitute other conditions for those given, or to determine grave necessity according to their personal criteria, however worthy.”²²

Misericordia Dei also directed that conferences of bishops update their norms for Rite 3 in light of this *motu proprio*, especially regarding what constitutes cases of grave necessity.

In the examination of the qualifiers for the use of general absolution, it is interesting to recall canon 844 which governs sacramental sharing. The norms of

¹⁸ Frederick McManus, “Title IV: The Sacrament of Penance,” *New Commentary on the Code of Canon Law*, J. Beal et al. (eds.), (New York/Mahwah: Paulist Press, 2000) 1147.

¹⁹ Referenced in McManus, 1147, fn. 35. See also *Complementary Norms*, (Washington: NCCB, 1991) 12.

²⁰ *Code of Canon Law Annotated*, E. Caparros et al. (eds.) (Montréal: Wilson et Lafleur Limitée, 1993) 1381.

²¹ *Ibid.*, 1399.

²² For example, see the circular letter, Congregation for Divine Worship and the Discipline of the Sacraments, “Integrity of the Sacrament of Penance,” (March 20, 2000) n. 4. Text in Woestman, *Sacraments*, 468-469.

canon 844, §4 for sacramental sharing of Penance, Eucharist, and Anointing allow this sharing in danger of death for baptized non-Catholics. In addition, it provides that the diocesan bishop or conference of bishops can determine if a grave and pressing need exists, and if the criteria of unavailability of their own minister exists, and requested spontaneously, demonstrate a Catholic faith in the sacrament, and are properly disposed. Several of these criteria are also applicable to general absolution: grave need, properly disposed. (The criterion of “*diu*,” originally presented in the first ecumenical directory [1967], was not preserved in the 1983 code.)²³

Several Roman dicasteries have emphasized, in a series of documents, that on a major feast day or pilgrimage, confessors could be available prior or after such an event. However, as the paucity of confessors increases, the presumption may well have to yield to an increasingly opposite reality and hence this presumption would be overturned that there cannot be a gradual or broad interpretation of canon 961, §1, 2^o.²⁴

Another concern of Rome is that without individual confession, the confessor cannot determine the correct disposition of the penitent, thus opening the possibility for invalid absolution. This is not necessarily an obstacle. When the penitent who has received general absolution later confesses his sins, there is still the opportunity for the confessor to exercise such discretion if necessary (although absolution has already been granted). Admittedly, there may be more risk of invalid absolution with Rite 3, but this should not be a barrier to an expanded use of this rite. However, invalid absolutions are inevitable from time to time in all three rites of the sacrament.

There have also been expressed some fears, even by John Paul II himself, that an increased use of general absolution would lead to a decline in the use of Rite 1 and 2. Actually, there are heard, not infrequently, the experiences of pastors that when a person has been away from the sacrament for an extended period of time, there is a reluctance to confess individually. The experience of general absolution has a renewing effect on the person, who thus subsequently avails him or herself of individual confession, regardless of whether it involves grave sin or not. Thus, a wider availability of Rite 3 will promote individual confession, and not deter it as commonly assumed.

The bishops of Great Britain and Ireland, Scotland and Wales in 1999 presented a plan for general absolution in preparation for the new millennium: the plan was to celebrate Rite 3 on Palm Sunday, and then have individual confessions – Rite One – on the subsequent Monday, Tuesday, and Wednesday of Holy Week. The Congregation for Sacraments rejected this plan.²⁵ Furthermore, as a result of the

²³ 1967 *Ecumenical Directory*, n. 44.

²⁴ Coffey observes that the paucity of confessors is a negative reason to celebrate the Third Rite. While legitimate per se, the expansion of the use of the Third Rite should be based upon a more positive rationale. Among such rationale is greater desirability of a communal experience of the sacrament.

²⁵ As reported in Coffey, 174. See also *Notitiae* 36 (2000) 312-319.

1998 *ad limina* visit of the Australian bishops, there was issued a letter instructing that the practice of general absolution is to be viewed as exceptional, and thus abuses of the norms which legitimate its practice are to cease.²⁶

3. The Seal of Confession

The *m.p.* of John Paul II, *Sacramentum sanctitatis tutela* of April 30, 2001, reserved to the Congregation of the Doctrine of the Faith the category of *graviora delicta* – a competency which the the Congregation already possessed in virtue of *Pastor Bonus*, art. 52.²⁷ Article 3 of the *Normae substantiales* reserved three delicts concerning the sacrament of penance to the CDF:

Art. 3.1 – absolution of an accomplice in a sin against the sixth commandment;

Art. 3.2 – delict of solicitation

Art. 3.3 – direct violation of the seal of confession. This delict carries the penalty of *latae sententiae* excommunication. On February 7, 2003, the Holy Father granted to the CDF additional competence to hear cases involving the indirect violation of the sacramental seal.²⁸

Why was this additional competency for cases involving indirect violation of the seal given to the CDF? While no rationale for this decision was communicated, it is believed that there is increasing concern for the integrity of the seal of confession. There have been challenges in civil courts and proposed legislation which would not grant an exemption to protect the seal of confession. The sexual abuse of minors and mandatory reporting laws is very likely a compelling reason for this addition to *SST*. Here we have the example of an interesting situation – potential threats to the seal of confession, impacting on the canonical norms for the sacrament. Nonetheless, this new reservation of indirect violation may contribute to a greater protection of the confessor who finds himself compelled to testify in court or when the seal is potentially jeopardized by civil legislation.²⁹

²⁶ Congregation for Divine Worship and Discipline of the Sacraments, “On the Administration of the Sacrament of Penance,” (March 19, 1999). Text located at www.adoremus.org/699Penance.html.

²⁷ John Paul II, apostolic letter *motu proprio* “*Sacramentorum sanctitatis tutela*,” AAS 93 (2001) 737-739. English text located in William Woestman, *Ecclesiastical Sanctions and the Penal Process*, second edition, revised and updated (Ottawa: Saint Paul University, 2003) 300-309.

²⁸ John Paul II, Decisions subsequent to the promulgation of *Sacramentorum sanctitatis tutela* (February 7, 2003). Text in Woestman, *Ecclesiastical Sanctions*, 314.

²⁹ The author here recalls a personal comment by Carl Peter, an authority on the sacrament of penance, who believed that one contributing factor to the decline of the use of the sacrament was fear by many faithful that the seal was not zealously protected by priests. In the United States in the summer and fall of 2004, there were emerging debates about the admission to holy communion of politicians who espoused a pro-choice stance. Several bishops have suggested that if a Catholic politician who espouses such a position wishes to receive the Eucharist should first confess such a grave sin. How is such a confession to be verified without violation of the seal?

4. The confessional must have a fixed grill (c. 964, §2)

The Pontifical Council for the Interpretation of Legislative Texts issued an authentic interpretation response to a *dubium* on the place for sacramental confessions (July 7, 1998).³⁰ The question asked whether the minister of the sacrament, for a just reason and apart from a case of necessity, can lawfully decide, even if the penitent may request otherwise, that a sacramental confession be heard in a confessional equipped with a fixed grill? The response was affirmative.

Various principles may have contributed to this response from the Council. In addition to the right of the penitent to anonymity, it may be understood to be a response to potential accusations against a priest confessor on the occasion of hearing confessions in a confessional. The right of the priest to insist on the use of the grill, in lieu of face to face confession, prevails if there is a just reason and apart from a case of necessity.³¹

5. Absolution by priests in a schismatic church

This question arises out of several scenarios. Persons who belong to a schismatic church out of good faith, or who approach a schismatic priest in good faith for confession. Is such an absolution valid in light of the absence of faculties to hear confessions?

While the *Ecclesia Dei* Commission has not issued any directive in this regard, it has provided some general private unpublished directives in this regard regarding the priests of the schismatic Society of St. Pius X. In essence, the Commission advises that the sacraments of penance and matrimony require that the priest enjoys the faculties of the diocese or has proper delegation. Since that is not the case with schismatic priests, these sacraments are invalid. However, if the faithful are genuinely ignorant that the priests of the Society of St. Pius X do not have the proper faculty to absolve, the Church supplies these faculties so that the sacrament is valid on the basis of canon 144, invoking common error.

The appeal to common error is a strongly attractive response to such a question. The question is not idle since it concerns sacramental validity, and deserves a response. While the concern for invalidity remains, there is the possibility to invoke common error of canon 144. But is it necessary? Does it operate as a “fiction” of the law, without any awareness on the part of the penitent? The moral

³⁰ *Communicationes* 30 (1998) 27. English text in Woestman, *Sacraments*, 476.

³¹ For a brief commentary on this authentic interpretation, see. Gordon Read, “Comment” *Canon Law Society of Great Britain and Ireland Newsletter* (December 1998) 6-9. Read, 9, makes a reference also to the current sexual misconduct climate as a possible contributing factor for this authentic interpretation. There were also some media reports that in at least one diocese, the ordinary requested that face-to-face confession in a penitential room not be practiced due to the climate surrounding the sexual abuse of minors. Also, some parents did not permit their children to enter a penitential room where they would be alone with a priest.

theologian William Smith has authored a brief in opinion in this regard.³² Smith preferences his remarks that when we are talking about severance of ecclesiastical communion, detailed canonical questions of jurisdictions and faculties become secondary questions. Those who have separated themselves from the Church's jurisdiction are in a different category apart from the more "ordinary" situation of a minister of the sacrament possessing the necessary faculty to absolve sins. Rather, Smith appeals to a parallel with converts to Catholicism from Eastern Orthodoxy: their sacraments of baptism, confirmation (chrismation) and prior sincere confessions are valid. Regarding schismatic Catholics who return to the jurisdiction of the Church, we should "welcome home" such persons, appealing to the parable of the prodigal son rather than immediately invoking canonical categories and consequences. If their prior confessions were sincere, then we should leave them in peace. Smith even says that to invoke common error/canon 144 is "uncommon error" or "uncommon confusion" since it is strange that a person would simultaneously appeal to the pope's legal authority and simultaneously refuse communion and obedience to the same Pope!

6. No Sacraments on the Internet

Occasionally, the question is asked if sacraments may be celebrated via the internet. What was perhaps considered an odd question in the past, has in our era of cyberspace become a real question. In February 2002, The Pontifical Council for Social Communications issued an instruction, "The Church and the Internet."³³ In this document in n. 9 is a brief reference that states that no sacraments are to be celebrated via the internet:

... the virtual reality of cyberspace has some worrisome implications for religion as well as for other areas of life. Virtual reality is no substitute for the Real Presence of Christ in the Eucharist, the sacramental reality of the other sacraments, and shared worship in a flesh-and-blood human community. There are no sacraments on the Internet; and even the religious experiences possible there by the grace of God are insufficient apart from real-world interaction with other persons of faith.

This comment, which did receive some media attention upon publication, was often reported in various headlines and headings as "Rome says no confession on the internet." While the document does not speak about confession of sins per se, it is applicable to the celebration of the sacrament of reconciliation.

³² William Smith, "Questions Answered," *Homiletic and Pastoral Review* 6 (May 2001) 63-64.

³³ http://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20020228_church-internet_en.html.

Concluding Reflections

1. There continues to evolve significant theological reflection on the sacrament of reconciliation. While these reflections are not yet received into magisterial or curial documents, it should be remembered that the sacrament itself has undergone significant evolution over the centuries. Certain ongoing concerns expressed by Roman congregations, e.g., abuse of Rite 3, the emphasis on the use of a grill if the confessor desires, the understanding of sin operative in these documents, all indicate that there undoubtedly will be significant future discussion and perhaps eventual further change in the norms and praxis of the sacrament, despite how slow this evolution may be. The survival of the sacrament will depend on such an evolution.

2. The current theological reflection on the sacrament has been precipitated by the decline in the use of the sacrament and especially by consideration of Rite 3 and general absolution.

3. The interpretation of the Tridentine requirement of integral confession as a divine law imperative continues to need more interpretation, in light of the decline of the use of the sacrament. It is one of the most controlling requirements in the law.

4. The operative presumption on the availability of confessors may be a key element in reconsiderations of the praxis and norms.

**REMUNERATION, DECENT SUPPORT
AND
CLERICS REMOVED FROM THE MINISTRY
OF THE CHURCH**

REV. JAMES I. DONLON, J.C.D.

As I begin this presentation this morning, first I have to acknowledge several people who assisted me in my preparations. Advice was offered especially by Mike Ritty and Paul Golden, both of whom have considerable experience in assisting men removed from the ministry due to allegations of having sexually abused minors. They offered me both their insights and their questions, and suggested some avenues to follow. I relied much on the outstanding work of Jeffrey King, of the Archdiocese of Ottawa, and his 2004 J.C.L. thesis on canon 1350. I thank him for sharing his work with me. His thesis helped point me in the right direction. And considerable help was given me by Vic & Lu Laprade, friends who loaned me their isolated cottage on Peacham Pond in the Northeast Kingdom of Vermont – four miles in on a single-lane dirt road – where I spent several days distracted only by the cry of the loons and the occasional lure of the kayak.

INTRODUCTION – THE QUESTION

Perhaps one of the most challenging questions facing the Church today, as we continue to grapple with the scandal of sexual abuse of minors by clerics, is how do we handle those priests and deacons accused of having sexually abused minors. How do we deal with those clerics who have been accused, but the allegation is not yet determined to be credible? How do we deal with those in which the allegation is deemed credible, but the cleric denies the allegation and contests his removal from the ministry? How do we deal with the cleric who has admitted his guilt and has willingly accepted permanent removal from ministry? How do we deal with the cleric who has been found guilty by means of the formal penal process? How do we deal with the cleric who has been returned, either voluntarily or involuntarily, to the lay state?

Recently I was reading Donald Cozzens latest book, *Sacred Silence – Denial and the Crisis in the Church*. When discussing what he terms “official truth,” he comments, “And sincere men and women continue to ask: ‘What is the right thing to do in this particular situation?’ ‘What, in fact, does the Gospel require of me here

and now?”¹ That is indeed where I think we find ourselves today. What is the right thing to do, both in keeping with the law of the Church as well as with justice and the Gospel message we profess?

As I began work on this presentation I consulted a number of people, for ideas and suggestions. One responded by noting, “Everybody, including bishops, agree that a priest who is accused and who leaves the active ministry must get some financial assistance.” While I wish this were the case, I honestly cannot agree with this assessment. It seems many people – especially survivor/victims and their advocates as well as some bishops – feel priests guilty of such horrendous crimes deserve nothing from the Church. Just quietly go away! So much harm has been done to the victims! So much has it cost the Church – financially and emotionally! While such sentiments may be understandable and expected, do they reflect the law of the Church? Justice? The Gospel message?

Good people, sincere people, disagree as to how men removed from the ministry as a result of sexually abusing minors should be treated, how they should – or should not – be financially supported by the Church they served. The same canonist who said everybody agrees that the accused cleric must get financial assistance also noted that the environment in which these issues are being discussed is a troubled one, one in which we see bishops who simply do not want to see these clerics again, bishops who are afraid, clerics so angry they cannot be civil, clerics who are terrified of what confronts them. It is certainly a heated environment that makes this discussion more difficult. Emotions too often over-ride rational thinking.

I. THE CANONS

As one begins to tackle the question of what financial support and other assistance should be given to clerics removed from ministry as a result of allegations of sexual abuse of minors, perhaps it is best to begin by looking at the canons so as to see the relationship between the cleric and the bishop. Yes, these men have been accused of terrible acts of abuse. And yet at the same time, these are men for the most part who otherwise served the Church faithfully and diligently for many years. Those years of good service to the Church, it must be acknowledged, cannot erase the reality of the pain and the harm their abuse caused.

A. Canon 281

The 1983 *Code of Canon Law* shows a significant change from the 1917 code. In the 1917 code a cleric’s support stemmed from his title of ordination –

¹ Cozzens, Donald. *Sacred Silence – Denial and the Crisis in the Church* (Collegeville: Liturgical Press, 2004) 20.

service to the diocese or service to the missions – or from the title of benefice, patrimony or pension.² When a man was ordained to the priesthood, he was to have one of these titles so as to assure his livelihood and that proper support was provided. If a bishop ordained a man absent such title, then the bishop would assume for himself and his successors responsibility for the man's support. Further, these same canons of the 1917 code saw these titles as having to be truly secure for the life of the individual and truly sufficient for his proper upkeep – “*et vere securus pro tota ordinati vita et vere sufficiens ad congruam eiusdem sustentationem. . .*” A man was not to be ordained unless there was some form of assurance that his needs would be met, for life.

Closely associated with this is the concept of incardination. An incardinated cleric in the 1917 code became the responsibility of the incardinating bishop. The law said that a bishop should not incardinate an individual unless his support could be assured through a new title. Otherwise the bishop and his successors would be responsible.³

In that this support had to be adequate for the cleric's upkeep, what were commonly seen as factors to be considered? One commentator wrote:

A fitting support must be understood in a generous way and without scrupulosity. It includes, according to the doctors, all that is necessary for food, clothing, housing, medical care and the preservation of health, the maintenance of servants according to the status of the beneficiary, decent relaxation, a moderate amount of liberality towards good causes, the demands of sociability, of hospitality that must be shown to friends and to the needy, of the payment of one's debts as well as those of one's relatives, of prudent provision for the future.⁴

Further, the 1917 code, in canon 2299, §3, went on to stipulate that a cleric could not be deprived of his benefice or pension unless his support was assured from other sources. One commentary spoke not merely of the cleric being assured his support, but also of adequate provision for “a respectable livelihood.”⁵ Clearly the earlier code was greatly concerned that the cleric not be reduced to a state in which he would have to resort to begging or to work unbecoming of the clerical state. This obligation to provide for the support of the cleric ceased, however, if the cleric were deprived of the clerical state, if he were deposed (c. 2300). This would be an exception to the general norm of canon 2299. In such a situation the bishop's obligation ceased, one might say, because the concern for the clerical state ceased

² 1917 *CIC* c. 979 and c. 981.

³ 1917 *CIC* c. 117, 1°.

⁴ Hannan, Philip M. “The Canonical Concept of ‘*congrua sustentatio*’ for the Secular Clergy” *Canon Law Studies*, no. 302 (Washington: The Catholic University of America, 1950) 109-110.

⁵ Abbo, John, and Hannan, Jerome. *The Sacred Canons* (St. Louis: B. Herder Books, 1960), Vol. II, 857.

since the man was no longer a cleric! Even in such situations, though, the 1917 code still spoke of the bishop's charity for a man truly reduced to a state of indigence. The bishop is to care for the man out of his charity – “. . . *Ordinarius pro sua caritate*. . .”⁶ The priest, however, strictly speaking would not have a right to such assistance.⁷ The canon ended by noting that this charitable concern for the deposed cleric is so that the clerical state would not be dishonored, not disgraced.⁸ Even then, the bishop's concern is not without limit. Canon 2304, §1-2, noted that if the cleric truly failed to repent and continued to give scandal, then the prescriptions of the previous canon no longer applied.

As can be seen from these few canons discussed here, the bottom-line concern being expressed had not really been for the man personally so much as it had been for the dignity of the clerical state. The concern was that the clerical state not be dishonored, disgraced or tarnished by a cleric living below the standard envisioned for the clergy.

Canon 281 of the 1983 code reflects a significant change, a change stemming from the pronouncements of the Second Vatican Council, especially as heard in *Presbyterorum Ordinis* and later in *Ecclesiae Sanctae*. The council fathers noted that if provision is not provided by some other means, “the faithful are duty-bound to provide a decent and fitting livelihood for their priests.” Continuing on, they wrote that this obligation “arises from the fact that the priests are working for the benefit of the faithful.”⁹

This canon says that clerics, since they dedicate themselves to the ecclesiastical ministry, deserve the remuneration that befits their condition. This remuneration should take into account both the nature of the cleric's office and the condition of time and place. It should be such that it provides for the necessities of life and for the just remuneration of those whose services the cleric needs. What is seen here is a shift away from a concern merely for the clerical state to more emphasis on the dignity and well-being of the individual. The 1971 Synod of Bishops noted that the support given priests “is a duty of justice and must also include social security.”¹⁰ In an official response to a question from Australia in 2000, the Pontifical Council for Legislative Texts noted that canon 281 is situated in Book II of the code. Since this book sets forth the obligations and rights of clerics, it “leads to the logical conclusion that remuneration is a right; a cleric has a right to adequate remuneration.”¹¹

⁶ 1917 *CIC* c. 2303, §2.

⁷ Findlay, Stephen. “Canonical Norms Governing the Deposition and Degradation of Clerics.” *Canon Law Studies*, no. 130 (Washington: The Catholic University of America, 1941) 169.

⁸ Abbo-Hanna, Vol. II, 858.

⁹ *Presbyterorum Ordinis*, no. 20.

¹⁰ *Canon Law Digest* Vol. 7 (1975) 364. The first document is reported in an English version in *TPS* 16 (1971) 377-389.

¹¹ Official interpretation from the Pontifical Council for Legislative Texts, April 29, 2000, reported in the *Newsletter of the Canon Law Society of Australia and New Zealand* (2000) no. 2, 42.

Even though presently we are talking about the remuneration given a cleric, this shift in the basis for the remuneration, I think, will have considerable bearing on the question of decent sustenance that we will discuss a bit later. I think this shift in the foundation for what is given the cleric has tremendous bearing on how the Church cares for a man removed from the ministry. As we have just seen, the provisions of the 1983 code are founded on the teachings of Vatican Council II and on the social teaching of the last century. The emphasis has shifted from a concern for the clerical state to a concern for the individual

While this canon is often seen as the basis for a cleric's remuneration, it seems to raise as many questions as it answers. What are some of these questions posed by canon 281?

The first clause of this canon can be seen as a limitation on the cleric's right to remuneration. It reads: "*Cum ministerio ecclesiastico se dedicent. . .*" This "*cum*" clause, it seems, can be translated and interpreted in various ways. The clause may be either temporal or causal. If the clause is interpreted as being temporal, then it would seem to refer to the cleric as being remunerated "when" he dedicates himself to the ministry of the Church. His remuneration, it could be argued, would be contingent on his performance of ministerial work. He is remunerated for his work. When he fails to perform the ministry of the Church, he is not remunerated. Clearly such an interpretation would significantly limit the cleric's claim to an absolute right to remuneration.

However, this "*cum*" clause could, on the other hand, be interpreted as causal. It would refer to the cleric being remunerated "since" he dedicates himself to the ministry of the Church. His remuneration would not be directly contingent on his performance, but rather on his dedication, devotion to the ministry of the Church. While the Church certainly would have a right to expect the cleric to perform the ministry entrusted to him, there might well arise situations in which he remains dedicated but nonetheless incapable of carrying out the ministry. Such factors as old age, illness, infirmity might limit the cleric's ability to minister. Other factors could certainly be envisioned that would likewise limit the cleric's ability to minister, factors such as those confronting the Church today. Many men removed from the ministry as a result of sexual abuse of minors, it can easily be argued, remain dedicated to the ministry of the Church, but can no longer minister in the name of the Church.

As the new CLSA commentary notes, the approved translation of this canon has decided in favor of "since."¹² The commentary goes on to point out, however, that based on rules of Latin grammar, when "*cum*" is followed by the indicative mood – as it is in this canon – it indicates "when (temporal)."¹³ Continuing, the commentary suggests that one could thus argue that a cleric is deserving of

¹² Beal, John, et al. (eds.). *New Commentary on the Code of Canon Law* (Mahwah/New York: Paulist Press, 2000) 368.

¹³ *Ibid.*

remuneration from the Church when he dedicates him to the ecclesiastical ministry.

James Provost, while noting that most commentaries have not thoroughly addressed this issue, argues that as long as the cleric is willing to serve, the bishop is obliged to provide him not only with basic support, but indeed “also with remuneration in keeping with his condition. That is, provided he is dedicated to ministry, even though he has been given no ministry to do, the diocese is bound to provide for his support.”¹⁴

Frank Morrissey offers a somewhat different perspective. He raises the question as to whether there is some point at which the diocese’s obligation towards a priest ceases. He comments:

Must the diocese continue to support a priest for the rest of his life, when he did not observe his part of the ‘contract’? Although we are not dealing with a formal contract, when a priest accepts ordination, he does so in accordance with the applicable legislation. If he does not uphold his part of the agreement, it does not seem fair to bind the other party to it.¹⁵

Clearly canon 281, while providing for the remuneration of clerics, is a major change from the provisions of the 1917 code. The earlier law was more absolute – a cleric’s remuneration was closely tied to the benefice he held or to his title of ordination. Now the remuneration is tied to the cleric’s dedication to the ministry of the Church. The cleric certainly retains a right to a just remuneration. That right, however, is not without limit.

What is remuneration? This is another question that demands our consideration, for the code at times speaks of remuneration, of decent support, and of social assistance. James Provost, writing in 1992, discussed the difference between remuneration and decent support. He saw remuneration, as spoken of in canon 281, as being “pay . . . provided to clergy when they dedicate themselves to sacred ministry.”¹⁶ He sees this remuneration as being above and beyond what could be called decent support. What is called decent support would provide for a person’s basic subsistence, even if he were to be penalized.

In its 2000 response to a question from the Australian Church, the Pontifical Council for Legislative Texts addressed this question of what is remuneration. It commented:

[. . .] The remuneration of which canon 281 speaks cannot be considered to be a ‘stipend’, that is, it is not to be considered compensation for work

¹⁴ Calvo, Randolph, et al. *Clergy Procedural Handbook* (Washington: CLSA, 1992) 48.

¹⁵ Morrissey, Francis G., “Addressing the Issue of Clergy Abuse,” *Studia Canonica* 35 (2001) 417.

¹⁶ Provost, James H., “Some Canonical Considerations Relative to Clerical Sexual Misconduct,” *The Jurist* 52 (1992) 632.

performed, agreed upon and measured in relationship to either the quantity or the quality of the services rendered.[. . .]

The remuneration that the Church must ensure for the cleric who dedicates himself to the exercise of ministry according to the mandate of the Bishop is not measurable according to the criteria of commutative justice, that is, of reciprocity and of proportionality with respect to the particular services rendered by the cleric. The Church, in fact, is not called upon to ensure a 'stipend' (c. 281, §1 uses, in fact, the term '*remuneratio*', which expresses a different concept than '*stipendio*') for the work or works performed by the cleric, but guarantees to the cleric honest sustenance, whatever might be the assignment (or assignments) that he receives from the Bishop, so that he might continue to exercise his ministerial service, requiring total giving of himself and his time, in serenity and complete liberty.

From this perspective, one sees the radical difference between the 'remuneration' given to a cleric and the salary or stipend paid to the laity: above all, it is not the quantity of services performed that needs to be recognized and proportionately compensated, but rather the person of the cleric, who offers his services, or should offer his services, for reasons other than those which would motivate the average laborer.¹⁷

Canon 281 does not directly answer the question as to what constitutes remuneration. It leaves determination open. Factors that might be involved in determining a just remuneration could be the cleric's office. Not all clerics of a diocese might receive the same remuneration. For example, the bishop could receive greater remuneration than a pastor, who in turn would receive more than a parochial vicar. A cleric ordained twenty-five years could receive more than a newly ordained cleric. A man in active ministry, it seems, could be given a greater remuneration than a man in limited or restricted ministry, or removed from ministry all together. In any case, though, canon 281 does say that this remuneration must be such that the cleric can provide for the necessities of his life. Keeping in mind other canons affecting clerics, this remuneration would indeed cover more than simply the basic necessities of life. For example, it would have to be such so as to allow the cleric sufficient income for continuing education (c. 279), vacation (c. 283, §2) and provision for the future. Finally, as again noted in the CLSA commentary on this canon, Pope John Paul II, referring to clerics directly employed by the Holy See, remuneration should be such so as to allow clerics "to carry out the duties of their state, including the responsibilities which they may have in

¹⁷ *Newsletter of the Canon Law Society of Australia and New Zealand* (2000) no. 2, 42-43.

certain cases toward parents or other family members dependent on them.”¹⁸ And certainly the economics of the local area could be taken into account. What might be adequate in one place may be inadequate elsewhere due to the cost of living of the place.

In general, it can be said, whatever the determination is, the remuneration given the cleric should be adequate to enable him to live in a dignified fashion in conformity with the general economic conditions of his locality, as well as allowing him to meet his obligations.

B. Canon 384

I have heard one canonist argue that even though the cleric has a right to remuneration, the obligation to provide this does not necessarily fall to the bishop. The argument presented is that the canon makes no mention of who has the obligation. This canonist points out that the canon does not so much affirm the cleric’s *right* but rather makes a point of the fact that clerics *deserve* remuneration. Frankly, I find this position hard to accept, if it is used to abrogate the bishop’s responsibility to provide for the support of his priests, including those removed from ministry.

Canon 384, speaking of the various responsibilities of the diocesan bishop towards his priests, says “He is also to take care that provision is made for their decent support and social assistance, according to the norm of law.”¹⁹ While the bishop may not personally be responsible for the support given priests, he is indeed ultimately responsible to see that it is in fact provided. Indeed, this is an issue a bishop must keep in mind when he accepts a man for ordination and/or incardination.

Having said all of this, I think it is fair to say that the remuneration given the cleric is not without limitations. Certainly as we have just seen, the cleric is remunerated insofar as he dedicates himself to the ministry of the Church. Clearly, if that dedication ceases, the cleric’s right to remuneration would be radically reduced. If he refuses without just cause or reason to accept and carry out a lawful assignment or ministry, the cleric, as William Woestman says, “implicitly renounces the right to support as long as the situation exists.”²⁰

C. Canon 1350

Another serious limitation on a cleric’s right to support is seen in canon 1350. This canon, in paragraph one, notes that even in a situation in which a penalty is

¹⁸ *New Commentary*, 367.

¹⁹ *Code of Canon Law Latin-English edition* (Washington: CLSA, 1999) 126.

²⁰ Woestman, William H. *The Sacrament of Orders and the Clerical State* (Ottawa, ON: Saint Paul University, 1999) 187.

imposed – short of dismissal from the clerical state – care must always be taken that the cleric does not lack what is necessary for his decent support. (Another translation of the phrase “*ad honestam sustentationem*” is “worthy support.”²¹) Note that the code has moved away from the term “remuneration” and here speaks of “support.” This is not, in my opinion, an insignificant change in terminology. As we have already discussed, remuneration is given to the cleric due to his dedication and performance of ministry. Support would seem to address more directly the cleric’s ability to live in a decent manner. While the numbers may not radically differ, the concept does.

Canon 1350 sees the institutional Church as having a responsibility to a cleric even when the cleric has seriously violated the law and has been penalized. In spite of having seriously violated law somehow, the cleric’s basic right to support is to be recognized and honored by the Church. He has not lost his right to decent support. That is not to say that the situation has not changed. Indeed it has. As a result of his actions and the penalties imposed upon him, the cleric’s status obviously differs from that of clerics remaining in good standing and active in their ministry. It would, I think, be widely conceded that a cleric in good standing and active in the ministry deserves appropriate remuneration. That is not to say, however, that the penalized cleric is deserving of nothing. Quite the contrary. Remaining a cleric, he retains a right to support. The penalty inflicted on him would not remove this basic right. And as canon 1350 notes, the bishop should remain vigilant that the penalized cleric does not find himself in need for what is necessary, for decent support! The canon leaves open, however, the question of just what is decent support. No clear definition is offered.

Writing in 1992, John Beal commented:

A cleric accused of sexual misconduct or a cleric undergoing treatment or even incarceration for the offense remains a cleric incardinated in his diocese. While it may be inadvisable or impossible for him to remain active in ministry temporarily or even permanently, the local church’s obligation to the cleric does not cease. He is entitled to support so that he does not lack the necessities of life, including medical insurance. He is entitled to treatment if he is found to suffer from some disorder. A cleric implicated in sexual misconduct with minors cannot simply be cut loose with five thousand dollars and told to ‘have a nice life’. Although the diocese’s obligation to provide for the financial support of an accused or a guilty cleric cannot be neglected, equally important and more often overlooked is the diocese’s obligation to provide the cleric with moral, emotional, and spiritual support. . .²²

²¹ Caparros, E., Thériault, M., and Thorn, J., *Code of Canon Law Annotated* (Montréal: Wilson & Laffleur Limited, 1993) 842.

²² Beal, John P., “Doing What One Can: Canon Law and Clerical Sexual Misconduct,” *The Jurist* 52 (1992) 669.

The second paragraph of this same canon goes a step further. It addresses the cleric who has in fact been dismissed from the clerical state. The bishop is to see to it that such a cleric is not truly in need as a result of the penalty inflicted upon him. The dismissed cleric is not beyond the bishop's pastoral care and charity. While the cleric's right to support is extinguished because he is no longer a cleric, the bishop should nonetheless be attentive to the man's needs. While some commentators seem to dwell more on the canon's notion of this as flowing from the bishop's charity, the canon itself actually does not use the word "charity." The CLSA commentary points out that the canon specifically says the bishop is to provide – "*providere curet*."²³ While this paragraph of canon 1350 would not speak of a dismissed cleric as having a right to support from the Church, it does remind the bishop of his responsibility to the cleric. The dismissed cleric is not to be abandoned if he is truly in need. The dismissed cleric is not to be left destitute.

I think these canons once again remind us of the basis for these concerns for the cleric's support. No longer is the concern merely for the clerical state, for the dignity of the clerical state, but rather for the dignity of the person. And again we have to recall that these canons stem from the teaching of Vatican Council II and the papal social teaching of the last century. The concern is founded on the dignity of the person. And thus I think when we consider how to care for clerics removed from the ministry as a result of having sexually abused minors, we cannot lose sight of the basic dignity of the individual. I do not think we can see these canonical provisions as merely legal precepts. Rather, I think we have to see them as a codification of the rich social teaching of the Church on the dignity of the person. And thus I think that when bishops weigh how they will care for and support men removed from the ministry, even as a result of having sexually abused minors, they have to keep in mind this teaching, not merely legal precepts.

Jeffrey King makes a good point when he notes that the first paragraph of canon 1350 is formulated in the negative – "so that he [the cleric] does not lack. . . ." King notes that by doing so the canon avoids having to spell out in a positive fashion what those things were that were necessary for the cleric, for his decent support. He goes on to comment that this formulation "allows for more discretion in applying the norm to individual situations."²⁴ Finally, King comments that canon 1350 does not in fact say who is to provide this support; rather, it simply says that such support is to be provided. He notes that this support could come, for example, from pensions, government grants, insurance, donations and the like. Certainly the bishop, in weighing how he would address the decent support of a cleric removed from ministry, could legitimately take into consideration these other means of income, especially if the cleric has been able to procure gainful employment that would enable him – the cleric – to live quite decently. In such situations it might

²³ *New Commentary*, 1564.

²⁴ King, Jeffrey L. "The Application of Canon 1350 on Decent Support of Priests to Contemporary North American Situations," J.C.L. Thesis (Washington: The Catholic University of America, 2004) 29-30.

even be argued the bishop's responsibility to provide for the man has ceased.

In the end, then, canon 1350 expresses the concern that the cleric's basic needs be met, while not clearly defining what these needs are, nor clearly spelling out from whom or from where this support would come. In any case, the bishop is to remain attentive to the man and to his needs.

D. Canon 195

Another canon that has to be looked at here is canon 195. This canon speaks of the person who has been removed from an office on which the person's livelihood depends. This removal is done by decree of the competent authority, not by the law itself. Canon 195 says that in such situations the authority removing the person from an office on which the person's livelihood depends is to ensure that the person's livelihood is secure for an appropriate time, unless this has been provided for in some other way. I think this canon is relevant to our discussion for several reasons.

First, many of the clerics removed from ministry as a result of allegations of having sexually abused minors have been removed by decree of the bishop, not by the law itself and not by a penalty being imposed after canonical trial. Many have been removed as a result of allegations of actions that they deny. Some have been removed almost as soon as the allegation came to the bishop's attention, perhaps even before an investigation had taken place. In other instances the removal has come after an investigation, when the bishop, with appropriate consultation, has deemed the allegations credible. They have yet to be proven through trial, however. Other accused clerics have acknowledged the allegations to be true and have thus been removed from ministry, again without trial, and thus not dismissed from the clerical state. In any case they are removed from office, usually by decree, from an office from which they received their livelihood.

Second, the canon seems at least to open the door to this support being extended only for a reasonable period of time, not necessarily for the life of the individual. Certainly this would seem relevant to our consideration today in those cases in which we are dealing with relatively young and able individuals. Even though the person has been removed from an office that had provided the person's livelihood, the obligation to provide support to the person is limited. The canon would envision the person's immediate needs being addressed. It would seem to provide for the opportunity for the person to garner the skills or education needed to make the adjustment into new employment. While there might well be just reasons to remove the person from office, the Church must still remain concerned for the person's well-being, at least in the short term.

While this canon does not directly deal with clerics, it certainly gives us some points to consider later when we more specifically look at how the Church supports those clerics removed from ministry due to having sexually abused minors.

Canon 195 also makes mention of support being given the person "unless this

had been provided for in some other way.”²⁵ Again I think this will be relevant when we look more closely at the support given removed clerics. It seems to me that the bottom-line consideration here in canon 195 is that the person receive adequate support at the time of removal from office. While the Church must be concerned for this, other means may meet the need. Certainly the Church’s responsibility would be lessened, if not completely eliminated, when the person gains new employment. Certainly it would be expected that the person would seek new employment. Hopefully such employment would indeed be adequate to provide for the person’s livelihood. Or the Church’s need would be lessened if the person had other means, other sources of income – unemployment compensation provided by the state, social security benefits, for example. And the Church’s obligation would be lessened if the person had personal or family resources adequate to meet the individual’s needs. Indeed it would be expected that the person would make use of such resources if they were there.

It seems to me that this canon highlights both the Church’s need to be concerned for those removed from positions providing their livelihood, while at the same time noting that this concern has limitations. The focus of the canon is more for the well-being of the person than on the Church’s obligation to provide support.

E. Conclusion

In the end it seems to me that each of these canons we have looked at here today – canon 281, canon 384, canon 1350, and canon 195 – all have one thing in common: *a concern for the individual*. While there certainly remains a concern for the dignity of the clerical state, the primary concern is centered on the dignity of the individual as a person. And so again we see these canons as flowing from the social teaching of the popes of the past century and of the Second Vatican Council. This in turn must always be kept foremost in our minds as consideration is given to providing for removed clerics. We must not be content to do just the minimum commanded by the law.

Perhaps if I had to summarize my reflections on this question as to how we as a Church respond to and treat those men who have been removed from ministry as a result of credible allegations of having sexually abused minors, there are two points that stand out.

First, I think we can never lose sight of the canonical principle of no penalty unless a person is proven guilty of the allegations made against him. Like all persons, the accused cleric enjoys a presumption of innocence. Guilt must be proven, and only then can penalties be imposed.

Second, in all that we do, even when a man is indeed guilty of these horrendous acts against young people, we must still be guided by the Church’s rich social

²⁵ *Nisi aliter provisum sit. Code of Canon Law Annotated* edited by E. Caparros, M. Thériault, J. Thorn (Montréal: Wilson & Lafleur Limitée, 1993) 180.

teaching on the dignity of the person, clearly rooted in the Gospel message. Indeed just last night, in his keynote address opening our annual convention here in Pittsburgh, Bishop Thomas Doran reminded us that one of the outstanding features of the 1983 *Code of Canon Law* is that it bases the Church's law on the Church's teaching.²⁶

II. PRACTICAL CONSIDERATIONS & APPLICATION

Perhaps we can understand some of the repercussions of these canons by attempting to apply them to a few scenarios.

A. Cleric accused, restricted but allegation not proven

An allegation has been brought against Fr. Titus, accusing him of having sexually abused a minor many years ago. The allegation has become public and there has been a public outcry against Fr. Titus. Thus, the bishop feels he has no choice but to remove Fr. Titus from any public ministry. There has been no investigation yet and Fr. Titus continues to deny the allegation being made against him. The bishop invokes his executive powers and removes Fr. Titus, making public his actions in restricting the priest.

What are Fr. Titus' rights insofar as financial support and benefits?

I think in looking at Fr. Titus' situation, it is vital to bear in mind that there has been no canonical process yet. Certainly the truthfulness of the allegation has yet to be proven. It is not even certain that the allegation is credible. The bishop acted by removing Fr. Titus from public ministry primarily as a result of the public furor surrounding the allegation becoming public. I am not today discussing whether the bishop's action in restricting Fr. Titus' ministry was appropriate or justified. Our premise is simply that he did so.

In spite of the public outcry and in spite of the bishop's action, Fr. Titus must be presumed innocent until and unless proven guilty. At this point certainly there has been no proof of guilt, no formal canonical judgment, no admission of guilt on his part. Fr. Titus strenuously denies the allegation.

As we know, when the bishop receives such an allegation, he must act. The alleged action is far too serious to be ignored. First, once he makes some prudential judgement that the allegation is not merely frivolous or patently false, the bishop must initiate an investigation, as noted in canon 1717. Care must be taken throughout such an investigation to safeguard the good name and reputation of the accused cleric. One might argue that by removing Fr. Titus and making this public, the bishop has called Fr. Titus' reputation into question. But again, that is not our

²⁶ Doran, Bishop Thomas, Keynote address at the 66th annual convention of the Canon Law Society of America, Pittsburgh, PA., October 11, 2004, pages 1-12.

question here today. The situation is one, however, that we know is not at all uncommon today.

Indeed canon 1722 would allow the bishop, at any stage in the process, after consulting the promoter of justice and summoning the accused cleric, both of which I will presume he did, to prohibit the accused cleric from the exercise of his ministry and/or to restrict his exercise of his ecclesiastical office or position and even to impose or forbid residence in a certain place. The bishop is able to do so in order to prevent scandal, to protect the freedom of potential witnesses and to safeguard the course of justice. The bishop, in Fr. Titus' case, did so because he obviously felt there was scandal in the community, given the notoriety the allegation received in the secular media. While this may be argued, it was apparently the bishop's judgment.

What support is due Fr. Titus?

As we have discussed earlier, canon 281 speaks of the cleric receiving remuneration since he dedicates himself to the ministry of the Church. He does not receive his remuneration simply because of a job he fulfills or an office he holds. In Fr. Titus' case, there is no question that he has and continues to be dedicated to the ecclesiastical ministry. He denies the allegation made against him and fully intends to be vindicated, to return to the active ministry he has performed for so many years. His dedication has in no way ceased or been extinguished. His inability at this time to minister is due to the actions of his bishop.

Canonically, Fr. Titus has not been removed from office – there has been no formal process yet. Canonically, no penalty has been imposed on Fr. Titus. Thus, I think the law is clear – he remains entitled to remuneration, not simply “decent support.”

It is worth recalling what Jim Provost argued, that as long as the cleric is willing to serve – as indeed Fr. Titus is – then the bishop remains obliged to provide him not only basic support, but indeed “also with remuneration in keeping with his condition. That is, provided he is dedicated to ministry, even though he has been given no ministry to do. . . .”²⁷

What would this remuneration be? I would argue that since there has been no formal canonical penalty, no proof or admission of guilt, Fr. Titus would remain entitled to the full remuneration package he had been receiving at the time of his restriction by the bishop. There should be no diminution of his remuneration and related benefits. It could be well-argued in fact that there might be legitimate cause for greater financial consideration. This would, in my estimation, certainly be warranted if the bishop has restricted Fr. Titus' residence in the parish house or some similar ecclesiastical facility, such as the diocesan seminary or chancery residence. If Fr. Titus is forbidden residence in such a facility, then obviously he would incur additional expenses for housing and board. Even if he were able to

²⁷ Calvo, Randolph, et al. *Clergy Procedural Handbook* (Washington: Canon Law Society of America, 1992) 48.

reside with family members or friends, he should not be expected to do so gratis. In justice, he would be expected to offer some financial support and consideration for this hospitality. Since residence in the parish house or other church facility, and the related benefits of such residence, are traditionally provided to our priests, then denial of such residence would in my mind call for some sort of residential supplement as long as the priest is restricted from ministry and ecclesiastical residence.

Further, I believe the diocese would also be obligated to provide Fr. Titus those other perks given to priests in good-standing and active ministry in the diocese. Obviously they vary from diocese to diocese. These could include, for example, a car allotment, car insurance, retreat expenses, educational expenses, and other such things. Insofar as these are provided to the active priests of the diocese, then they should still be offered to Fr. Titus. He is not suspended. He is not removed from office. He is under no penalty. He has not ceased his dedication to the ministry. He is simply restricted from the exercise of his ministry, at the call of his bishop, pending the outcome of the preliminary investigation.

What is perhaps a more difficult consideration is what to do about Fr. Titus' lost income? Since he cannot publicly minister at this time, he would lose, for example, the stipends for the celebration of the Eucharist and offerings or gifts given him on other similar occasions. These are, in my opinion, more difficult considerations because on the one hand, such income certainly has impacted on Fr. Titus' living condition, while on the other hand, such offerings are indeed given for some particular function performed. Since he cannot function, he cannot receive such offerings and indeed there is a reduction in his income. While I think it would be hard to argue that canonically Fr. Titus is entitled to compensation for this lost income, in justice it should be at least given consideration. Since no person should be punished unless he or she has committed a crime, is Fr. Titus' lost income, due to the limitations on his exercise of the ministry, *de facto* a penalty? If answered in the affirmative, would not logically, then, the one restricting the ministry, creating the loss, become responsible to make up for it? It is a question we must at least consider.

B. Cleric accused, allegation deemed credible

Closely related to this first scenario would be the case in which Fr. Brutus has also been accused of having sexually abused minors, again many years in the past. After having received the allegation against Fr. Brutus, the bishop issued the appropriate decrees initiating the preliminary investigation. Once the investigation had been concluded and the results shared with the diocesan sexual misconduct panel, the allegation was deemed credible. Thus in accordance with the provisions of the *Essential Norms for the Protection of Children and Young People*, the bishop removed Fr. Brutus from all public ministry. No formal canonical trial has been conducted yet, though the case has been submitted to the Congregation for the

Doctrine of the Faith. The bishop is awaiting the congregation's response and direction.

Again the question is, what are Fr. Brutus' rights insofar as financial support and benefits?

As in our first case with Fr. Titus, there has been no formal canonical trial yet. Even though the allegation against Fr. Brutus has been judged to be credible, believable, Fr. Brutus has not been proven guilty of the alleged actions. He denies the allegation and thus he must still enjoy the presumption of innocence.

Indeed Fr. Brutus' situation is very similar to Fr. Titus' in our first scenario. The only significant difference here is that the allegation against Fr. Brutus has been investigated and has been found to have credibility. Thus the bishop was obliged to restrict Fr. Brutus' ministry. Just as with Fr. Titus, Fr. Brutus denies the allegation and he hopes to be restored to the active ministry. His dedication to the ministry of the Church continues. There is no question that he would remain active in the ministry other than for the fact the bishop has restricted him. Again as in our prior case, Fr. Brutus has not undergone a trial and thus canonically no penalty has been imposed upon him. And so again the law seems clear – Fr. Brutus remains entitled to remuneration, not just decent support.

As far as what remuneration would be due Fr. Brutus, I again feel that since there has been no proof of guilt yet, and since no canonical penalty has yet been imposed on him, he would remain entitled to his full remuneration package, the same as he had been receiving at the time he was restricted from carrying out his ministry. Further, I think the same considerations must be accorded Fr. Brutus as had been accorded Fr. Titus. If he has been removed from his ecclesiastical residence, I think appropriate compensation must be considered to cover his added living expenses. Failure to do so, I think, would constitute a penalty. And again as with Fr. Titus, I feel Fr. Brutus would still be entitled to those other benefits given the priests of the diocese.

C. Cleric accused and admits guilt

A case not by any means unusual is that in which a cleric has been accused of having sexually abused a minor, usually many years in the past. When called into the bishop's office – hopefully with adequate counsel – Fr. Octavius admits his guilt. The bishop thus permanently removes him from all ministry in the Church, in accordance with the *Essential Norms for the Protection of Children and Young People*. While Fr. Octavius may not have been formally found guilty via a penal process, his admission of guilt, it seems to me, has in many ways the same result. Though not removed from the clerical state, he is to be permanently removed from any and all ministry in the Church. While he may still feel dedicated to the ministry of the Church, his days of ministering are gone. At least under the current legislation here in the United States, Fr. Octavius cannot ever be restored to the ministry.

Given that, then I think we move from a question of remuneration to decent

support, “*honestam sustentationem*.” Canon 1350 tells us that care must always be taken that the man does not lack for his decent support. While the canon does not spell out how this is to be done, we are to keep in mind that this is clearly based on the Church’s social teaching on the dignity of the person.

What support is to be given Fr. Octavius is not an easy question to answer. Many factors come into play. Often those men like Fr. Octavius, who have admitted their guilt, especially if older, are moved into something similar to retirement. While on the surface this may seem commendable, let’s look at it a bit more closely. While the monthly check given the removed cleric may be the same as that given a priest who retired in the normal fashion, the removed cleric has lost, however, much of his ability to earn other income. He will not, for example, be able to provide weekend coverage, something most retired priests do for many years into retirement. And at the same time Fr. Octavius will have added costs in many instances. For example, he will not be able to reside in a parish house or rectory, as many retired priests do. Even when a retired priest moves to a warmer climate, he is often able to arrange to live in a rectory in exchange for weekend assistance and other limited forms of ministry. The removed cleric loses all of this and must provide for his own room and board. While some removed clerics may be able to find some form of secular employment that might offer some income, many of the men being removed are older and thus their ability to find gainful secular employment is severely limited. Younger men may be much more able to find secular employment and should be expected to do so. But older men will, as I have said, have greatly limited ability to do so. Age and health considerations may severely limit them.

When a cleric admits his guilt and willingly accepts permanent removal from the ministry, without a formal penal process and conviction or laicization, it would seem prudent that he – with canonical counsel – and the bishop should have some sort of agreement – preferably in writing – spelling out specific terms as to what assistance will be given the removed cleric, including such things as his financial support and health benefits, where he may or may not reside, any other support he may receive, and specifically what ministerial activities are restricted.

D. Cleric accused, tried and convicted, dismissed from clerical state

After having been accused of sexually abusing minors, Fr. Antonius has been tried and convicted, and dismissed from the clerical state. Or perhaps he has been laicized by an act of the Holy See. In either case, Fr. Antonius is no longer considered a cleric and so the question of his dedication to the ministry of the Church is moot. And thus it can no longer be argued that he is entitled to remuneration, as provided by canon 281. Further, the provisions of canon 1350, §1 would no longer apply either. We are now in a situation envisioned by canon 1350, §2 where the bishop is to take care to provide for such a dismissed cleric who is truly in need as a result of the penalty inflicted upon him. These are also perhaps the cases most notorious and problematic, surrounded by considerable anger and

emotion. These are, I fear, the cases where the bishop may just want the man to go away quietly.

While it might be argued that the Church is no longer canonically obligated to support Fr. Antonius, the canon reminds us that the Church nonetheless must continue to show a concern for the man, especially if he finds himself in need. Here again the emphasis seems to be on the basic dignity of the person. While strictly speaking Fr. Antonius would not be entitled to remuneration or even support, if he is truly in need, the Church is morally bound to respond. This is clearly a situation that has to be addressed individually. Certainly it should be expected that Fr. Antonius would seek secular employment if his health and age would permit. And he would be expected to make use of whatever personal resources and wealth he might have accumulated over the years. And he would certainly be expected to make use of whatever social assistance programs might be available to him from the federal or state government.

In a sense, it might be argued the Church would be the man's last resort. When all these other avenues have been exhausted and the man still genuinely finds himself in need, can the Church just stand back and look the other way? Again, I think that this is where canon 1350, §2 especially reminds us of the Church's concern for the dignity of the person, not merely a legal precept.

E. Cleric accused, tried, acquitted, restricted nonetheless

What of Fr. Julius? He has been accused of having sexually abused a minor several years ago. Once the allegation was received the bishop informed Fr. Julius, who denied the charge being lodged against him. The bishop conducted the appropriate investigation and then discussed the matter with the diocesan sexual misconduct panel. The allegation was deemed credible, Fr. Julius was restricted from the ministry, and the case was referred to the Congregation for the Doctrine of the Faith. The congregation in turn authorized the bishop to conduct a formal penal trial to judge the allegation against Fr. Julius. The trial was held and Fr. Julius was acquitted. Nevertheless, the bishop felt that for the well-being of the diocese he must invoke his executive powers and by an administrative act remove Fr. Julius from all ministry.

What remuneration and support are due Fr. Julius?

It seems to me that Fr. Julius would be entitled to his full benefits, just as Fr. Titus and Fr. Brutus in our first two examples. Like Frs. Titus and Brutus, Fr. Julius remains dedicated to his priestly ministry, to the ministry of the Church. He has in no way abandoned that dedication. It endures as far he is concerned. But the bishop has seen fit to restrict him from any and all exercise of the ministry. He has clearly not been found guilty of a crime, though the bishop may continue to feel the allegation is credible. In fact, though, it has not been proven. Thus, insofar as canon law is concerned, Fr. Julius is not to be penalized. Perhaps from other information available to the bishop – information not brought into the trial for whatever reason – he truly believes Fr. Julius is guilty, or at the very least, a danger

to the community. Thus the bishop feels he must act to restrict Fr. Julius, removing him from all ministry, for the safety of the community entrusted to his care. While Fr. Julius can certainly appeal the bishop's actions, he is nonetheless at the moment restricted from all ministry.

This might indeed be a situation in which Fr. Julius – together with his canonist – might strive to work out some equitable agreement with the bishop. Perhaps if he is old enough and/or ordained for a sufficient number of years, Fr. Julius might be able to go into retirement and receive the retirement benefits normally extended to the retired priests of the diocese.

This still poses some difficulty because most retired priests, as we have seen earlier, continue to exercise their ministry well into their retirement – albeit with limitations – usually celebrating Mass, providing weekend coverage, and the like. Often this supplements their retirement benefits from the diocese. Fr. Julius, being restricted by his bishop, essentially loses this possibility.

Additionally, often retired priests continue to live in a rectory or some other diocesan center, even when they might permanently relocate or seasonally flee to Florida or some other warm climate. This too might become unavailable to Fr. Julius, thus adding to his living expenses since he would have to provide for his residence. Should not the bishop give consideration to this also?

On the other hand, if Fr. Julius is a younger man, might it not be expected that he seek gainful employment in the secular realm? Might not the diocese assist him financially while he makes the adjustment, assist him financially if he needs additional education or vocational training of some sort? Such investments now could indeed prove a win-win situation. The man could support himself in a meaningful and fulfilling way, and the diocese would not be confronted with years of support which could easily far surpass the immediate investment.

Finally, perhaps in a case such as that of Fr. Julius, consideration could also be given to transfer to another diocese. Strictly speaking, this would not be forbidden by the either canon law or the *Essential Norms*. Certainly in such a situation the bishop of the other diocese would have to be provided Fr. Julius' complete personnel file, particularly everything concerning the allegations lodged against him and the reasons the man's bishop has continued to restrict his ministry. Nothing whatsoever should be held back, in fairness to all involved, including the community. This would have to include, I think, all the acts of the penal trial that acquitted Fr. Julius. Since he had been found not guilty, he would not be barred by the *Essential Norms* from being restored to the active ministry. The bishop of another diocese might be willing to accept him into some form of ministry in his diocese, perhaps in some limited fashion. The other bishop might not face the same public reaction as there might be in the original diocese. While such consideration may prove difficult, perhaps it should at least be something open to consideration. Certainly great care must be taken, though, so as not to put the community at risk.

CONCLUSION

These five scenarios are just a few of the possible situations the Church faces as we continue to confront the scandals of sexual abuse of minors by clerics. How the Church assists a cleric removed from the ministry will have to be addressed on an individual basis, given the particulars of each man's situation and condition. There are no simple answers and no simple solutions. It is a matter that needs addressing, always keeping in mind both the appropriate canons as well as the social teaching of the Church and the teachings of Vatican Council II, on which the law is founded. It is a matter that is too often addressed in a climate of fear and anger, in an atmosphere too often clouded by emotions. While this is understandable, given the horrific acts of some clerics and the mistakes of Church leadership, somehow we have to get beyond the fear and anger, beyond the emotions, so that all parties are ultimately treated fairly and justly.

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**THE CHARTER AND NORMS TWO YEARS LATER:
TOWARDS A RESOLUTION OF
RECENT CANONICAL DILEMMAS**

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In a recent edition of the news magazine *The Economist*, the author of the weekly column dedicated to the European Union highlighted the difficulty interpreters tackle when conveying the subtle meaning that lurks behind otherwise obvious phrases expressed in the various languages.² The importance of the issue has resulted, or so we are told, in the appearance of guidebooks meant to assist translators with conveying the deeper meaning behind everyday expressions.

“Hence the guide’s warning,” the author writes, “that when a Briton says . . . I’ll bear it in mind” [he usually] means “I’ll do nothing about it;” while “Correct me if I’m wrong” means “I’m right, please don’t contradict me.”

Of interest to me though, and what brings me to today’s topic, was not French exasperation with British nuance, but the English frustration with French subtlety. The author continues: “The British guide to what the French really mean has a narrower aim: it was written specifically for [meetings] where officials . . . haggle over legal texts.” Summing the matter up, the author says: “As the Brits see things, a Frenchman who says . . . “We must find a pragmatic solution,” should be understood as meaning: “Warning: I am about to propose a highly complex, theoretical, legalistic and unworkable way forward.”

The adoption of the *Charter for the Protection of Children and Young People*, and the subsequent promulgation of the *Essential Norms*³ by the members of the United States Conference of Catholic Bishops intended to propose a pragmatic solution to a complex and destructive problem: the sexual abuse of minors by members of the clergy. To the surprise of many, or perhaps with no surprise at all, criticism of the bishops’ pragmatic solution surfaced quickly, leaving at times the impression that the *Charter* and *Norms*, from a canonical perspective at least, comprised more of a highly complex, legalistic and unworkable way forward than a viable proposal consonant with the canonical tradition. Critics of the *Essential*

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² “I Understand up to a Point,” *The Economist* (September 4, 2004) 52.

³ United States Conference of Bishops: Washington, DC, 2002. The *Charter* and *Essential Norms* were approved by the body of bishops on June 14, 2004. The *Essential Norms* received *recognitio* from the Holy See on December 8, 2002.

Norms spoke out relentlessly while defenders of the law were sparse and subdued.

Certainly, many of the observations of the legal critics were well founded. Besides, legal criticism is an essential method for sound advancement of the law. Yet critique of the law is often in vain when it does not observe the fundamental rule of law: *audi et alteram partem*, or listen to the other side. During the past two years, bishops have all too often found themselves in the unenviable “no win”⁴ situation that arises when addressing issues as serious and complex as those of clerical abuse of minors. They have faced many interests, most all of them justifiably concerned with the outcome of decisions, both on the local and the national level. Canonists, too, from the perspective of either practitioners or academics, have followed events closely and with a critical eye.

One of the more recent and well known commentators on the *Charter, Norms*, and practices that have devolved from them, is the eminent theologian, Cardinal Avery Dulles.⁵ In an article in *America*, Cardinal Dulles briefly discussed thirteen areas where he considers some flawed theory and practice to have arisen regarding resolution of clerical sexual abuse of minors. The thirteen topics chosen by the Cardinal constitute an excellent summary of the more controversial and debated questions of the past two years. They provide an appropriate framework, then, for my own observations.

With this in mind, I will offer some of my own thoughts regarding several of the issues raised by Cardinal Dulles in his insightful contribution. My goal is to demonstrate that some of the criticisms lodged against the law – even as they are worthy of consideration – comprise but one half of the story. The hope is that revision of the *Charter* and *Essential Norms* will take place most constructively when we have considered all aspects thoroughly, the weak as well as the strong points of the law as it now stands. Accordingly, I will largely emphasize the strengths of the current law and practice.

Presumption of Innocence

Much has been spoken during the past two years of the presumption of innocence that is due a cleric by right when accused of or charged with the offense of sexual abuse of a minor. The complaint reads that once an allegation is received, the presumption of bishops is not that the cleric is innocent until proven guilty, but that something did, in fact happen. Such a conclusion then leads to swift and exaggerated steps to remove the cleric from public ministry and view. The result

⁴ A phrase used in the past by one of the most vocal critics of the bishops today: “The problem of what to do with priests who have sexually abused children is now a major question facing many bishops in our country. It is not a question with a firm answer, for there are several aspects of the issue that place the bishops in a delicate and potentially “no win” situation.” Thomas P. Doyle, “Canonical Rights of Priests Accused of Sexual Abuse,” *Studia Canonica* 24 (1990) 336.

⁵ Avery Dulles, “Rights of Accused Priests: Toward a Revision of the Dallas Charter and the ‘Essential Norms’,” *America* 190/20 (June 21-28, 2004) 19-23.

is a conviction before trial. What should happen instead, is that the right to a presumption of innocence direct the steps from the time of the accusation to the ultimate resolution of the complaint, whatever that might entail.

Two dilemmas arise here, one legal and one practical. First the legal. Read as we may, from cover to cover, the code contains no explicit expression equivalent, or perhaps even comparable, to the American, legal notion of a presumption of innocence.⁶ If it did, however, it would relate, if it is to coincide with the common law, to the criminal procedure. For the doctrine of a presumption of innocence is precisely a matter applicable to the due process of law pertaining to criminal proceedings. Canon lawyers who wish to appropriate the principle only confuse matters when they apply it outside of its proper domain.

Although the code does not explicitly guarantee a procedural presumption of innocence, neither does it embody a presumption of guilt. It does presume legal responsibility – willful and malicious intent – once an act in violation of the criminal law has been established.⁷ In this way, the canonical prosecutor does not as a rule bear the burden of proving malicious intent once he has proven the commission of a criminal act, and the court does not indicate circumstances require positive proof of legal responsibility.

We could argue, however, that a canonical, *procedural* presumption of innocence can be inferred from the principle enshrined in the code *accusatore non probante, reus absolvitur*.⁸ This is precisely where the issue of innocence might gain entrance.⁹ As a defendant in the criminal action I have no burden to meet

⁶ As Ladislav Örsy has written in his own commentary on the *Essential Norms*: “‘Due process’ is not a standard term with a recognized content in canon law. Canonists tend to interpret it as ‘a process according to our procedural law’ – no more. Lawyers in the English common law tradition go further and insist on some substantive elements that the process must include in order to be fair and due, such as the right to the presumption of innocence, to confront witnesses, to trial by an independent court, and so forth. Not all such ‘rights’ are protected by the canonical procedures.” Ladislav Örsy, “Bishops’ Norms: Commentary and Evaluation,” *Boston College Law Review* 44 (2003) 1016.

⁷ See c. 1321, §3. Even here, though, we are not speaking of a true legal presumption since the presumption of imputability need not be overturned only if moral certitude to the contrary has been reached. A court need determine merely that “it appears otherwise” in order to lessen or remove the willful or malicious character of the infraction. See Helmut Pree, “Imputabilitas – Erwägungen zum Schuldbegriff des kanonischen Strafrechts,” *Österreichisches Archiv für Kirchenrecht* 38 (1989) 238 [who follows V. De Paolis on the issue]; and Alphonse Borras, *Les sanctions dans l’église: commentaire des canons 1311-1399* (Paris: Editions Tardy, 1990) 18.

⁸ “If the accuser does not succeed in proof, the defendant is to be acquitted.” See c. 1526, §1: “The burden of proof rests upon the person who makes the allegation,” *Code of Canon Law Latin-English edition* (Washington: CLSA, 1999) 474.

⁹ “The *inquisitional* canon law process leaves the fact-finding to the judge, as well as the definitive judgement on the issue. In his hands too is the dynamic of the trial. Canon law necessarily has norms to guide the judge in these tasks. Here, the presumption of imputability takes the form of a direction in the law itself to the tribunal as to how it is to assess the evidence it has received: it will presume that a person intended to do what he or she did do, but if any doubt is raised then that doubt has to be resolved, for the tribunal must arrive at moral certitude to make a judgment of guilt. And this is precisely the form that the presumption of innocence takes in the canonical trial: it is a direction in the law itself to the

regarding what the accuser asserts. This is *at least* because the law does not presume I am guilty of the charge I face. Consequently, if the accuser is unable to meet the burden he faces, the court is bound to acquit me of the charges.

At this point a significant question arises: is absolution of a charge as provided for in the *contestatio litis* the same as a declaration of the court that the defendant is, in fact, innocent of the abuse of a minor? It is not. Acquittal is a statement by the court that at least the charges could not be proven as set in the joinder of issues. The court may assert this more forcefully if it wishes to express in the sentence – or if it is required to do so by law – that the defendant evidently did not commit the crime alleged.¹⁰ Even on this occasion, we should note, the court states merely that the defendant did not commit the crime, not that the defendant has never committed an act of abuse against the alleged victim or any other minor.

Because innocence of all wrongdoing cannot always be inferred from acquittal of a criminal charge, the code allows for lesser measures, warnings and penal remedies to be specific, to be applied against the defendant by ecclesiastical authority even though the crime alleged could not be proven to moral certitude.¹¹

So far we have spoken of procedural rights of the defendant and the presumption of innocence. I began there because I fear that if trials end in acquittals, and the Ordinary still takes measures to impose certain restriction on the defendant, an outcry might arise claiming the superior is acting unjustly in light of the presumption of innocence and the inability of the accuser to overturn it through the legitimate canonical process. He is not necessarily doing so. Since acquittal of criminal charges does not always measure up to exoneration of all wrongdoing, the law allows ecclesiastical authority a fairly broad discretion when directing the lives of clerics, especially if possible harm to the common good is a concern, something I will discuss shortly.

At any rate, the procedural safeguards placing the burden of proof on the accuser, and envisioning acquittal of the defendant when this bar is not met, does not transfer neatly to non penal administrative actions placed by the bishop with the common good in mind. The bishop need not prove to moral certitude that an action did occur before he restricts or removes authorization for ministry. By no means does this signify that the law provides no safeguards on these occasions. What it does mean, however, is that the law does not apply the same principles or require that the same standards be met before ecclesiastical authority can act outside of the

tribunal that it must find a person guilty *only* if it has acquired moral certainty on that point.” Michael Hughes, “The Presumption of Imputability in Canon 1321, §3,” *Studia Canonica* 21 (1987) 33.

¹⁰ See c. 1726: “If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.” *Code of Canon Law*, 529.

¹¹ C. 1348: “When an accused is acquitted of an accusation or when no penalty is imposed, the ordinary can provide for the welfare of the person and for the public good through appropriate warnings and other means of pastoral solicitude or even through penal remedies if the matter warrants it.” *Code of Canon Law*, 422.

imposition of penalties. To what extent, then, can we say that a cleric might enjoy a presumption of innocence outside of a formal canonical penal process?

What a cleric enjoys at all times, like all the faithful, is the right to a good reputation. This right is of natural origin, is absolute, it does not expire, nor can it be taken from a person. Once possessed, proof of a good reputation is not required. We presume persons do, in fact, have a good reputation until it is otherwise legitimately established, through fact or law.¹² The illicit loss of or harm to the right to a good name when caused by another has long been a punishable offense in our law, and rightly so.¹³

Now, given the seriousness with which the Church promotes this fundamental right, the provision of the *Charter* and *Norms* mandating ecclesiastical authority to do all it can to protect the good name of accused clerics must be strenuously upheld. But is the right to a good reputation the same as a right to a presumption of innocence? In one sense the right to a good name is more pervasive than the presumption of innocence. The presumption that a cleric enjoys a good name implies we would not consider him to have committed *any* crime, not simply the one now alleged by an accusation. At the same time, the presumption of innocence or even possession of a good name does not preclude the possibility that a crime or abusive act was committed. Perpetrators whose actions are occult still enjoy the appearance of a good name.

At this point, we encounter the practical dilemma. After an accusation is received, the accused cleric is asked to participate in the investigation into it. Instead of willingly doing so, he claims that his legal counsel, canonical and civil, advise him to remain silent except for a denial of the accusation itself. Thus, we have a complainant who offers her story in some detail, and an accused who refuses to speak or otherwise assist the investigation. He claims instead that he has a right to the presumption of innocence. If the preliminary investigation is inconclusive, he asserts, his status quo should be restored since the presumption prevails.

The bishop now faces a complex decision. The accuser might seem credible. The accused refuses to speak. The investigation can neither confirm nor rule out convincingly the truth of the accusation. Does the bishop then return the cleric to the *status quo ante* or does he invoke by analogy a provision of the procedural law: although the accused is not bound to confess a crime,¹⁴ he is bound to respond regarding other matters, and his refusal to respond permits the judge to decide what

¹² See Ronny E. Jenkins, "Defamation of Character in Canonical Doctrine and Jurisprudence," *Studia Canonica* 36 (2002) 419-462, especially 419-424.

¹³ C. 1390, §2: "A person who offers an ecclesiastical superior any other calumnious denunciation of a delict or who otherwise injures the good reputation of another can be punished with a just penalty, not excluding a censure." *Code of Canon Law*, 432.

¹⁴ C. 1728, §2. The same canon also provides that the accused is not bound to take an oath.

can be inferred regarding the refusal.¹⁵

Bishops have, in fact, followed the path analogous to the procedural law. A cleric's refusal to cooperate in the investigation might be interpreted as a reluctance borne of guilt, or at least of a desire to "hide something" as it were. This prompts the bishop to conclude that he can no longer guarantee to the public that the cleric is suitable for ministry with access to minors. Yet neither can he state that the cleric is not suitable. The accusation is just substantive enough to need a definitive resolution one way or the other, and not simply dismissal of it due to an inability to move forward with the investigation. So what happens now? Does the bishop err on the side of the common good – as he might read it – or does he decide in favor of the cleric and allow ministry to continue despite the bishop's unsettled sense of the need to proceed with caution?

The Common Good and Individual Rights

The broader question that underlies the above dilemma, is that of the notion of conflict of rights. Is it possible for the "rights of individual persons," as Cardinal Dulles refers to them, to be overridden by the "supposed good of the totality?"¹⁶ Legal theory, both secular and ecclesiastical, has grappled with this question for centuries. And we canonists, I strongly believe, should not easily take one side or the other in the debate without having first fully informed ourselves of the complexity of it.

The canon law provides several instances where individually held rights do bend to the common good. The removal of pastors from office, even if due to no fault of their own, is one example. The several marriage impediments (cc. 1083-1094) are further instances, inasmuch as they restrict the individual's exercise of the natural and fundamental *ius connubii* in order largely to protect the common interest in promoting the institution of marriage.

The example most pertinent to our topic is the general norm found in canon 223, §2.¹⁷ This legal provision has made its way into the current jurisprudence of the Congregation for the Doctrine of the Faith. In general terms, the canon itself is meant to safeguard against the exercise of individual rights becoming a weapon of "personal egoism" used without keeping the common good of the Church in mind.¹⁸ Thus, ecclesiastical authority is given not only the right, but the obligation to

¹⁵ C. 1531. This canon constitutes another instance where the code has not canonized in its statutes American constitutional guarantees related to due process, here the broad fifth amendment protection against self-incrimination in criminal actions.

¹⁶ Dulles, 20.

¹⁷ "In view of the common good, ecclesiastical authority can direct the exercise of rights which are proper to the Christian faithful." *Code of Canon Law*, 65.

¹⁸ Winfried Aymans, *Kanonisches Recht*, vol. 2 (Vienna: Ferdinand Schöningh, 1997) 114: "*Der Grundgedanke ist der, daß die Rechtsausübung nicht als Kampfmittel des persönlichen Egoismus mißbraucht werden darf, sondern stets das sog. Gemeinwohl der Kirche zu berücksichtigen ist.*"

moderate the exercise of individual rights “in view of the common good.”¹⁹

Use of the canon to resolve allegations of abuse has not been without controversy. It is usually invoked by bishops in cases where the accusation has not resulted in the imposition of penalties through a criminal action. The bishop determines that public ministry is still not an option for the cleric in light of either public scandal surrounding the accusation or the perceived threat to minors that the cleric might pose. In the case of public scandal at least, this may be without any fault on the part of the cleric himself.

Debate concerning the meaning and use of this canon should continue. It is new to both the 1983 code as well as applied jurisprudence, although the principle behind it is certainly not unfamiliar to the tradition. In the meantime, bishops and their canon lawyers should keep in mind that the perceived threat of scandal to the faithful or harm to minors must be more than mere speculation or hypothetical guesswork in order to invoke canon 223. Likewise, canon law advocates for accused priests should bear in mind that the rights of clerics are not intended to stand over and against ecclesiastical authority and the promotion of the common good. The bishop does and should have a right and duty to moderate the exercise of clerical rights, always, of course, with a sense of the fair and equitable before him, and following the procedures determined by law.

The Definition of Sexual Abuse and the Principle of Unambiguous Laws

Another criticism often levied against the *Essential Norms* is that the qualification of what constitutes sexual abuse presented in the preamble is too vague to allow for a just application of it within substantive criminal law. In particular, the provision that an act may qualify as abusive even though “no discernable harm” may come to the victim has met with opposition.

The first response I would offer is that prior to the inclusion of this qualified “definition” within the *Norms*, the only statute applicable would have been that of the universal law; namely, canon 1395, §2, where the characterization is limited to “a sin against the sixth commandment with a minor. . . .” In light of the universal statute, I believe the qualified definition of the *Norms* is a good, initial attempt to elucidate what it means to commit the crime of sexual abuse.

This is particularly so given that the universal law does not itself distinguish between various types of sexual offenses. The code approaches no system of classification here as would secular legal texts. In this country, for instance, we distinguish in general between felony sexual abuse, misdemeanor violations, sexual harassment, and so forth. Because the code speaks generally, canon 1395 is open to a broader reading so to include acts that might not be considered felonious in other legal systems, but still should constitute more grave delicts in ours. To

¹⁹ C. 223, §2.

suggest otherwise would be to lessen the gravity and consequences of types of sexual abuse or harassment other than rape or direct genital contact. Here, the argument would go, the destructive effect on a child of an overtly sexual act is the paramount concern that the law intends to convey.

Moreover, the inclusion of the phrase “when the act does not include discernable harmful outcome” is significant. By it is intended at least two things. First, the minor who becomes the object of sexual gratification may not realize it at the time, and so suffer no ill affects from the act. For example, abusers often engage in “peeping Tom” behavior, or worse, use their influence to have minors undress in their presence. There is no contact with the minor, and the minor may not consider the actions particularly abusive even if the minor does question on a certain level why the activity is occurring. The current definition of sexual abuse would cover this type of behavior as well as instances of contact since the legislator asserts that the concern for the common good is specifically that no cleric use a minor for sexual gratification. That is enough to raise the activity to the level of a crime.²⁰

We note that all the elements of a crime are present even if discernable harm has not resulted: a willful, external act intended to exploit (use) a minor for the purposes of the sexual gratification of the cleric. These elements are also present in the second instance in which the “no discernable harm” clause becomes relevant; namely, when the minor consents to the sexual act. As is the case in most secular jurisdictions, the canon law does not foresee the consensual nature of the act qualifying as a positive defense against the charge of sexual abuse of a minor. Again, the crime arises from the actions of the cleric irrespective of the volitional state of the other party.²¹

Is the definition as contained in the *Norms* open to unjust manipulation by ecclesiastical authority or judicial officers? Of course it is, as is almost any statute or legal provision. What is abuse of office? What is defamation of character? What is disrespect of ecclesiastical authority? The majority of our criminal statutes require interpretation in specific cases. This is, after all, the theory behind codified law: maintain a universal stance to be applied in specific cases according to the circumstances. The possibility of misuse of the definition by authorities should be the first concern when it occurs. The definition should not be dismissed because of that possibility.

A final point concerning the use of the phrase “sin against the sixth commandment.” As noted, much has been said concerning the excessively broad nature of what is now being accepted as a sin *contra sextum*. That it should include rape, sodomy, and so forth, is easily accepted. More contested is whether it should also

²⁰ What punishment, if any, should follow is another matter. Here we are speaking merely of what constitutes criminal activity.

²¹ We can think here by analogy of the crime of the absolution of an accomplice in a sin against the sixth commandment (c. 1387). The consent of the penitent to the act does not remove the criminal nature of the priest’s action.

include such actions as inappropriate, non genital contact, and verbal exchanges of a sexual nature.

Few would argue that these acts are not instances of sins against the sixth commandment understood in its broad, catechetical sense. The debate takes off when we ask whether this or that sin rises to the level of a crime. Resolution of this dilemma is left ultimately to the authority charged with deciding the matter in a legitimate process. But that authority, executive or judicial, may not act on whim. Thus, the definition of the *Norms* rightly says doctrine, jurisprudence, and *praxis* must all be consulted if the matter is, in fact, ambiguous. Again, this is the case with most all of our penal sanctions.

There are two safeguards to prevent ambiguous results from harming the accused. If moral certitude cannot be reached by the judge due to an inability to determine whether an act qualifies as criminal, then acquittal must result. If this does not happen, then the defendant should appeal the decision based at least on the defense that the act was not *contra sextum*, and so no sanctionable external violation of the law occurred when the act was committed.

In the meantime, debate should also continue as to whether or not the particular law determination of sexual abuse of a minor in the revised *Norms* needs to specify further various acts and grades of sexual abuse.

The Principle of Proportionality and Zero Tolerance

As some have noted, there is very little in the *Essential Norms* that is not already provided for to some extent in the universal law of the Church. The requirement for a diocesan review board, and mandatory reporting to civil authorities of allegations are two examples of particular law provisions. A far more controversial provision of the *Norms*, also not contained in universal law, is the so-called zero tolerance provision, expressed by the *Norms* in this way: “When even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.”²²

With this provision, then, the bishops are said to have established a mandatory, determinate and perpetual penalty for clerical sexual abuse of a minor. Critics point out that the norm goes beyond that of the universal law which calls for “just penalties, not excluding dismissal from the clerical state.”²³ We should note, however, that the code itself allows for particular law to modify the usual penalties established in the common law. The legislator may either add to the penalty provided in the code or, as we read in canon 1315, §3 “if universal law threatens an indeterminate or facultative penalty, particular law can also establish a determinate

²² *Essential Norms*, 8.

²³ C. 1395, §2.

or obligatory one in its place.” Thus, the *Essential Norms* have added to the penalty of universal law for clerical abuse of minors, and they have made the indeterminate penalty a determinate one. So far everything seems to be in line with the code itself.

However, critics go further by asserting that such a zero tolerance, or one strike and you’re out provision, is contrary not only to the canonical tradition, but also offensive to natural principles of justice.²⁴ The canonical expectation is that the penalty would be imposed only after due consideration for the particular nature of the violation and the state of the perpetrator at both the time of the crime and punishment. In other words, judicial discretion (cc. 1343-1346; 1349) with regard to “sentencing guidelines” of the code cannot be impeded through particular legislation.

First, I believe it important to put things in perspective with regard to the argument that the practice of *one strike and you’re out* is foreign to the canonical tradition. If a religious notoriously defects from the faith or attempts to contract marriage, even civilly, the religious faces an *ipso facto* dismissal from the institute.²⁵ The law itself contains a zero tolerance provision for religious responsible for these acts.²⁶ Moreover, if a religious commits the delicts mentioned in canons 1397 or 1398, those involving homicide and abortion, the major superior faces a legal mandate to dismiss the religious once the act and imputability for it are established.²⁷ These two provisions of law establish a zero tolerance for the actions when committed by religious.

Back to the *Essential Norms*. As a norm of particular law, and inasmuch as it might constitute a criminal statute, the zero tolerance provision is always subject to the universal norms concerning the imposition of a penalty on the guilty. Accordingly, the provisions of canon 1344 apply to Norm 8 of the *Essential Norms*. Even in those cases where the law, universal or particular, uses preceptive words regarding penalties, a judge is free to defer the penalty, impose a lesser one, suspend the obligation of observing it, or even abstain from imposing one

²⁴ See Örsy, 1013.

²⁵ C. 694.

²⁶ With regard to the process of dismissal in such cases, we should note that the subsequent declaration of the dismissal by the major superior adds no further juridical qualification to the fact that the law has itself dismissed the religious: “*La dimissione dell’istituto ha luogo, quindi, automaticamente, per il fatto stesso di aver commesso il delitto. La dichiarazione del fatto, che il superiore maggiore emette col suo consiglio, non ha effetto sulla validità né sull’efficacia della dimissione, ma deve essere emessa soltanto perché consti giuridicamente della stessa dimissione.*” Antonio Calabrese, *Diritto Penale Canonico* (Vatican City: Libreria Editrice Vaticana, 1996) 349.

²⁷ Canon 695 on mandatory dismissal qualifies the consequences of a violation of canon 1395, §2 by allowing the superior to determine whether other provisions than dismissal can be made. This may be due to the fact that in the past the violation of canon 1395, §2 may not have been considered as serious an affront to the charism of religious life as would have been the other infractions such as attempted marriage. All the same, the point here is that the law does allow for a zero tolerance response to some actions, and could do so for others were the circumstances to call for it.

altogether. So while the *Norms* may seem to mandate one strike and you're out, they cannot mandate that judges (and bishops in administrative processes) impose the mandatory penalty provided there.

We should be aware, however, that the zero tolerance provision might not be meant to constitute at heart a penal law that removes judicial sentencing discretion. It could be that the purpose of the norm is not punishment, but protection. That is, whether or not the penalty due an offender should be more or less grave, or not imposed at all, does not address the need to protect children from the threat of recidivism.

In this sense the zero tolerance provision is a disciplinary law that claims once a cleric is admitted or shown to have abused a minor, ecclesiastical authority can no longer guarantee to the public that trust should be placed in this man not to offend again. This determination does not require an evaluation of the repentant character or good service of the offender, as would the issue of imposition of penalties. The object of the norm is protection, not punishment.

All the same, even here the disciplinary character of the provision would allow for its dispensation, mitigation, and so forth. The bishop exercises executive governance so to provide for the common good and the mission of the Church. The complex of secondary issues once again come into play in such decisions, including whether the denial of any rights to the cleric is outweighed by the promotion of the common good,²⁸ and to what extent the protection of minors is secured by removing the offender from all ministry, even though it might be supervised and constitute activity removed from immediate access to children.

Further, the pressing question of to what extent the Church is prepared to or capable of establishing truly effective means of after care, supervision, and monitoring has not been sufficiently answered. Nor have the pilot programs begun in sufficient number or run for a sufficient length of time to ascertain their effectiveness. As a consequence, zero tolerance as a disciplinary measure may be the necessary response for the time being if the protection of children is the paramount principle that the American bishops have adopted.²⁹

Retroactivity of Law

The *Essential Norms* do not provide explicitly for retroactive force. Consequently, only favorable provisions may be applied retroactively. Other norms may not be, including the zero tolerance provision inasmuch as it constitutes penal law. Most importantly, legislators can never establish *post facto* laws that make actions criminal which, at the time of their commission, were not crimes. Early on there

²⁸ Indeed, cases have arisen where the use of zero tolerance has actually caused more scandal than would its dispensation have. All the same, the refusal to implement zero tolerance by a particular bishop because more harm might have come from its use will not satisfy those who argue the protection of children is the paramount principle to uphold.

²⁹ See Archbishop Harry J. Flynn, *America* 191/11 (October 18, 2004) 11.

was misunderstanding regarding this fundamental principle of law. For instance, actions committed with a person between the ages of 16 and 18, would not have constituted a delict in this country until 1994. The change in age, cannot be applied retroactively to make acts criminal that took place prior to 1994 with a minor over the age of sixteen.³⁰

That having been said, we should note that provisions found in the *Norms* that are also found in universal law may be applied according to their status as common law. For instance, Norm 9, on the use of executive power of governance, merely restates prerogatives that the bishop enjoys by universal law. Thus, if a bishop uses his executive power of governance to address a past action he may do so retroactively, as it were, so long as the action does not impose a penalty based on an *ex post facto* application of the current law.

There is no doubt that addressing past situations through executive power can appear to constitute or actually become a back door way to the imposition of penalties. Should this happen the canonical advocate can lodge a complaint to the effect that the executive action comprises a quasi-penalty without the due process mandated by the universal law.

Applicability of the Statute of Limitations (Prescription)

Related to the issue of retroactivity of law is that of the applicability of the statute of limitations, or prescription, related especially to *graviora delicta* cases of the sexual abuse of minors. The institute of prescription refers to the legal deadline set by statute after which a criminal action cannot be brought against someone to address the possible commission of a delict. Prescription is a significant legal institute meant to promote the prompt presentation and resolution of criminal accusations. Among the benefits of the use of prescriptive statutes are trial of crimes while the evidence is still “fresh,” and the ability of the members of society to know that the possibility of criminal action will not haunt them forever.

Under the former code the period of prescription for clergy sexual abuse of minors was certainly too short: five years from the commission of the act, or the last act in a series. Even the current period of ten years from majority is considered by many to be insufficient. All too often the trauma of the abuse does not permit a victim to come forward for many years after the abuse has occurred. When the abuse was at the hands of a priest, and the authority to whom the victim must turn is the Church, the reluctance to do so can be overwhelming.

³⁰ A related provision of law is also pertinent to this topic. The 1917 code contained a canon particular to clerics in minor orders who committed offenses *contra sextum* (see c. 2358). In light of the fact that the minor orders are no longer conferred, the current code does not sanction the abuse of minors by those clerics not yet in major orders. Consequently, those men who were clerics, but not ordained a deacon, when they perpetrated an act cannot now be punished for it. The principle applicable being that when a penalty is abrogated it may no longer be imposed on those who would have been subject to it before its abrogation (see c. 1313).

Perhaps in light of this, on November 7, 2002, by a decision *motu proprio* of the Roman Pontiff the Congregation for the Doctrine of the Faith was granted the faculty to derogate from prescription in cases of the sexual abuse of minors by members of the clergy (as well as other *graviora delicta*). In a sense, this pontifical act returns the crime of sexual abuse of minors in particular cases to a period when it, like other more grave delicts, did not labor under a period of prescription.

The derogation, when requested by a bishop referring a case to the Congregation, is granted when the grave allegation requires a penal process to restore justice and reform the offender. Hence, the formal law yields to the substantive when the particular gravity of the charge demands it. In my experience, the Congregation has applied the derogation in an exceedingly just and equitable manner. It is not granted if the threat of double jeopardy looms for the cleric. Nor is it presumed that all requests will be granted. A case by case review results in the determination as to the most suitable and just manner to proceed in resolving allegations, past or present.

Perhaps maintaining a period of prescription even for heinous crimes such as sexual abuse is prudent. And it could be that ten years from majority ends up as the ideal time limit, all things considered. At the same time, to allow for derogation in exceptional cases so that justice may be brought to perpetrators of this criminal act is not itself an injustice. The law cannot foresee all circumstances. The derogation at least provides a means to address those occasions when the statute has run, but justice must still be served.

Oversight, Therapy and the Prospect of Reinstatement

With regard to oversight of abusive priests, and therapy for those who have acted out on their impulses or fear doing so in the future, Cardinal Dulles remarks: "Prior to the Dallas charter, a priest with a problem was able to apply for therapy and be sent to an institution with the support of his bishop. Under the 'Essential Norms,' as they are being interpreted, this possibility is foreclosed. The bishop will not restore the priest to ministry and probably will not pay the costs of his rehabilitation. Thus priests with such problems have no motivation to seek treatment that might prevent future acts of abuse."³¹

The difficulty I find with this assertion is that of the thousands of clerics who abused in past years – a time before the zero tolerance policy was even conceived of – few indications are that most willingly came forward at one point to seek therapy for their disturbance. That a minority agreed to limited treatment after having been discovered in abusive situations is true. That there was a general readiness for treatment must still be established.

Yet even if we were to stipulate that offenders might voluntarily come forward for help if it were not for zero tolerance, the practical dilemma arises when we

³¹ Dulles, 21.

follow the scenario through to its end. The cleric admits that he has a problem with attraction to minors. He seeks treatment for it. The mental health care professionals indicate the treatment was a success.

And now the conundrum: what does success mean? One hundred percent guarantee the cleric will not offend or repeat the offense already enacted? No clinician makes that bold a statement. Perhaps there is an eighty/twenty chance against recidivism. Even a ninety/ten chance of no further offenses occurring. The numbers do not matter as much as who it is that becomes the chip in this game of chance. The argument goes: the most vulnerable among us are asked to wait and see. Most likely no more offenses. But considering the extraordinary, devastating impact an abusive act has on a minor, is the wager admissible? This is the question a bishop must answer. What is paramount?

Cardinal Dulles suggests that when an offending cleric “has repented and made a firm resolve of amendment, and when there is no reasonable likelihood of a relapse,”³² reinstatement to ministry should be a possibility. If this principle is to become the standard, I believe it essential to first determine what a “reasonable likelihood” consists of. Similarly, Ladislav Örsy asserts that the bishop should not invoke zero tolerance, but should dispense from it instead, with the proviso: “Obviously, such dispensation should never be granted if there is a risk of repeated criminal action.”³³

How many past cases are there where a bishop was told just that by the professionals, there is no likelihood of recidivism, only to have the offender commit another act some five, ten or more years later. It is certainly true, as the Cardinal points out, that in many instances an offender committed one act with no subsequent recidivism. But who has the means to say which offender will meet that standard? More troubling still, how can we determine reliably the rate of recidivism when there may be offenders who did commit further acts of which we still have no knowledge?³⁴

One of the world’s leading experts on sexual offenders and relapse, wrote recently at a Vatican symposium on the subject: “It is extremely difficult to determine whether offenders have ‘benefitted from treatment’. A few recent studies have found that ‘successfully treated’ sexual offenders were less likely to reoffend than ‘unsuccessfully treated’ offenders. In most studies, however, the recidivism

³² Ibid., 22.

³³ Örsy, 1021.

³⁴ I question whether Thomas J. Reese draws a sound conclusion when he comments on the John Jay study, asserting it is a myth that “most of the abusers were serial offenders,” since, as the study indicated, “56 percent of priests had only one allegation against them [Thomas J. Reese, “Facts, Myths and Questions,” *America* 190/10 (March 22, 2004) 13].” What these statistics indicate is that 56 percent of priests did not have serial allegations lodged against them. Whether or not they were serial offenders whose other offenses remained unreported or unknown is another matter.

rates were unrelated to judgments of treatment behavior.”³⁵ The author continues, “In general, the shorter the history of offending and the longer time offense-free, the less likely to reoffend.”³⁶ From a psychological perspective this is good news. From a pastoral perspective where the protection of children is paramount, the qualifying phrase “less likely” is of great concern.³⁷

A cleric who admits that he has exploited minors sexually should receive all the medical and psychological assistance he needs to control and live with the condition. He should be treated by ecclesiastical authority with compassion, charity and concern for his well being. That much is true and essential. I am not yet convinced, however, that the presumption should be that when the cleric receives a so-called clean bill of health public ministry should again be an option, at least not in the short term. Perhaps the standard should remain that no public ministry will occur, although the facts in a given case can allow for the rarest of exceptions. But even here, the dilemma remains: ecclesiastical authorities are once again asked to play that game of chance for which they have been roundly criticized in the past, and so rightly cautious to engage in again for the future.

Confidentiality

As a rule, priest personnel files, inasmuch as they contain personal information, should be seen or handed over only to those with a legitimate right to see them and proper motive for doing so. Cardinal Dulles points out that a few bishops have handed over these records to civil authorities. A consequence of this practice, the Cardinal asserts, is that “priests with personal problems are discouraged from turning to their bishops for help and advice.” This in turn injures “the relationship between bishops and priests.”³⁸

The request for records is not foreign to our legal system, especially if made by a judicial authority. Let us imagine a case before the Roman Rota where the promoter of justice suggests that proving a charge will require examining the personnel files of all the priests of the diocese in order to determine how personnel decisions were made by the bishop, and what decisions were made in particular cases. The court then orders copies of the files be sent to the *turnus* for its review

³⁵ R. K. Hanson, “Prognosis – How Can Relapse be Avoided,” in R. K. Hanson, et al., eds. *Sexual Abuse in the Catholic Church: Scientific and Legal Perspectives* (Vatican City: Libreria Editrice Vaticana, 2004) 140.

³⁶ *Ibid.*, 141.

³⁷ Some suggest that the distinction must be kept in mind between sexual acts committed with a child, and those engaged in with minors of sixteen or seventeen. Proportionality requires that the two situations be dealt with differently. I would certainly agree with this when it comes to the imposition of penal sanctions. However, from a pastoral perspective a bishop faces a formidable challenge if he wishes to convince the Christian faithful that a priest “has only” engaged in acts with sixteen or seventeen year olds rather than pre-adolescent children. To the parents of adolescents this may be of little comfort.

³⁸ Dulles, 22.

of them. The canonical rules of evidence admit a very broad range of proofs, and always at the court's discretion except for those types of evidence barred by the law itself.

Admittedly, the intent of the court would not be to weed out abusers so to charge them with crimes as could happen with civil review of files. Nevertheless, I myself would argue that the bishop would not be able to refuse to hand over files simply because they qualify as personnel files.³⁹ The point then is this: if priests of a diocese consider their personnel files to enjoy a type of professional confidentiality that would exclude their admission from ecclesiastical court (to stay with the example),⁴⁰ and so place them beyond the grasp of other ecclesiastical authorities, they are mistaken.

The issue of handing files over to civil authorities goes a step beyond my example. As Cardinal Dulles mentions, civil laws come into play, as do, I would add, constitutional provisions that protect internal Church communication and processes. So a distinction can be drawn between the confidential nature of personnel files and the right of civil authority to review ecclesiastical files relating to ministerial personnel, whether the files are confidential or not. Internal Church practice does not constitute a waiver of constitutional rights.

At any rate, I cannot solve the dilemma raised by Cardinal Dulles, of priests losing confidence in approaching their bishops out of fear that files might later be handed over to civil authorities. What I would suggest, however, is that better education on the nature of such files to interested parties would be an advantage. More importantly, we cannot lose sight of the fact that it is possible for a priest to approach his bishop as pastor without the bishop having to invoke the diocesan human resource manual and procedure.⁴¹ That is, not all personal issues need be personnel matters.

Settlements

Agreeing to monetary settlements in order to avoid trials have become common means of resolving accusations of sexual abuse lodged against clerics and of negligence levied against dioceses and their bishops. The *Essential Norms* do not speak to the issue, and the *Charter* states merely that dioceses will no longer enter into confidential agreements except for grave reasons suggested by the victim.⁴² The *Code of Canon Law*, of course, prefers settling cases out of court, whether civil or criminal, by reconciliation, settlement, or arbitration.⁴³

³⁹ One claim for exemption might be that presentation of the documents would cause harm to the subject of them. See., c. 1546.

⁴⁰ Cf., c. 1548, §2.

⁴¹ I am not thinking here of the issue of sexual abuse of minors or other actions criminalized by secular law.

⁴² *Charter*, art. 3.

⁴³ See cc. 1713-1716.

As we know well, settling cases out of court can be beneficial to a diocese in terms of monetary loss and avoidance of harmful publicity. Conflicts arise, however, in cases where the settlement is opposed by the cleric who supposedly committed the abuse. He claims innocence, and wishes to have his day in court. Cardinal Dulles justly remarks that if the settlement moves forward care should be taken “so that the public does not regard the settlement as tantamount to an admission of guilt.”⁴⁴

That having been said, I myself would qualify the Cardinal’s assertion in this way. Cardinal Dulles says that “if no guilt or liability has been admitted or accepted [by the cleric], the announcement should make this clear.”⁴⁵ I would prefer to place more of a burden on the cleric’s words. If he insists on his innocence then it should be made clear that no admission of guilt has taken place. If, however, the cleric has simply maintained silence regarding the matter, and again, not cooperated with the investigation into the accusation, then the bishop once more faces the dilemma of placing trust in a man who will not speak regarding the accusation nor play some active role in its resolution. What public statement should emanate from the bishop in such cases?

Remuneration of Accused Priests

Of immediate and practical concern to priests accused of sexual abuse is the question of their support and well-being during any and all processes meant to resolve the allegations. Bishops are charged by the law with upholding the rights and welfare of their clerics. So if a particular bishop is not fulfilling his obligation, the *Charter*, *Norms*, or even the *praxis curiae* should not be held accountable. The bishop who fails to meet his obligations should respond.

That having been said, it would be advisable in my view for any revision of the *Charter* and *Norms* to contain a general norm indicating that no priest is to suffer undue financial loss pending the outcome of an accusation. The norm should be general in character because some cases will always be unique, such as the priest who receives income from an institution other than the diocese. Even in these cases, though, the priest should receive at least what other incardinated priests receive in the diocese according to the customary stipend or to particular law on the matter.

The foregoing applies to priests during the period of the resolution of an accusation; that is, from the preliminary investigation to the conclusion of the canonical process that might follow afterwards. Should that process result in a finding of guilt, the issue of remuneration becomes more complex. It might happen, for instance, that a penalty imposed consists of a loss of income (a monthly payment to victim services might be mandated). Or it could happen that a loss of

⁴⁴ Dulles, 22.

⁴⁵ Ibid.

office results from the conviction due to a penalty or simply to the notoriety surrounding the accusation and outcome. In such cases particular law will again play a significant role, if any has been established to address it. But if the priest has lost employment with an institution separate from the diocese (a hospital or university, for instance) then the diocese can hardly be expected to offer the priest a comparable salary as a means of "softening the blow."

Yet other principles apply if the priest is dismissed from the clerical state. Although no legal obligation now exists for the bishop to offer the priest sustenance, the law reminds us that charity urges that the priest not be left indigent due to the penalty incurred. Charity urges, but does not compel. This is because there may well be suitable reasons why a diocese should not provide for a dismissed cleric. I am thinking here of the unrepentant offender or the notorious perpetrator.

Advocates for dismissed clerics can be of great assistance here. It is of little help merely to complain to the bishop that he is not fulfilling an obligation in charity to a dismissed priest. The advocate should propose solutions, investigate means of overcoming the obstacles to the priest receiving some form of assistance from the diocese. Advocates can be constructive partners and not antagonists that use as a sole tool the threat of recourse.

Access to Trial

Cardinal Dulles notes that accused clerics either have little chance of vindicating themselves in an ecclesiastical criminal trial or if they do, the period spent waiting for the process to begin and reach its completion is excessively long, so lengthy that "if [the accused cleric] is eventually cleared, the clearance comes too late."⁴⁶ Two reasons are offered for the delay: the sheer number of cases that have been sent to the Congregation for the Doctrine of the Faith, and the lack of sufficiently trained canon lawyers in the United States capable of litigating a criminal action.

I concur with the Cardinal on the *practical* point he makes. Swifter resolution of cases, while maintaining strictly the norm of justice, must be a priority. Indeed, this is now occurring, at least with regard to the case load at the Congregation for the Doctrine of the Faith. Two American canonists have generously agreed to work in Rome, hand in hand with the officials of the Congregation, to expedite resolution of the cases. What is now necessary is for bishops to continue to send qualified persons to study the law so that the dearth of suitable canonists will lessen. At the same time, canonists now practicing must also redouble their own efforts to stay current on the development of law.

I differ, however, with regard to one aspect of the theoretical point that underlies Cardinal Dulles' claim. He asserts that "if the principle of prescription were re-established as being indispensable, many or most of these cases could be

⁴⁶ Ibid., 22.

resolved early on.”⁴⁷ Prescription is only one part of the answer since it cuts two ways. A cleric who desires trial resolution of an accusation aired publicly by an alleged victim, but after prescription has run, is also barred from receiving a solemn response of the court. When prescription has run, the case will never be resolved since the most solemn means of discovering the truth is now barred from use. As a consequence, the only one who might be content with prescription could be the true perpetrator who fears imposition of a penalty.

Additionally, as noted above, the term of prescription as found in the previous code, five years from the commission of the act, and in this country since 1994, ten years from majority, is still too short in my opinion to allow for resolution of all abusive behavior. Many victims are simply not psychologically and emotionally capable of bringing their complaints to ecclesiastical authority by the age of twenty-eight. So reform of the law in the future might consider options such as extending the period of prescription yet further, or allowing for circumstances that would interrupt the running of prescription, or removing prescription altogether from the *graviora delicta* or at least this *delictum gravius*.

Virtual Laicization and Laicization

Of particular concern to priests since the appearance of the *Charter and Norms* has been the possibility of an allegation of abuse leading effectively to a perpetual irregularity to the exercise of orders. If an allegation is deemed credible, but resolution of it is not possible for some reason, the bishop decides—or so the claim goes—that the priest must be placed on “retired” status just in case something might have happened, and so might happen again. The same would be the case for priests who admit to past actions of abuse. Cardinal Dulles refers to such a scenario as the “forced laicization” of the priest.⁴⁸

Under the former code, the suspension of clerics by a bishop *informata conscientia*, or following on the informing of his conscience, was derided as too susceptible to abuse and so worthy of exclusion from the 1983 code, which it was.⁴⁹ Under those provisions, an ordinary could have suspended a cleric from the exercise of office in whole or in part provided the alleged crime was occult and recourse to normal legal methods posed a grave inconvenience.

It certainly may have been a laudable decision to remove the institution from the new code. Yet, the concern is that when the use of *informata conscientia* was taken away, it was not replaced with other means that would allow ecclesiastical authority to address the pressing matters such as sexual abuse swiftly and when the normal course of law would not provide the immediate relief required. The institute of irregularity for exercise of orders still applies, but the grounds for declaring an

⁴⁷ Ibid.

⁴⁸ Ibid., 22.

⁴⁹ See cc. 2186-2194 of the 1917 code.

irregularity do not fit neatly into issues of sexual abuse of minors.⁵⁰

The practice that has developed is for bishops to impose restrictions equivalent to suspension at the time an accusation is either received or certainly by the time it is deemed credible. The measures applied comprise at least those contained in canon 1722, but go beyond the canon with regard to such matters as the use of clerical dress. The legal foundation used to support these decisions is Norm 9 of the *Essential Norms*, and the universal provisions underpinning it: the bishop's prerogative to exercise executive governance by commanding and forbidding when a just cause requires it.

Moreover, the practice has also developed of using the same power of governance to apply the same measures for extended, indefinite periods in cases where no penalty was applied or where the credible accusation could not be disproved to a degree of certitude with which the bishop is at peace. When this happens, as Cardinal Dulles emphasizes, the bishop has effectively either suspended the cleric indefinitely or declared a de facto irregularity for the exercise of orders even if one does not exist *de iure*. If the measures last long enough we face a virtual laicization since the priest is no longer able to exercise ministry or even appear or refer to himself as a priest.

The situation may sound bleak. And I will not now either defend or deride any form of the practice outlined above. What I will say is that this is one of the most critical areas currently in need of serious study by canonists. All sides of the argument must be addressed. The urgency faced by ecclesiastical authority should be taken into account, as should the rights due clerics subject to their governance. We can no longer simply repeat that the law does not provide for such use of executive authority without at the same time offering solutions to the dilemmas faced by the same authorities. In the meantime, recourse remains open to those who feel aggrieved by the decisions. Resolution of the recourse should be swift and fair, resting not simply on the formal deficiency of the practice, but on the substantive needs that have brought it into play.

Offenses Beyond the Scope of the Essential Norms

During the past two years, a phenomenon colloquially referred to among some canonists as "charter creep" has been known to occur. Even though the provisions of the *Charter* and *Norms* are applicable specifically to the crime of sexual abuse of a minor by clerics, some non criminal actions of a sexual nature have also been addressed using measures of the *Charter* or *Norms* in either a penal process or executive action. Cardinal Dulles asserts that "this is to go beyond the charter,

⁵⁰ The exception being, of course, cases of pedophilia or ephebophilia where a determination might be made that the condition equates with a psychic illness or disturbances that disqualify a man from the exercise of orders. See c. 1044, §2, 2°.

strictly interpreted.”⁵¹

I think the warning the Cardinal sounds is worth heeding. It is, in my mind, both legally and pastorally imprudent to link all sexual sins and even other sexual delicts, with the crime of the sexual abuse of a minor. This would first of all weaken the character of sexual abuse as foremost a violent, manipulative act destructive of another person. It would also illegitimately raise the other actions, especially those between consenting adults, to the level of a crime even though the law does not provide for this, or, if the act is legitimately criminal, to the level of a *delictum gravius*, something the law also does not foresee. Sin should remain sin so that it can be addressed using the penitential means the Church provides for, and crimes should retain the character they have in the law so that they also can receive the most appropriate treatment.

At the same time, it should be recalled once more that many of the measures contained in the *Norms* are also contained in universal law. To the extent that this is so, a bishop may certainly use the provisions of the law to address actions other than sexual abuse of minors. The individual bishop might wrongly consider the actions to be authorized by the *Norms* while they are actually born of the universal law.

Universal Legislation

Finally, the desire expressed by Cardinal Dulles, among others, for universal legislation on sexual abuse of minors, while retaining the possibility of “regional adaptations,” is also worth considering. Criminal law is especially suited to uniformity so that justice will be constant and credibility in the legal resolution of allegations will be sustained.

Since most of what is contained in the *Norms* is already a part of the universal law, what is unique to the *Norms*, such as the requirement for diocesan review boards, could remain a part of the *Charter* to which the bishops have bound themselves by moral agreement.

At the same time, consideration of how the universal law can adapt better to addressing certain of the *graviora delicta* might also be worthwhile. One example: perhaps the sexual abuse of a minor should be established as an irregularity for the reception and exercise of orders.⁵² Before this were to occur, however, precision as to what constitutes sexual abuse of a minor would have to be addressed. If sexual abuse of a minor were an irregularity, a bishop could address the matter more expeditiously, while still being held to canonical standards, and all rights of recourse remaining available to the cleric. The establishment of this irregularity would also further remove the need for particular, national law to address the crime

⁵¹ Dulles, 23. The Cardinal then cites canon 18, on the narrow interpretation of laws that establish penalties, as a support for his claim.

⁵² Something that has been strongly promoted in the past two years by several canonists, the principle one in mind being Msgr. John Renken.

on a local level. It would, finally, confirm to the Christian faithful that the Church responds immediately and effectively to acts committed by clerics that seek to exploit minors for sexual gratification.

Conclusion

Looking back over the past two years of legal development and practice, words attributed to the nineteenth century jurist and legislator, Thomas B. Reed, come to mind: "One of the greatest delusions in the world is the hope that the evils of this world can be cured by legislation." I do not believe the bishops of this country had the mistaken impression that the *Essential Norms* would remove instantly the destructive evil of the abuse of minors. On the other hand, they also might not have foreseen the complexity of the legal ramifications that often devolve from legislation meant to fend off evil behavior.

I realize that many of the arguments and opinions that I have expressed today will meet with opposition, even strong at times, from canonists wishing to emphasize other legal values than those I have highlighted here, or at least to emphasize the same ones from a different angle. As I said at the start of my presentation, that is exactly what I would hope for. My purpose was not to provide the solutions to all the dilemmas raised. It was to demonstrate that there are two sides to the story, each requiring thoughtful consideration as we move forward. The advancement of our legal system, and so the principles enshrined in it that promote the good of the Church herself, requires such thoughtful dialogue on sensitive and demanding issues. I hope my thoughts today will have contributed in some way to that noble effort.

THE ROLE OF THE EXPERT IN TRIBUNAL PROCEEDINGS

REV. MR. GERALD T. JORGENSEN, PhD, JCL

INTRODUCTION

Speaking to the members of the Tribunal of the Roman Rota in January 2004, Pope John Paul II reflected on an important pastoral and juridical aspect that emerges as members of any tribunal adjudicate marriage cases.¹ The pastoral and juridical aspect that John Paul II addressed was the *favor iuris* (the favor of the law) that marriage enjoys and the associated presumption of its validity in case of doubt as declared in canon 1060 of the Latin code and in canon 779 of the *Code of Canons of the Eastern Churches*.²

Of course, the presumption of the validity of marriage implied by the *favor iuris* reserved for marriage, as with any presumption, holds until the contrary is proven. However, John Paul II went on to critique as erroneous the argument that holds that the failure of conjugal life implies the invalidity of marriage.³ In attempting to overturn the presumption of the validity of a marriage, John Paul II stressed:

Such a process is essentially inconceivable apart from the context of ascertaining the truth. This teleological reference to the truth is what unites all the protagonists of the process, despite the diversity of their roles. [. . .] The search itself for the truth, to which the judge is seriously bound *ex officio* (CIC c. 1452; CCEO c. 1110) and for the attainment of which he seeks the help of the defender of the bond and of the advocate.⁴

Therefore, what is the judge to use in ascertaining the truth, that is, in reaching a decision in a fair, impartial, and honest manner with rational and consistent reasons for the decision reached. In order to promote justice, the law presents the

¹ Pope John Paul II, Allocution to the Roman Rota, 29 January 2004, Vatican Web Page, 1-3.

² CIC canon 1060: Marriage possesses the favor of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven, *Code of Canon Law* Latin-English edition (Washington: CLSA, 1999) 336. CCEO canon 779: Marriage enjoys the favor of the law; consequently, in doubt, the validity of a marriage is to be upheld until the contrary is proven, *Code of Canons of the Eastern Churches* Latin-English Edition (Washington: CLSA, 2001) 296.

³ Pope John Paul II, Allocution, 29 January 2004, 2.

⁴ Pope John Paul II, *ibid.*, 2.

method through which a judge arrives at a definitive decision in a given case (*CIC* c. 1608; *CCEO* c. 1291). In fact, one of the noted contemporary commentators on the law emphasizes that one of the fundamental principles governing the vindication and defense of one's rights according to the norms of law is "when judged before a competent court, they (all Christ's faithful) have the right to be judged in accord with the provisions of law, *to be applied with equity* (emphasis in original). It is in this principle that we find the meeting of *justice* and *equity*; and the Church correctly recognizes this as a *right* (emphasis in original).⁵

MORAL CERTITUDE AND THE NORMS OF LAW

A constitutive element of a juridical decision is the necessity of the presence of moral certitude in the mind of the judge (*CIC* c. 1608, §1; *CCEO* c. 1291, §1). Indeed, Pope John Paul II provided a succinct and cogent commentary on the necessity of moral certitude in the mind of the judge in his address to the Roman Rota in 1980:

Each one (judge) must arrive, if possible, at moral certainty concerning the truth or existence of the fact, since this certainty is an indispensable requisite in order that the judge may pass judgment: first of all, so to speak, in his heart, and then voting in the gathering of the judicial college. [. . .] Consequently no judge may pass sentence in favor of the nullity of a marriage if he has not first acquired the moral certainty of the existence of this nullity. Probability alone is not enough to decide a case.⁶

This moral certitude *must* be derived from the acts and from the proofs (cf. *CIC* c. 1608, §2; *CCEO* c. 1291, §2). The proofs used in the judge's decision making process not only must be included in the acts but also must be weighed by the judge in accord with his or her conscience, with due regard for the provisions of the law about the efficacy of certain proofs (*CIC* c. 1608, §3; *CCEO* c. 1291, §3). In the end, as John Paul II reminded us in his allocution to the Roman Rota in January 2004:

Without in anyway belittling the valid contributions of sociology, psychology or psychiatry, it cannot be forgotten that an authentically juridical consideration of marriage requires a metaphysical vision of the human person and of the conjugal relationship. Without this ontological foundation the institution of marriage becomes merely an extrinsic superstructure, the

⁵ Augustine Mendonça, "Justice and Equity: At Whose Expense?" in F. C. Easton, ed. *The Art of the Good and Equitable* (Washington: CLSA, 2002) 191.

⁶ Pope John Paul II, Allocution to the Roman Rota, 4 February 1980. *Papal Allocutions to the Roman Rota 1939–2002*, ed. W. Woestman, (Ottawa: Faculty of Canon Law, Saint Paul University, 2002) 161–162.

result of the law and of social conditioning, which limits the freedom of the person to fulfill himself or herself.⁷

Again in his February 1980 address to members of the Tribunal of the Roman Rota, Pope John Paul II reminded us all that:

To limit as much as possible the margins of error in fulfilling the precious and delicate service performed by you (judges, defenders of the bond, advocates) the Church has elaborated a procedure which, with the intention of ascertaining the objective truth will, on the one hand, ensure the parties the greatest security in advancing their own arguments, and on the other, consistently respect the divine command: "Therefore what God has joined together, let no one separate" (Mk 10:9).⁸

Thus, first and foremost, the judge, in respecting the fundamental human dignity and rights of person in the Church as well as the ontological foundation of the institution of marriage, must draw his or her moral certainty *ex actis* because it must be presumed that the *acta* are the source of truth. However, the judge must move on to the proofs because he must keep in mind the possibility that the objective truth may be obscured, whether intentionally or unintentionally. As Pope John Paul II exhorted:

The judge must act with a critical sense. A difficult task, because there may be many errors, while truth, on the contrary, is only one. It is necessary, therefore, to look in the documents for proofs of the alleged facts, and then proceed to a criticism of each of these proofs, comparing it with others.⁹

THE NECESSITY AND ROLE OF EXPERTS

It is when the judge moves to *ex probatis* that the expert can and may provide crucial if not critical information, as the judge weighs up all that he or she has received and considers it in light of the doctrinal and canonical requirements of the Church. As implied above, the weighing of evidence in one's conscience is a sacred duty.¹⁰ The judge cannot abdicate or somehow relieve himself or herself of

⁷ Pope John Paul II, Allocution, 29 January 2004, 3.

⁸ Pope John Paul II, *Papal Allocutions*, 160.

⁹ Pope John Paul II, *ibid.*, 161.

¹⁰ "Since the abstract law finds its application in individual, concrete instances, it is a task of great responsibility to evaluate the specific cases in their various aspects in order to determine whether and in what way they are governed by what the law envisages. It is precisely at this stage that the judge's prudence carries out the role most its own; here he truly *dicit ius*, by fulfilling the law and its purpose beyond preconceived mental categories, which are perhaps valid in a given culture and a particular historical period, but which cannot be applied a priori always and everywhere and in each individual

this responsibility. Nor can a judge permit a decision to be left to his or her whim or mood at the time.

Although in this paper our concern is the role of the expert in tribunal proceedings, which is addressed in canons 1574-1581 and 1680 (*CCEO* cc. 1255-1262 and 1366), the fundamental principles concerning proofs in canon law are contained in canons 1526-1529 (*CCEO* cc. 1207-1210). After giving the basic norms governing the submission and admissibility of proofs, the law (the code) then goes on to list and to address five major sources of evidence, of which experts are one of the major sources.¹¹ An “expert” for our purposes may be considered to be a person possessing special or peculiar knowledge acquired from practical experience. However, such a broad definition may lead a party to a case before a tribunal or the personnel of a tribunal too readily to conclude that simply because a person has completed a degree in medical studies or an advanced degree (that is, beyond a baccalaureate degree) in a related field that that person is an “expert.” Perhaps a more precise definition, as the one that follows, better delineates who an expert is:

An expert is one whose knowledge, experience, or art, makes him an authoritative specialist in a particular field. This specialty should relate to particular facts, the perception, interpretation and assessment of which require a particular skill permitting assimilation of the facts, their causes and their effect, their relationship to other facts relevant to the case, and their influence on one another.¹²

As indicated above, not only must the judge not abdicate his or her responsibility in decision making or permit the expert to unduly influence him or her but also the context of the canons addressing experts, namely Chapter IV within Title IV: Proofs in Book VII: Processes (cf. *CCEO* Art. V, 4° within Art. V: Proofs in Chapter I: The Ordinary Contentious Trial in Title XXV: The Contentious Trial), clearly indicates that the judge must critically evaluate what the expert offers in light of doctrinal and canonical requirements of the Church. Moreover, again because of the context of the canons addressing experts, the parties to the case:

- must be notified of the appointment of an expert;

case.” (Pope John Paul II, Allocution to the Roman Rota, 22 January 1996, *Papal Allocutions*, 240.)

¹¹ A useful overview and commentary on the premises underlying an ecclesiastical trial as well as how a judge obtains moral certainty according to the norm of law, including the provisions of the law concerning proofs, can be found in Aidan McGrath’s article, “From Proofs to Judgement: The Arduous Task of the Judge,” in F. C. Easton, ed. *The Art of the Good and the Equitable*, (Washington: CLSA, 2002) 147-173.

¹² Joaquin Calvo, “Chapter IV: Experts,” in *Code of Canon Law Annotated – 2nd Edition*, ed. E. Caparros, M. Thériault, J. Thorn, (Woodridge: Midwest Theological Forum, 2004) 1233.

- are able to challenge the qualifications or expertise of the expert;
- and must have access to what the expert offers to be able to challenge the expert's conclusions or reasoning in arriving at his or her conclusions.

Finally, it ought to be noted that the code does not place an “assessor” among the experts.¹³ From the context, Art. 1: The Judge, within Chapter I: The Tribunal of First Instance, within Title II: Different Grades and Kinds of Tribunals in Book VII: Processes (*CCEO* Art. I: The Judicial Vicar, Judges, and Auditors within Chapter II: The Officers of the Tribunal within Title XXIV: Trials in General), it is clear that the assessor does not provide “proofs” but advises the judge on the matter at hand, including giving advice on interpreting the proofs, and on the problems of the trial.

Canon 1574 (*CCEO* c. 1255) unambiguously states that the collaboration of experts is necessary if prescribed by the law. If the services of experts are not required by law, the judge may and, at times must, obtain the professional/technical/reasoned advice of persons with special technical knowledge or skills.¹⁴ In addressing when experts are a facultative means of proof in an ecclesiastical trial, Mario Cardinal Pompedda, a former Dean of the Roman Rota and the former Prefect of the Apostolic Signatura, stated:

One is not saying that such a choice is purely “arbitrary” or “optional,” or a choice left to the capriciousness of a judge. We are speaking of a discretionality which is dependent upon and connected with the procedural exigencies in a specific case. This is particularly true in matrimonial cases which concern a grave psychic defect or for cases of impotence. What distinguishes mere arbitrariness or capriciousness from a facultative choice of the judge is the procedural need in a specific case. [. . .] In a case in which not only there is an over-abundance of good qualified witness testimony, *but also* (emphasis added) medical or psychiatric/psychological documentation as a result of previous treatment, recourse to a *peritus* could very well be superfluous, useless, and a waste of both time and money.¹⁵

However, as Pompedda implies in his statement cited above, the facts, which include medical record documents, in the case must be overwhelming for a judge

¹³ *CIC* canon 1424: In any trial, a single judge can employ two assessors who consult with him; they are to be clerics or lay persons of upright life, 445. (*CCEO* c. 1089)

¹⁴ *CIC* canon 1574: The assistance of experts must be used whenever the prescript of a law or of the judge requires their examination and opinion based on the precepts of art or science in order to establish some fact or to discern the true nature of some matter, 484. (*CCEO* c. 1255)

¹⁵ M. F. Pompedda, “Incapacity to Assume the Essential Obligations of Marriage,” in *Incapacity for Marriage: Jurisprudence and Interpretation*, ed. R. Sable (Rome: Pontificia Universitas Gregoriana, 1987) 209.

not to use an expert in certain types of cases. In fact, Pompedda in the example he gave alludes to canon 1680 (*CCEO* c. 1366). According to canon 1680 (*CCEO* c. 1366), “in cases of impotence or defect of consent because of mental illness, the judge is to use the services of one or more experts unless it is clear from the circumstances that it would be useless to do so. . .”¹⁶ Canon 1680 (*CCEO* c. 1366) is an unambiguous example where the provision of law requires the intervention of an expert.¹⁷ It would be reasonable to conclude that the intervention of experts in cases of nullity being considered under canons 1084 and 1095 is mandatory, not optional. The mandatory nature of the intervention of experts in the just mentioned cases of nullity was made even clearer in a recent intervention of the Apostolic Signatura (16 April 1998).¹⁸ While canon 1680 (*CCEO* c. 1366) does admit of an exception, as the Apostolic Signatura noted in its intervention, the exception cannot be and must not become an alternative norm. Professor Versaldi in commenting on the role of experts in marriage procedures and what is the approved jurisprudence of the Church noted:

It is possible to find judges who go beyond their competence and try to substitute the expert in psychological or psychiatric competence. According to approved jurisprudence, when it is a question of evaluating the psychic condition of the spouses, the rule is that the judge must seek the service of an expert and the opposite must remain an exception. Nevertheless, it is possible to find judges who do the opposite, that is, they ordinarily evaluate the psychic condition by themselves and use the expert only as an exception. The reason for this behavior may be found in the good psychological insight some judges may possess or in their rich experience accumulated with time. But it must be clearly said that this endowment is not sufficient to reach moral certitude which requires an objective (and not only subjective) root of evidence.¹⁹

¹⁶ *CIC* c. 1680, 515.

¹⁷ For an overview of the evolution of the meaning of “mental illness” within canonical doctrine and jurisprudence see Augustine Mendonça, “The Apostolic Signatura’s Recent Declaration on the Necessity of Using Experts in Marriage Nullity Cases,” *Studia Canonica* 35 (2001) 40-41. In that article Mendonça references an earlier article of his, “The Role of Experts in ‘Incapacity to Contract’ Cases (Canon 1095),” in *Studia Canonica* 25 (1991) 417-450, in which he offers an even more detailed canonical analysis of “*morbus mentis*,” concluding that “*morbus mentis*” seems to include all “mental disorders” which are, for example, described in *DSM – IV*. In the article referenced above, Mendonça concludes: “It would be reasonable to assume that the canonical legislation seems to include within the expression ‘*morbus mentis*’ of c. 1680 all psychological sources of consensual incapacity mentioned in c. 1095 (*CCEO* c. 818),” 41.

¹⁸ Supreme Tribunal of the Apostolic Signatura, Prot. N. 28259/97 VT: Question regarding the use of experts in marriage nullity cases, in *Forum* 9 (1998) 1: 35-38. Also found in *Periodica* 87 (1998) 619-622.

¹⁹ G. Versaldi, “The Role of Experts in Marriage Procedures,” in *Forum* 9 (1998) 2:91.

Even Pompedda in 1986, thus before the allocutions of 1987 and 1988 of Pope John Paul II and long before the intervention of the Apostolic Signatura in 1998, observed:

We can therefore say that as a general rule in these trials of nullity of matrimony (in which c. 1095 is the *caput nullitatis*), one ordinarily cannot nor must one prescind from seeking a *peritia*. However, in particular cases (even if the case is based on a psychic defect) there could be cases in which a judge need not seek an ulterior proof from a *peritia*. Certainly, to lack any psychological or medical documentation in a case, to lack any qualified testimony (that of doctors, psychologists/psychiatrists) even if these testimonies are not based on a specific role to which they were assigned in a case – to lack all this, and then for the judge to say that because of his own competence in psychological/psychiatric matters he can do without these, the legitimacy of such a judge's behavior must be called into serious question. I would question the legitimacy of the omission of a *peritia* under such circumstances.²⁰

But again, as indicated above, experts are to assist the judge, they do not replace the judge, and experts always remain subordinate to the judge in the process (cf. *CIC* cc. 1575-1576; *CCEO* cc. 1256-1257). It is the judge who determines what the expert is to focus upon, who supplies the expert with whatever information he or she might need or provides access to persons in the process, if such is necessary or warranted, and who determines the time frame for the preparation and submission of the expert's report or *votum*, obviously in consultation with the expert (cf. *CIC* c. 1577; *CCEO* c. 1258). Moreover, the law also gives guidelines to the expert concerning the writing of his or her report: "experts must indicate clearly by what documents or other suitable means they gained certainty of the identity of the persons, things, or places, by what manner and method they proceeded in fulfilling the function entrusted to them, and above all on which arguments they based their

²⁰ Pompedda, *Incapacity for Marriage: Jurisprudence and Interpretation*, 210. For Pope John Paul II's comments on the trial of cases of nullity of marriage on the grounds of psychic or psychological limitations *demanding* (emphasis added) the intervention of the experts and the role of experts in a trial see his allocutions to the Roman Rota of 5 February 1987 and of 25 January 1988 in Woestman, *Papal Allocutions*, 191-203. In his February 1987 allocution to the Rota, Pope John Paul II explained both to judges and defenders the complex nature of the grounds involved in canon 1095 and the necessity of using the services of experts in psychology and psychiatry in acquiring the moral certitude required to render an affirmative decision in a marriage case. Pope John Paul II in his 1987 allocution explicitly insisted that the two functions of the judge and of the experts are distinct and meant to complement each other in achieving the goal of ascertaining the truth of the allegation concerning the invalidity of a specific marriage. Then, in his 1988 allocution to the Rota, Pope John Paul II speaks of the function of the defender of bond when services of an expert are used in a case where consensual incapacity for marriage is alleged. It is obvious that the presupposition underlying Pope John Paul II's comments concerning the duties of the defender of the bond is that the services of experts are necessary when consensual incapacity for marriage is the *caput nullitatis* of the specific case.

conclusions” (*CIC* c. 1578, §2; *CCEO* c. 1259, §2). It seems reasonable to assume that it is incumbent upon the judge to apprise the expert of the guidelines given in the law in a way understandable to the expert rather than to presume that the expert has knowledge of the law.²¹ As McGrath succinctly articulated in his recent article:

Experts are not to be treated as infallible or as gods. Like all those who participate in a process, they are subject to the law. They must explain themselves in terms which others can understand. They are not to draw up a report of a few lines giving their conclusions only; rather they are to explain carefully the method and means by which they came to their conclusions. If the report does not fit the requirements of law, ‘the judge can summon the expert to supply explanations which later seem necessary’ (c. 1578, §3).²²

Pompedda in his review of the role of experts and the report the expert provides in a canonical process noted “*peritiae* are not to be absolute affirmations nor simple conclusions. To use the word *peritia* means to speak of a *detailed* exposition that is reasoned and is based in both scientific data and indubitable facts.”²³

However, even when the judge is satisfied with the expert’s report, the judge still must evaluate the report and is not to consider himself replaced by the expert (cf. *CIC* c. 1579; *CCEO* c. 1260). Pompedda in commenting upon the judicial evaluation of *peritia* stated:

That the *peritia* could and must be evaluated by the judge is evident by the fact that the *peritia* is but a *species* of the *genus* called “canonical proofs.” Therefore the judge cannot ignore nor can he/she abstain from evaluating and weighing a proof. The judge must weigh all the testimony, documentation, etc. In the same way he/she must evaluate any expert proofs proffered in a case. A further argument for the weighing of the *peritia* by the Judge is to be found in *CIC*1983 itself. The code permits the judge to dissent from the conclusions of the *peritus*. How can one dissent unless one has evaluated beforehand.²⁴

²¹ In fact, the Signatura concluded its intervention of April 1998 by stressing the urgent need to prepare experts in order to help them properly to fulfill their function: “Since the services of experts, who are distinguished for their knowledge and experience and who adhere to the principles of christian (sic) anthropology, are to be considered of great importance in settling marriage cases of nullity based on the grounds dealt with in canon 1095, one must absolutely see to it that the principles indicated above are duly explained to those whom it concerns” (*Forum* 9 [1998] 1:37-38).

²² McGrath, *The Art of the Good and the Equitable*, 167.

²³ Pompedda, *Incapacity for Marriage: Jurisprudence and Interpretation*, 214.

²⁴ Pompedda, *ibid.*, 213.

CRITERIA FOR SELECTING AND EVALUATING EXPERTS

Other than reading the reports carefully, how is the judge to evaluate the reports of the expert? What criteria or guidelines is the judge to use in his or her mandated judicial evaluation? As Pompedda so deftly stated: "A judge does not judge from the words of the expert, but *ex sua conscientia*."²⁵ From the jurisprudence of the Rota and canonical literature, it is possible to identify some useful points against which the judge can measure the expert or the expert's report as well as questions the judge can ask himself or herself as he or she critically reviews the expert's report.

- Judges must first consider does the expert adhere to the fundamental Christian anthropological principles? Does the expert hold a theory or espouse a religious or philosophical belief that denies the inherent dignity and liberty of the human person or fosters distorted views of human freedom? If the expert does not adhere to fundamental Christian anthropological principles, it is hardly possible for him or her to have a correct understanding of the nature and demands of marriage as instituted by God or of the role of grace in overcoming human difficulties arising in married life.
- Judges must consider the competence and technical skill of the expert. The scientific competence of the expert can be ascertained by reviewing his or her educational background, professional training, and professional credentials, especially when reputable professional boards or groups/associations have granted the credentials, and professional experience. Professional experience includes such activities as recent and current professional practice, membership as part of the medical staff of a behavioral health inpatient unit or outpatient clinic, experience in testifying in civil or secular courts, and membership on professional licensure boards or certification associations. Rotal praxis favors psychiatrists and clinical psychologists as the experts of choice. Judges should know whether the expert holds a license to practice his or her profession, including what functions or behaviors the expert's license in that civil jurisdiction permits the expert to practice. Furthermore, judges should have some minimal notions about the particular area or areas of psychology involved in the specific case before him or her and how the expert's competence fits with or matches the areas involved. Does the expert actually practice in the area or areas for which the judge needs assistance? The expert may be an excellent marriage and family therapist or mental health counselor but know little about diagnosing mental disorders or assessing and explaining pathological human behavior. Also the expert may be trained and licensed in an area that does not require an understanding of the etiology and epidemiology of mental disorders.

²⁵ Pompedda, *Incapacity for Marriage: Jurisprudence and Interpretation*, 214.

The expert may be licensed in a behavioral science area but the license in that specific civil jurisdiction may not permit the licensee to diagnose mental disorders or to perform psychological or psychiatric evaluations of persons because the professional licensure law of the jurisdiction presumes that persons seeking that specific behavioral science license do not have the training and expertise to carry out certain diagnostic and assessment functions. The scientific preparation and current professional practice of the expert for the function, or to carry out the task, he or she is called upon to assume are crucial to the judge's judicial evaluation of the expert's report and the ensuing probative weight the judge attributes to the expert's report. As their function requires, experts must be adequately trained in assessment techniques, diagnostic skills, and effective treatment methods. The experts employed by the Court must have the skills to assess and interpret the results in a scientific way.²⁶

- Judges must be sure of the moral honesty and probity of life of the expert. What is the professional reputation of the expert among his or her peers in his or her field and in related fields in the city or region? What is the expert's professional reputation in the community at large?
- Judges must formulate questions in the psychological categories connected with the canonical question before them. Judges and defenders of the bond must pay careful attention to ask proper questions of the expert in order to avoid confusion of roles by mixing the different categories – canonical and psychological. In canon 1095 cases, for example, questions ought to be formulated about the capacity of the party or parties to relate to each other, in what degree, according to which motivation and purpose. If the party has a dysfunction, the judges need to know precisely what consequences the particular dysfunction has or has had upon the person's ability to understand or to fulfill some object or purpose, for example, sexual fidelity, the rearing of children, interpersonal relations, societal relations, etc. How severe does the expert consider the

²⁶ A judge's initial reaction to the just stated criteria for evaluating the competence and technical skill of an expert may be that he or she needs to be an expert just to identify an expert or to weigh up properly what the expert provides. In a truly contentious case, as in the adversarial model of common law, the parties to the case often present proofs and/or arguments addressing the expertise of the expert and the weight to be given to the expert's report or *votum*. Lacking the parties providing proofs and arguments, a judge would be prudent to engage the assistance of others such as assessors in weighing up the competence and technical skill of the expert or the proposed expert. Possible assessors that a judge might use could be local Catholic civil attorneys who practice criminal law or local Catholic psychiatrists or psychologists who are recognized in the community as reputable practitioners. Especially helpful assessors would be Catholic psychiatrists or psychologists who are members of the civil jurisdiction's licensing body for physicians or psychologists or serve on a local hospital's medical staff credentialing committee. Even a local Catholic physician or a Catholic staff member of a local hospital's medical staff credentialing committee could be of great assistance to a judge in using the criteria just given for evaluating the competence and technical skill of an expert.

dysfunction in terms of a person's ability to cope with the tasks of daily living? A related question could be what are concrete consequences of the dysfunction upon the person's psychic state regarding his or her freedom to choose specific behaviors or regarding his or her affective life and how transient or fixed was it? Finally, how severe is the disorder considered in comparison to other disorders by the professional community, what is the common opinion in the professional community as to the etiology of the disorder, how amenable is the disorder to treatment and what is the expected prognosis?

- "Judges ought to study all the *acta* before reading the report of the expert. In this way they may be better able to weigh the expert's report and relate it to all the other circumstances of the case."²⁷
- Judges must determine the validity of the facts upon which the expert is basing his or her opinion. If the expert uses facts or information provided by one or both parties or the witnesses in the case, are the facts used facts proven in the case? If the expert uses professional evaluation instruments, are the instruments/tests reputable ones in the scientific community and was the method or methods the expert used truly scientific? For the judge to accept a conclusion given by the expert that was not well founded within the scientific community would be a serious error on the judge's part. For example, it takes an experienced psychologist skilled in the interpretation of the *MMPI-2*, the *MCMI-III*, or the *16PF* to extrapolate back scores of present day administrations of either or all three tests to the time of the celebration of the marriage in question and establish a state of mind or level of functioning at the time of the contract.²⁸ In addition to the test data, a reputable psychologist would want to have all other data in the case available to him or her in attempting to render an opinion

²⁷ McGrath, *The Art of the Good and the Equitable*, 169.

²⁸ The *MMPI-2* refers to the *Minnesota Multiphasic Personality Inventory -2*, a second or revised edition of the original instrument. It requires specialized training to administer and interpret and is the most widely used and researched psychological test available for clinical use. It is the most common psychological test used in the practice of forensic and/or clinical psychology. The *MMPI-2* is generally regarded as most powerful in assisting psychologists to diagnose mental disorders coded on Axis I of the *DSM-IV* diagnostic system. The *MCMI-III* refers to the *Millon Clinical Multiaxial Inventory-III*, a third edition of the original instrument. The *MCMI-III* also requires specialized training to administer and interpret. Like the *MMPI-2*, the *MCMI-III* is a widely used and highly researched test and is also a frequently used test in the practice of forensic and/or clinical psychology. It is generally regarded as most powerful in assisting clinical psychologists to diagnose personality disorders coded on Axis II of the *DSM-IV* diagnostic system. The *16PF* refers to the *Sixteen Personality Factor Questionnaire*. It is now in its fifth edition. As with the other two tests described, it requires specialized training to administer and interpret. The *16PF*, unlike the other two psychological tests listed here, was normed or standardized on a non-clinical population as opposed to a clinical population, thus the test offers the psychologist some objective comparisons with a non-clinical population. Again, the *16PF*, like the *MMPI-2* and the *MCMI-III*, is a widely used and highly researched test and is frequently used by psychologists who do psychological evaluations in a variety of settings for a variety of purposes.

regarding one or both parties. Even with all the available data the psychologist may determine that sufficient information is not available to render an opinion with any degree of confidence.

- Judges must ascertain the methods the expert used to respond to their questions. Did the expert examine each party or only one party? What did the expert's examination of the parties include, if there was one? Did the expert examine only the *acta* but not clinically interview or examine the party or parties? (Of course, the judges may only need the assistance of the expert to explain technical terms in certain documents or to comment upon the already available reports or treatment records of psychiatrists or psychologists who have treated one or other of the parties in the past. Also, the judges may only need an opinion whether the facts concerning the behavior of one of the parties, given that what is related in the acts is true, would be a clear indication of a severe mental illness or severe pathological disturbance or not.) In responding to the questions posed by the judges, did the expert make use of all the information made available to him or her or is his or her report based only on selective interpretation of information he or she received or heard and if selective, why?
- Judges must make certain that the expert presents his or her report impartially, manifesting no personal preference for either party, and in a logically consistent, professional manner. Did the expert abide by the norms of canon and civil law, if not, why not and what is the impact of the expert's failure not to abide by the norms of canon or civil law upon the probative weight that can be attributed to the expert's report? Does the failure on the part of the expert to diligently respect the norms of his or her profession or the norms of canon or civil law so egregiously violate the rights of the persons involved as to vitiate his or her report? For example, if the expert conducted a clinical interview and or examination with either or both parties, did the expert make the party aware that he or she was a Court appointed expert and therefore the Court was his or her "client" and not the party being evaluated?
- Judges must be aware that the expert's report, whether it be a *votum* (his or her opinion) or a *peritia* (a formal expert report according to civil and professional meaning) becomes a part of the *acta* and therefore open to inspection by both parties, the parties' advocates, and the defender of the bond upon the publication of the acts. Each party has a right to know what is in the acts and upon which the decision of the judge must be based. Each party has a right to submit a brief in which they respond to the acts, including the expert's report. A party also has a right to secure and enter the report or *votum* of his or her own expert. It is the judge's responsibility to also inform the expert that his or her report will become a part of the acts of the case and thus be open to inspection by the parties and their advocates, as well as the defender of the bond.

- “Judges must decide if the conclusions of the expert are to be accepted or rejected and must state the reasons in the sentence. Additional experts may be appointed in order to verify the findings of the first expert. The final decision as to the value of all experts’ opinions and their bearing on the case is and remains the exclusive province of the judge. . . .
- Judges must bear in mind the different concept of certainty which prevails in the field(s) of psychology and psychiatry. Thus, what an expert indicates as ‘certain’ cannot simply be considered as such in the canonical sense. . . .
- Judges must always translate the conclusions of the experts into categories of the juridical order, e.g., it is for the judge to decide from his or her study of all the *acta* whether or not a particular difficulty constituted the impediment of impotence; or whether or not a particular condition constituted a defect of consent which rendered the marriage invalid, i.e., whether it was lack of sufficient use of reason, grave lack of discretion of judgement, or inability to assume the essential obligations of marriage.”²⁹
- As indicated above, judges must evaluate the proofs in accordance with their conscience, according to the norms of law about the efficacy of certain proofs. There is absolutely no room for arbitrary decisions in ecclesiastical trials. In the absence of moral certitude, as Pope John Paul II so eloquently stated it in his January 2004 allocution to the Rota, the judge must pronounce *favor iuris* (in favor of the law).³⁰ Mendonça in his concluding comments on the 1998 intervention of the Signatura concerning the use of the services of experts stated plainly and simply, without qualification, “But without professional formation in behavioural sciences a judge cannot and should not try to indulge in evaluating clinical data or information found in the acts of the case without the help from experts in psychology or psychiatry.”³¹

²⁹ McGrath, *The Art of the Good and Equitable*, 169-170.

³⁰ Pope John Paul II, Allocution, 29 January 2004, 1-3.

³¹ Mendonça, “The Apostolic Signatura’s Recent Declaration on the Necessity of Using Experts in Marriage Nullity Cases,” 58. As an aside and from a personal perspective, even though I have a doctorate in clinical psychology, am a licensed psychologist and certified by the National Register of Health Service Providers in Psychology as a “Health Service Provider in Psychology,” am a member of a medical staff at the local hospital that has a psychiatric unit, and continue to engage actively in the practice of psychology, I would not as an appointed judge in a case engage in a formal clinical evaluation of the data but would require the use of the services of an expert. Even as a judge with formal professional preparation in the behavioral sciences, I think the lack of the use of the services of an expert would deny objective information to the parties, which could affect their decision to request additional information, to challenge information presented, or to propose other or counter arguments prior to my decision as a judge.

THE ROLE OF EXPERTS IN PENAL TRIALS

Finally, in today's climate it seems appropriate to address the use of the services of experts in an ecclesiastical penal trial. The proper application of the canons 1321-1326 (*CCEO* cc. 1413-1416), which establish the legal causes granting exemption from any penalty, that is, that determine legal incapacity, or that address the extenuating circumstances that diminish the penalty or the substitution for a penalty by a canonical penance, could and at times ought to involve the use of the services of an expert. Again, the expert that appears to be the most likely choice would be a psychologist or a psychiatrist. In a penal trial the judges might determine that in fact the level of expertise that would be most useful would be a forensic psychologist or psychiatrist. With perhaps the obvious exception of the questions that specifically or only address a marital relationship, most of the questions or guidelines provided above as guidance for judges in marital cases would be the same questions asked of the experts in a penal trial. The judges may determine a need to ask the expert questions that are typically encountered in a secular criminal or civil trial or procedure such as,

- competence to stand trial or to participate in one's own defense;
- the psychological state of the person at the time of the commission of the alleged delict;
- the degree of severity of the person's psychological dysfunction at the time in question and how such a dysfunction can or may impact a person's decision making skills;
- the presence or absence of any cognitive impairment at the time in question and if present, its severity and how it would affect a person's decision making; and
- the dangerousness of person to himself or others at the present time.

Generally speaking a forensic psychologist or psychiatrist will be more attuned to the nuances of the questions as well as the research literature concerning the assessment of persons in legal settings addressing issues of importance to any judge in which the freedom of the person to act, to respond and to participate in his or her own defense is important.

CONCLUSION

In conclusion, in canon law the principle of "free judicial evaluation of the proof" by the judge or judges is fundamental. However, this principle gives the judge or judges the discretion to evaluate the proofs according to legal/canonical

criteria, and not the license to judge them arbitrarily. In many cases the judge has much to gain from an expertise formulated according to the laws and regulations of psychology or psychiatry, without abdicating his or her decisional responsibility and indeed he or she cannot abdicate the responsibility. There is no doubt that a judge has an “arduous task”³² entrusted to him or her to fulfill. “Much remains to be done in this dialogue between the different sciences in order to avoid confusion and increase reciprocal knowledge. In doing so, it is important to possess both intelligence and humility.”³³

³² “The arduous task of the judge – that of treating responsibly difficult cases, such as those involving the psychic incapacities for marriage, and always taking into consideration human nature, the vocation of humans, and, connected with this a correct conception of marriage – is certainly a ministry of truth and charity in the Church and for the Church.” (Pope John Paul II, 5 February 1987, *Papal Allocutions*, 195.)

³³ Versaldi, “The Role of Experts in Marriage Procedures,” 115.

THE RCIA: CANONICAL ISSUES

REV. RONALD F. KRISMAN

Almost from the very moment that the *Rite of Christian Initiation of Adults* appeared in its first English translation in 1974, it has been referred to by its acronym, "RCIA." Some thought was given to renaming the book "*Order of Christian Initiation of Adults*" when its final translation was being prepared in the early 1980s, since "Order" had already been used to translate the Latin word "*Ordo*" in the title of the *Ordo Exsequiarum* one year earlier, but "Rite" was kept, nonetheless.

Personally, using the acronym has never bothered me. It's much easier to speak four syllables instead of twelve every time the title of the liturgical book comes up. But matters do not end there. Most people, it seems, also do not take to terms such as "catechumenate," "catechumenal formation," and even much less "quasi-catechumenate." So those are called "RCIA" as well. Like it or not, we probably must live with one word that covers everything. But it's not even a word! I can imagine that for most Catholic folks in the pews these days, if they have any idea at all what "RCIA" refers to, they would probably say, "It is that program Sister has for those people who leave Sunday Mass after the sermon."

So, when I was given the topic for this seminar, "RCIA: Canonical Issues," I assumed that "RCIA" meant the whole ball of wax: all the liturgical rites in the ritual book as well as the manner in which catechumens and candidates are formed in preparation for their sacramental initiation, or the completion of their initiation, or their reception into the full communion of the Catholic Church.

The Latin *Ordo Initiationis Christianae Adultorum* was published by the Apostolic See on January 6, 1972. In its decree of promulgation the Congregation for Divine Worship stated that the new ritual "replaces the rite of baptism of adults now in the Roman Ritual." It likewise decreed that the new rite "may be used in Latin at once and in the vernacular from the day appointed by the conference of bishops, after it has prepared a translation and had it confirmed by the Apostolic See."

In other words, since January 6, 1972, there has been no other approved ritual for the baptism of adults in the Roman Rite. The 1969 *Rite of Baptism for Children* is intended for those whom the law defines as children below the age of discretion.

I would not hazard a guess about the number of adults in the United States whose Christian initiation was celebrated in Latin between 1972 and 1974, for the first English translation did not appear until 1974. I suppose the former "replaced"

ritual was still used during those two years. Or perhaps it was the revised *Rite of Baptism of Children*, adapted by the minister to fit the circumstances of the much older “child” being baptized.

Even after 1974, many were slow to use the new ritual, perhaps thinking that the term “provisional text” on the book’s beige paper cover – a term that the translator, the International Commission on English in the Liturgy [ICEL], has consistently used for all its first translations – meant that the revised rites themselves were provisional or experimental, for *ad libitum* use until officials of the Apostolic See came to their senses and withdrew the book when they realized how much more work it adds to a priest’s already busy schedule. It’s fair to say that use of the RCIA in the United States between 1974 and 1988 varied considerably from region to region and diocese to diocese.

In June 1984 the Bishops’ Committee on the Liturgy established a subcommittee to review the final English translation of the RCIA, which was then nearing completion by ICEL. The subcommittee was charged with the task of studying the new translation and then preparing any adaptations authorized by no. 33 of the *praenotanda* to the ritual which they deemed appropriate for eventual presentation to the full body of Latin Rite bishops for their approval. The subcommittee was also to prepare a plan for the future implementation of the RCIA in the dioceses of the United States.

The subcommittee completed its work over the next two years, and on November 11, 1986, the members of the NCCB approved the final English translation, along with a number of ritual determinations permitted by no. 33 of the Rite, such as when the oil of catechumens may be administered during the catechumenate. They also approved a significant body of textual additions – nine new chapters, to be precise – which were to be included in the U.S. edition of the ritual. And they approved *National Statutes for the Catechumenate*. The Vatican Congregation for Divine Worship gave its required *recognitio* of the NCCB’s actions in two decrees: the first on February 19, 1988, confirming the new translation and all the adaptations; the second on June 26, 1988, confirming the national statutes. September 1, 1988, was established as the mandatory effective date for use of the new edition of the ritual.

As part of its plan for implementing the new edition of the RCIA, the Bishops’ Committee on the Liturgy sponsored six regional workshops for bishops and diocesan RCIA leadership which had a combined attendance of about one thousand persons. The Liturgy Committee also commissioned several additional publications, and it called for a national study of the effectiveness of this implementation effort – to take place after five years.

The math did not quite work out. Five years became closer to ten, but the national study took place. Its results are summarized in the USCCB’s report entitled *Journey to the Fullness of Life: A Report on the Implementation of the Rite*

of Christian Initiation of Adults in the United States.¹ It is the work of five USCCB Committees and their secretariats: Evangelization, Education, Ecumenical and Interreligious Affairs, Liturgy, and Pastoral Practices.

The survey project began in April 1997 and its final report was completed and approved in June 2000. The professional staffs of the five committee secretariats coordinated the study, and Sr. Sharon Euart, RSM, was the overall supervisor. All diocesan coordinators were invited to provide information concerning their respective dioceses' implementation of the RCIA. Fifty-five percent responded in 1998. Seven hundred persons who became Catholic during the Easter seasons of 1993 through 1996 were surveyed in 1998. But this was only a 46 percent response rate to the 1,500 questionnaires mailed, and the researchers admit that the data is somewhat biased as a result.² Telephone interviews were conducted in 1998 and 1999 with 107 persons who withdrew from the RCIA, and all Latin diocesan bishops were surveyed in 1999, with a whopping 94 percent responding.

Of the persons who had gone through the RCIA, 25 percent were catechumens, 61 percent candidates for reception into full communion, and 14 percent baptized Catholics seeking to complete their initiation. Fifty-eight percent were presently married, and only fourteen percent had never been married. Of the 58 percent married group, 83 percent have Catholic spouses. The largest portion of catechumens and candidates are in the twenty- to thirty-five year old range. Most parishes still combine catechumens and baptized candidates in the same catechetical sessions and in the rites; 46 percent of parishes offer only a September to June (or September to Easter) period for formation; only 15 percent have implemented a full-year RCIA for adults; but 13 percent of parishes report they use a "one-on-one adult initiation model" (could this be a euphemism for "private instructions" and, if so, how is initiation celebrated?), and 6 percent have "some other kind of model," and 17 percent said they never have adult baptisms. Forty-one percent of parishes provide no catechumenate for children who have reached catechetical age. Diocesan leaders expressed the hope that this would change, and there are some positive signs that the number of parishes offering a year-round, enter at any time, approach to formation in the Christian life is increasing.³

While only 54 percent of diocesan RCIA leaders responded to their surveys, they reported that for 1998 the average number of persons initiated through the RCIA was 640 adults and 255 children. Of the adults, 32 percent were catechumens, 44 percent candidates for full reception, and 24 percent already baptized Catholics. Seventy percent of the dioceses responding reported that they provide diocesan training programs for catechists and RCIA team members.⁴

¹ *Journey to the Fullness of Life: A Report on the Implementation of the Rite of Christian Initiation of Adults in the United States* (Washington: USCCB Publications, 2000) No. 5-392; 58. Hereafter referred to as *Journey*.

² *Ibid.*, 50.

³ *Ibid.*, 6-7, 28.

⁴ *Ibid.*, 27-28.

There are many positive things going on, many hopeful signs, a few troubling areas. It is important that all study the USCCB report. Some additional data from the survey will be brought forth as various canonical issues are addressed.

UNIVERSAL LAW DEALING WITH THE RCIA AND THE CATECHUMENATE

The principal sources for the universal law dealing with the RCIA and the catechumenate are four. First is articles 64-71 of the constitution *Sacrosanctum Concilium* of December 4, 1963. The Council father decreed the restoration of the catechumenate for adults, divided into several stages; and revision of the two rites for the baptism of adults then in use, the rite of baptism for children, and the rite of confirmation.

In the 1972 RCIA, one of the results of the Council's decrees, adults preparing for baptism, confirmation and eucharist ordinarily progress through various periods of spiritual formation as they are initiated in successive steps. Thus the RCIA fulfills article 64 of the Constitution on the Liturgy which called for the restoration of "the catechumenate for adults, divided into several stages, . . . intended as a period of well-suited instruction . . . sanctified by sacred rites to be celebrated at successive intervals of time."

What some people seem to forget is the fact that the initiation of adults in stages predates the Second Vatican Council. The last edition of the Roman Ritual to appear before the Council – in 1962 – contained two rites for the baptism of an adult, and that is why, one year later, *Sacrosanctum Concilium* decreed the revision of both rites. In addition to the simpler "Rite for Baptism of Adults," there was a new seven-step "Rite for the Baptism of Adults arranged according to the Stages of the Catechumenate," based primarily on the limited experience of the restored catechumenate in postwar France. However, while that 1962 rite contained basically the same steps as are now found in the 1972 RCIA, no pastoral direction for the reestablishment and functioning of the catechumenate was provided.

The second source of universal law is the revised ritual itself. At the front of the book are two important documents with canonical import: the General Introduction to Christian Initiation and the *praenotanda* or particular Introduction to the RCIA itself. The General Introduction to Christian Initiation supplies the theological underpinnings for the interrelatedness of the three sacraments of initiations, and particularly the place which the sacrament of baptism has in the economy of salvation. It addresses a number of sacramental and canonical issues which pertain to all celebrations of baptism, infant as well as adult: those to be initiated; the proper minister of initiation; other offices and ministries, especially that of godparent; and the requirements for the valid and licit celebration of baptism, including the water to be used for baptism, the option to baptize by immersion or pouring, the sacramental formula, the baptistery, the time of celebration. These norms are summarized as well in the canons on baptism, nos.

849-878 of the *Code of Canon Law*.⁵ Finally, the General Introduction to Christian Initiation treats the adaptations which may be made by the conference of bishops, as well as accommodations which the minister of baptism is permitted to make.

The *praenotanda* to the RCIA amplifies these general norms and applies them specifically to adult baptism. In particular, the section dealing with the time and place of initiation is quite lengthy in the RCIA since initiation of adults requires several steps, the time and place of which are all described in detail. These are true ecclesiastical laws with the same binding force as the canons of the *Code of Canon Law* and other ecclesiastical laws.

There are two other sources of universal law affecting the catechumenate. First are the numerous canons in Book Four of the 1983 *Code of Canon Law*. In addition to the canons on baptism (cc. 849-878) previously mentioned, there are the general canons on the *munus sanctificandi* (cc. 834-839) and the sacraments in general (cc. 840-848), as well as canons treating the sacraments of confirmation (cc. 879-896) and eucharist (particularly cc. 897-923). Second are the norms of the liturgical books other than the RCIA which have a bearing on catechumens or candidate. Principally these are the Rite of Marriage, the Order of Christian Funerals, and the Book of Blessings.

One additional source of law must be considered, even though this source is not one of the Latin Church. I refer to the ten canons of the *Code of Canons of the Eastern Churches* (cc. 29-38),⁶ which treat ascription to a Church *sui iuris*. These canons significantly amplify the two canons (cc. 111-112) in the *Code of Canon Law* treating the subject. The more detailed canons of the Eastern Churches may come into play when determining what Church *sui iuris* a candidate for reception into the full communion of the Catholic Church will be enrolled in upon being received; in addition, they may even determine the ritual church ascription for a younger catechumen who has not reached his or her fourteenth birthday. Note that both the enrollment in a Church *sui iuris* as well as the transfer to another Church need to be recorded in an individual's baptismal record. Doing this will prevent many headaches.

PARTICULAR LAW: NATIONAL STATUTES FOR THE CATECHUMENATE

Appendix III of the USA edition of the RCIA contains a document entitled *National Statutes for the Catechumenate*. These norms were enacted by the *de iure* Latin Rite members of the NCCB on November 11, 1986 and received the *recognitio* of the Vatican Congregation for Divine Worship on June 26, 1988.

The creation of these statutes was authorized by the law itself, contained in no. 77 of the RCIA (Latin ed., nos. 20 & 98) and in canon 788, §3 of the 1983 *Code of*

⁵ *Code of Canon Law*, Latin-English edition, New English Translation (Washington: CLSA, 1999) 281-288. Hereafter referred to as *Code*.

⁶ *Code of Canons of the Eastern Churches* Latin-English edition (Washington: CLSA, 2001).

Canon Law, the latter stating: “It is for the conference of bishops to issue statutes which regulate the catechumenate by determining what things must be expected of the catechumens and by defining what prerogatives are to be recognized as theirs.”⁷

The National Statutes have the force of law for all Latin Rite dioceses in the United States of America, and supersede any other contrary laws, whether they be diocesan or other particular laws.

These statutes would even supersede any contrary universal laws, if any of their prescriptions were indeed contrary. But there are none. For the most part the national statutes are a restatement of the universal law of the Church regulating the catechumenate, the celebration of the rites, and the corresponding formation of already baptized adults preparing either for the sacraments of confirmation and eucharist or for reception into the full communion of the Catholic Church. While the statutes treat major subjects covered in this universal law, they make no attempt to repeat all of it. And so a parish minister who knows little of ecclesiastical law would be in error to think that the national statutes are all the norms that he or she needs to know.

Only four of the norms in the National Statutes introduce new legislation or modify the universal law. These norms are found in statutes 6, 16, 20 and 24.

Statute 6 states that the period of the catechumenate, that is, the period for the formation of catechumens – the unbaptized – should extend for at least one full year, preferably from before Lent of one year until Easter of the following year. Statute 16 repeats a ritual decision made by the NCCB and reflected throughout the USA edition of the RCIA, namely, that the anointing with the oil of catechumens is reserved for use during the period of the catechumenate, including the period of purification and enlightenment and is not to be included in the preparation rites on Holy Saturday or in the celebration of initiation at the Easter Vigil or at another time. This norm is also found in RCIA 33, 7. Although the universal law, expressed in the Latin edition of the RCIA, allows these two other times for the anointing – either a few minutes or a few hours before the baptism – they are prohibited in the territories of the United States episcopal conference. The purpose of this more restrictive U.S. norm is the desire on the part of the bishops that the anointing with the oil of catechumens not become a last-minute thought on the part of ministers, but rather that the anointing be given even several times during the catechumenate. We profess to believe in the power of the sacramentals; accordingly, we should employ them in the formation of catechumens.

Even if a new universal law were later to be promulgated which would restate the three options for the anointing, it would not affect the decision of the NCCB, because particular laws, duly confirmed by the Apostolic See, are not affected by a contrary universal law unless the universal law should expressly state the abrogation of contrary or more restrictive laws. Nor could a diocesan bishop validly enact a diocesan law contrary to the NCCB’s statute, because the laws of

⁷ *Code*, 258.

the episcopal conference, which are approved by the Apostolic See, are higher than diocesan laws.

Statute 20 repeats the universal law of RCIA 331 (Latin 240) that it is up to the diocesan bishop to make the determination that an abbreviated catechumenate, lasting less than the minimum one year, and/or an abbreviated form of the celebration of the sacraments of initiation is warranted in an individual and exceptional case; however, statute 20 adds a restrictive note when it judges that the change of residence of a catechumen is not in itself a sufficient reason to abbreviate the catechumenate.

Finally, statute 24 introduces for the dioceses of the United States an extended period of mystagogy, requiring that a program of at least monthly assemblies of neophytes extend from Pentecost until the following Easter.

The interpretation of the National Statutes is governed by the principles for interpreting all ecclesiastical law. In this regard, I would emphasize that the force of each statute is not the same. Generally the use of words such as “must,” “is to be,” and “should,” and the use of declarative sentences indicate that statutes are prescriptive, stating what actions are required. Statutes such as nos. 17 (on immersion) and 21 (on the initiation of those whose formation was in an abbreviated catechumenate), which use the words “is preferred” and “should . . . if possible,” are not absolute prescriptions but are exhortations showing a preference for certain actions. A few statutes, such as no. 9, dealing with Church funerals of catechumens and the need to omit from all prayers references to sacraments which the catechumens, of course, did not receive, simply give directions reflecting a common-sense pastoral solution in certain circumstances.

The National Statutes are important for the fact that they identify a number of topics around which pastoral/canonical questions arise in connection with Christian initiation. Among these are the rights and obligations of catechumens and of candidates for reception into full communion; the preparation of uncatechized adult Catholics; the initiation of younger children who have reached catechetical age; the minister of the sacraments; delay of confirmation; marriage cases; godparents and sponsors; and the “content” of formation in the Christian life; post-baptismal catechesis; and resolving doubts about the validity of baptism or confirmation. These pastoral/canonical issues are the subject of the rest of this presentation.

CATECHUMENS

First of all, who is a catechumen, and what are the rights and duties of catechumens? National Statute 2 specifies the juridical meaning of “catechumen” as “an unbaptized person who has been admitted into the order of catechumens,” which includes the period of purification and enlightenment. (This adds a note of precision to canon 206 of the *Code of Canon Law*.) The rights and obligations of a catechumen, therefore, pertain to anyone from the time of acceptance into the order of catechumens until the reception of baptism. The “inquirers” who show interest in the faith before their formal admission into the catechumenate are not

afforded the rights that canon law grants to catechumens.

Catechumens have a special place in Church law. They are not yet members of the *Christifideles*, the baptized, but they have a unique status due to their intention to receive baptism. Canon 206, §1 of the *Code of Canon Law* states that “catechumens, that is, those who ask by explicit choice under the influence of the Holy Spirit to be incorporated into the Church, are joined to it in a special way. By this same desire, just as by the life of faith, hope, and charity which they lead, they are united with the Church which already cherishes them as its own.”⁸

The canon goes on to say that “the Church has a special care for catechumens; while it invites them to lead a life of the gospel and introduces them to the celebration of sacred rites, it already grants them various prerogatives which are proper to Christians.”⁹ The prerogatives are *marriage in the Church*, the *right to a Catholic funeral* should they die before sacramental baptism, and the *right to receive blessings and sacramentals*, not only the blessings found in the periods of the catechumenate, but all blessings of the Church, and not only the anointing with the oil of catechumens – a sacramental – but all sacramentals publicly administered, for instance, the imposition of ashes on Ash Wednesday, the giving of candles on February 2, and of palms on Passion Sunday. And according to RCIA no. 40 (Latin, nos. 13, 11, 120) the blessings and exorcisms of the RCIA can even be given to those who, strictly speaking, are not catechumens, namely, to the inquirers during the period of the precatechumenate.

With regard to the obligations of catechumens, since they are not yet Catholic, they are not obliged to observe ecclesiastical laws as such, though canon 788, §3 allows for statutes which “. . . determining what things must be expected of the catechumens. . .”¹⁰ All catechumens, however, are bound to the divine law and, consequently, to whatever in canon law is of the divine law. For example, in the law of marriage they are bound by the impediment of prior bond and are not free to marry if they or their intended spouse were previously married, and that former spouse is still living, and there has been no ecclesiastical decree of nullity.

Even in the absence of particular law outlining the responsibilities of catechumens, it is commonly accepted that catechumens are bound by the obligations that flow from their status as catechumens. They have expressed their desire for baptism and willingly have undertaken the demands of the catechumenate, including religious instruction, spiritual formation, a regimen of prayer and apostolic activity, in order to be prepared and found ready for sacramental initiation into the Church. They have freely chosen to take on these obligations.

Canon 206, quoted earlier, speaks in general, descriptive terms of the responsibilities of catechumens without using the language of obligation. It says that catechumens lead “a life of faith, hope and charity;” and that “the Church

⁸ *Code*, 61.

⁹ *Ibid.*, c. 206, §2, 61-62.

¹⁰ *Ibid.*, 258.

invites them to lead the evangelical life and introduces them to the celebration of the sacred rites.” By implication, if catechumens are not attempting to lead an evangelical life of faith, hope and charity, or are not sufficiently partaking in the sacred rites of the Church warranted by their status and circumstances, they will not be fulfilling their obligations as catechumens and likely will not be judged ready for sacramental initiation.

Relating to this issue of fulfilling obligations, in its survey report the USCCB Committee on Pastoral Practices expressed concern that the Sunday Mass attendance of the newly initiated, while greater than the national average for Catholics, is still only at 64 percent. The Committee added that this pastoral challenge “should be addressed forthrightly during the formation process.”¹¹

It is the responsibility of the bishop, priests, deacons, catechists, godparents, and the entire community, especially those involved in the catechumenate, to see that these obligations are satisfactorily fulfilled by catechumens during the course of their preparation for sacramental initiation. RCIA number 121 states that the major judgment concerning a catechumen’s suitability is made by the community and its leaders, in accord with their respective responsibilities, before admission to the rite of election.

CANDIDATES FOR RECEPTION INTO THE FULL COMMUNION OF THE CATHOLIC CHURCH

Candidates for reception into the full communion of the Catholic Church are already baptized; they are not catechumens. They already belong to the order of the faithful by virtue of their baptism. They should, insofar as possible, be given a separate formation from those who are candidates for baptism, and they should not participate in rites intended solely for catechumens. We need to always keep in mind the wise counsel of RCIA no. 473, that “no greater burden than necessary is required for the establishment of communion and unity.”

A careful comparison of the USA edition’s fifth chapter in Part II, namely, the Rite of Reception of Baptized Christians into the Full Communion of the Catholic Church, with the Latin text will show that the American edition follows the Latin exactly, except for the addition of one new paragraph, no. 478. For baptized non-Catholics who have already been suitably catechized in the faith, this rite of reception – along with the rite of penance celebrated some time before reception – need be the only liturgical celebrations in which they will participate prior to their becoming Catholics. In fact, that is the clear intention of the original Latin text, which was issued in 1972 as an appendix to the RCIA. However, when candidates preparing for reception have not been previously catechized, or only minimally so – which occurs often in the United States – the USA’s added paragraph 478 may come into play.

¹¹ *Journey*, 55.

This author believes that RCIA no. 478 is the most important adaptation of the Latin *editio typica* approved by the American bishops. It has the effect of providing for the celebration of additional liturgical rites with candidates preparing to be received into the full communion of the Catholic Church who had received little or no previous catechesis in the faith. In fact, these optional rites look a lot like those intended for catechumens, and combined rites are even provided for the two groups to be together.

Particularly because of these combined rites, whenever catechumens and candidates for reception into full communion or baptized Catholics preparing for the completion of their Christian initiation appear together in liturgical ceremonies, including the Liturgy of the Word at Sunday Mass, the distinction between the baptized and the unbaptized is to be maintained. It was disheartening to read in the national survey that some parishes have decided that if everyone – catechumens and candidates – is not dismissed from the Sunday assembly, then none of them will be.

Reception into full communion should take place when the candidate has completed his or her individually-tailored preparation, as stated in RCIA number 477. Consequently, the rite of reception should normally take place at the Sunday Eucharist in the parish community, not at the Easter Vigil, even though this had already become the predominant practice in the United States by the time the final translation was approved. The fourth combined rite in Appendix I of the US edition of the RCIA is for use at the Easter Vigil when some candidates for reception happen to be ready at that time. It does not imply that these candidates should be treated as catechumens or that a uniform program of preparation for reception should be structured so that the candidates are all received at the Vigil.

Baptized non-Catholics belong to the Church of Christ and are linked in a real, though imperfect communion to the Catholic faithful. Since they are not in full communion, non-Catholic Christians do not enjoy all the rights of Catholics. However, several rights and privileges of separated Christians in general, and a few that are specific to baptized persons preparing for reception into full communion, are found in Church law, among them: sharing in worship in conformity with the provisions of the *Ecumenical Directory* and the *Code of Canon Law*; being a witness at a Catholic baptism or, in the case of separated Eastern Christians, being a godparent (c. 874); receiving blessings and other sacramentals, except where specifically prohibited (c. 1170); having their funeral rites celebrated in the Catholic Church (c. 1183, §3); participating in the optional liturgical rites marking their progress in formation, as are included in Part II, Chapter 4 of the USA edition of the RCIA; participation in celebrations of the word, including those intended for catechumens (National Statute 31).

Several times in the report on the national survey, mixed signals seem to be given regarding the necessary distinction between unbaptized catechumens and baptized candidates for reception into full communion or previously baptized but uncatechized Catholics preparing for the completion of their Christian initiation through the sacraments of confirmation and/or eucharist. Are liturgical celebrations which involve both catechumens and baptized candidates a good thing or not? Is

it appropriate that all the rites intended for use with catechumens also be able to celebrated with candidates? Some liturgical adaptations described in the report¹² are later viewed as unauthorized.¹³

Unlike catechumens, candidates for reception into full communion should not be dismissed after the Liturgy of the Word of the Mass, even though they are not allowed to receive Communion. Nevertheless, some candidates might prefer to leave the Eucharist at this time so that they may continue to reflect upon the Word. Provided that no confusion arises between their status and that of the catechumens, there is nothing to prevent this practice since these candidates are not obliged to fulfill the precept binding Catholics to attend Mass on Sundays and holy days.

Candidates for reception into full communion, like catechumens, are bound to observe the divine law. They must also observe what is required of them in preparation for reception into full communion, namely, accepting doctrinal and spiritual preparation, adapted to individual pastoral requirements depending on the extent to which the baptized person has led a Christian life within a community of faith; pursuing appropriate catechesis in order to deepen an inner adherence to the Church where the fullness of one's baptism is to be found; participating in the sacrament of reconciliation prior to, but distinct from, the reception into full communion when it takes place within Mass, informing the confessor that he or she is about to be received into full communion; and making a profession of faith consisting of the Nicene Creed and the words "I believe and profess all that the holy Catholic Church believes, teaches, and proclaims to be revealed by God."

UNCATECHIZED ADULT CATHOLIC CANDIDATES (NSC 25-29)

Adult Catholics who received little or no catechesis after their baptism as infants comprise about 14 percent of all participants in the RCIA.¹⁴ In the decade or so after the Latin *Ordo Initiationis Christianae Adultorum* was published in 1972, the liturgical rites of the catechumenate were found to be of great spiritual benefit to these already baptized members of the Catholic Church. Numbers 405 and 407 of the present USA edition of the RCIA recognizes this fact. What is often overlooked is the fact that the liturgical rites for catechumens which have been adapted in the USA ritual for use with the already baptized were intended first of all for this group of already baptized persons, namely, previously uncatechized adult Catholics. This is clear from the placement of the optional rites in Part II, Chapter 4 of the USA's ritual. These optional rites may also be used to advantage with those baptized non-Catholics preparing for reception into the full communion of the Catholic Church who have also received little catechesis in the Christian life.

¹² *Journey*, 18.

¹³ *Ibid*, 46-47.

¹⁴ *Journey*, 18.

CHILDREN WHO HAVE REACHED CATECHETICAL AGE

Regarding the initiation of children who have reached catechetical age, canon law recognizes two categories of children, or minors. In the first category are those either under the age of seven or who lack the use of reason; in the second category are those from seven through seventeen who have the use of reason. An adult is one who is eighteen or older and has the use of reason. But, with reference to baptism, canon 852, §1 states: "The prescripts of the canons on adult baptism are to be applied to all those who, no longer infants, have attained the use of reason."¹⁵ In other words, for purposes of Christian initiation, a younger child who has attained the use of reason is to be initiated as an adult is. In recognition of this norm, the Latin edition of the RCIA contains most of the principle liturgical rites of the catechumenate in language more accessible to these children; these children are baptized according to the RCIA, not the Rite of Baptism of Children. For purposes of Christian initiation they are considered adults. The term "RCIC," once quite entrenched in catechetical materials dealing with these children, is a meaningless and misleading acronym.

One rite is strangely absent from the Latin edition of the RCIA. There is no Rite of Election for these younger catechumens. The NCCB added one to the edition for the United States (in both English and Spanish, I might note), but it is used only when a separate Rite of Election is held for these youngest of catechumens. Ordinarily they will celebrate the Rite of Election with the older catechumens.

The law gives no upper age limit for those who are considered children of catechetical age, but the age of fourteen could be recommended as the standard upper age because it has a certain significance in canon law with reference to baptism. At age fourteen a person is free to choose to be baptized in any ritual Church – in the Latin Church or an Eastern Church. And canon 863 states: "The baptism of adults, at least of those who have completed their fourteenth year, is to be deferred to the diocesan bishop so that he himself administers it if he had judged it expedient."¹⁶

These references in the law suggest a special significance about the age of fourteen in relation to baptism. It seems appropriate, therefore, that minors who are fourteen and older should ordinarily be received into the Church according to the progression of rites and periods of formation in Part I of the RCIA, that which is intended for adults, and that children from the ages of seven through thirteen ordinarily should follow the rites for children of catechetical age in Part II, Chapter I. Actually, the terms "children who have reached catechetical age" and "children who have the use of reason," usually associated with age seven, are not synonymous. A child younger than seven may conceivably be admitted to the Order of

¹⁵ *Code*, 282.

¹⁶ *Ibid.*, 284.

Catechumens, as long as he or she is capable of being catechized. The parents or guardians could request catechumenal formation for the child prior to his or her Christian initiation. But it could be argued that a child who is, say, six years old and capable of being catechized but still not considered as having “attained the use of reason” may legitimately be baptized according to the Rite of Baptism for Children, as long as the parents or guardians are properly prepared for their responsibilities.

The national survey report indicated that there is much confusion in the United States regarding the Christian initiation of children of catechetical age. Forty-one percent of parishes still make no provision for the initiation of these children.¹⁷ One can only wonder if these children are being initiated as if they were still infants. And even where the RCIA is being used with children of catechetical age, are the prescriptions of the law that the three sacraments of initiation be received in one liturgical celebration being observed? The USCCB Liturgy Committee indicated that this is a question that perhaps should have been asked in the survey.¹⁸

THE MINISTER OF BAPTISM AND CONFIRMATION

The General Introduction to Christian Initiation, no. 12, while acknowledging that bishops, priests, and deacons are all ordinary ministers of baptism, notes that bishops are the “chief stewards of the mysteries of Christ.” They should direct the conferring of baptism in their diocese; they should themselves celebrate baptism, especially at the Easter Vigil. And they should have a particular concern for the preparation and baptism of adults. The *praenotanda* to the RCIA, no. 12, expresses the hope that the bishop will celebrate the Rite of Election and, at the Easter Vigil, the sacraments of initiation, “at least for the initiation of those who are fourteen years old and older.”

The law consistently gives this pride of place to the bishop. As was stated previously, canon 863 states: “The baptism of adults, at least of those who have completed their fourteenth year, is to be deferred to the diocesan bishop so that he himself administers it if he judged it expedient.”¹⁹ While diocesan grants of faculties to priests and deacons to administer baptism to those older than fourteen years of age are a quite common practice, bishops should not completely forsake their ministry of presiding at Christian initiation. And in the United States, it appears that they have not.

The survey report notes that, by and large, the bishops consider their presiding at the Rite of Election a highlight of their liturgical and pastoral year. They are convinced that “the RCIA is a ‘great source of renewal’ for parishes and an

¹⁷ *Journey*, 28.

¹⁸ *Journey*, 49.

¹⁹ *Code*, 284.

inspiration for greater outreach and an evangelizing spirit.”²⁰

In addition to bishops, presbyters and deacons are also ordinary ministers of baptism, including the baptism of adults. However, because of the intimate connection between the three sacraments of initiation celebrated in one continuous rite, the RCIA directs its attention to the priest as the minister in ordinary circumstances when the bishop is not going to be the minister. The law itself (c. 883, 2°) supplies the priest with the faculty to confirm. As NSC 28 states, this faculty applies even to the confirmation of baptized Catholics readmitted to full communion after apostasy or, without any fault of their own, growing up in a non-Catholic religion. However, the faculty does not apply to Catholics who simply never put their Catholic faith into practice; a grant of faculty from the diocesan bishop is necessary so that a priest may confirm such a person.

DELAYING CONFIRMATION

The RCIA, faithful to the practice of the ancient Church, calls for the celebration of baptism, confirmation, and Eucharist together in a single and unified rite of initiation; the three sacraments are interrelated actions within the total initiatory celebration. National Statute 14 is fully in accord with these provisions of universal law when it states: “In order to signify clearly the interrelation or coalescence of the three sacraments which are required for full Christian initiation, adult candidates, including children of catechetical age, are to receive baptism, confirmation, and Eucharist in a single Eucharistic celebration, whether at the Easter Vigil or, if necessary, at some other time.”

It is rare that Eucharist is delayed after adult baptism, but the practice of delaying confirmation unfortunately still persists in some places, perhaps as a result of misguided pastoral concerns or uninformed judgments about the nature of confirmation, which is a continuation and deepening of one’s baptismal life and commitments. It is the second sacrament of Christian life, the second principal action in the celebration of Christian initiation. It follows that, except for serious reason, confirmation is to precede the reception of first Communion, ideally in the same celebration to maintain the interrelatedness of the sacraments of initiation. This also applies to children of catechetical age who, according to National Statute 18, are to receive the sacraments of baptism, confirmation, and Eucharist at the Easter Vigil together with the older catechumens.

There is a firm legal obligation binding the minister to confirm adults and children of catechetical age who are baptized or received into the Church, even though they may be below the age that children baptized in infancy are normally confirmed in that locale. Canon 885, §2 states: “A presbyter who possesses this faculty [to confirm] must use it for the sake of those in whose favor the faculty was

²⁰ *Journey*, 26.

granted.”²¹ Whenever they baptize an adult or a child seven or older, or receive the same into full communion, their mandate or permission automatically includes the faculty to confirm. The law insists that when they have this faculty, priests must use it, and they may not be prohibited from using it. Canon 213 recognizes the fundamental right of the faithful to the sacraments, including confirmation, and canon 843 prohibits ministers from denying the sacraments to those who are legally qualified to receive them.

CATECHUMENS AND CANDIDATES IN IRREGULAR MARRIAGES

No information was supplied in the national survey about the percentage of adults in the RCIA who are in irregular marriages. But 20 percent of those who left the RCIA said they did so because of an irregular marriage situation, and they and/or their spouse were not ready to present the case or cases to the diocesan tribunal. This is an issue which requires much sensitivity. We know that irregular marriages need to be identified and addressed early, but it is very difficult to have to present the Catholic teaching on marriage early on in the precatechumenate or catechumenate. The Tribunal or the Office of Canonical Services probably should develop a simple brochure, if they have not already done so, and not leave the matter to be addressed only by parish RCIA leaders.

Dioceses vary in their practices whether someone in an irregular marriage can be admitted to the order of catechumens. There are arguments for both positions. Despite the diocesan practice, it is most important for those in charge of the RCIA on the local level to avoid a “programmatic” attitude toward the catechumenate. Such a view considers the RCIA as a parish program or course, with regular sessions lasting several months or a year after which all participants are expected to have uniformly “graduated,” that is, appropriated their formation in order to be ready to receive the sacraments of initiation together at the Easter Vigil. Instead of viewing the catechumenate as a uniform program that produces identical results in all, it is better to describe it as a progression of rites and periods of formation that is geared to the living realities of individuals whose status, circumstances, and needs are various and whose growth in faith and response to the Gospel proceed at different paces. The *praenotanda* to the RCIA envision a catechumenate that may take several years, and National Statute 6 only treats of the one-year minimum length of the catechumenate. Undergoing catechumenal formation does not inevitably lead to sacramental initiation. That is why the RCIA repeatedly calls for discernment of a catechumen’s readiness for initiation, most importantly before the Rite of Election is celebrated.

No one can be forced to accept the faith against their will, but neither can anyone claim a right to sacramental initiation when the Church determines they are not ready. In reference to adult initiation, readiness is determined by the local

²¹ *Code*, 291.

community and its leaders, and this judgment is based on the circumstances of each individual, including the canonical status of their marriage.

Any person, baptized or unbaptized, may petition the proper diocesan tribunal for a declaration of nullity of his or her marriage. Although non-Catholics are not bound by ecclesiastical law, the Church has the power to judge the validity of their marriages because all people are subject to the divine law concerning marriage.

In the survey irregular marriages were several times recognized as an obstacle to persons beginning formation through the RCIA or eventually being initiated.²²

FORMATION OF CATECHUMENS AND CANDIDATES

As it was in the beginning in 1972 and 1974, as it continued to be in 1988, as it is now, and as it probably will ever be, the most serious question pertaining to the formation of catechumens and candidates has to do with the “content” of their formation.²³

Number 75 of the rite states that the Church “helps the catechumens on their journey by means of suitable liturgical rites, which purify the catechumens little by little and strengthen them with God’s blessing.” This paragraph is referring to the period of the catechumenate, that extended period of time – twelve months or longer – during which the catechumens receive pastoral formation and training in living the Christian life. It is saying that liturgical rites of various kinds are essential to that process of Christian formation, thus challenging us to rethink our entire approach to adult formation in the faith. That formation takes place not through structured lectures or programs of reading adult-oriented catechisms but through gatherings around the Word of God, prayers and blessings for the catechumens’ continued maturation in the faith, and anointings for their strengthening against temptation.

RCIA no. 75 also addresses the catechesis to be provided in the catechumenate: It is to be “planned to be gradual and complete in its coverage, accommodated to the liturgical year, and solidly supported by celebrations of the word.” This catechesis leads the catechumens not only to an appropriate acquaintance with dogmas and precepts but also to a profound sense of the mystery of salvation in which they desire to participate.

GODPARENTS AND SPONSORS

The rites of the RCIA call for both a sponsor and a godparent (either a godfather, a godmother, or both) in the case of catechumens and previously unbaptized Catholics preparing to complete their Christian initiation (see RCIA 10, 11, 404). When the catechumens and candidates are first presented to the

²² *Journey*, 15-16, 20, 26, 32, 34, 43, 52, 58.

²³ See *Journey*, 9, 16, 20, 25, 37-38.

community (at the rite of acceptance into the order of catechumens and at the rite of welcoming candidates seeking to complete their Christian initiation, respectively) they are accompanied by the sponsor. Catholic candidates are to choose their godparent(s) after that, most fittingly, their baptismal godparent(s) "provided they are truly capable of carrying out the responsibilities of godparents;" catechumens are to choose their godparent(s) before the celebration of the rite of election. For the much younger catechumens the RCIA refers only to the choosing of their godparent(s), who assume their role at the Rite of Election (see nos. 278 ff.). The child's parents or a representative of the community presents him or her at the Rite of Acceptance into the Order of Catechumens. The RCIA refers only to a sponsor (or "two sponsors") for candidates who are preparing to be received into the full communion of the Catholic Church, even though this person will act as perform the same role as a godparent at the candidate's confirmation (see no. 483). The requirements of canons 874 and 893 apply to the godparent(s) and sponsor(s). For the younger catechumens their parents, who ordinarily present them at the Rite of Acceptance into the Order of Catechumens may not meet these requirements.

MYSTAGOGICAL CATECHESIS

The RCIA calls for a period of immediate post-baptismal catechesis, termed "mystagogy," to take place during the seven full weeks of the Easter season. The American bishops, in their National Statute 24, call for even more post-baptismal catechesis. After the period of immediate mystagogy, ending on Pentecost, "the program for the neophytes should extend until the anniversary of Christian initiation, with at least monthly assemblies of the neophytes." The national survey found that perhaps only one-half of all parishes have a functioning mystagogy.

Two of the bishops' committees stated that they find this very troubling. No one seems to know what to do about it, however.

CONDITIONAL BAPTISM

Those being received into full communion from other Churches or ecclesial communities are not to be baptized or even conditionally baptized unless there is a reasonable doubt whether they were baptized, or whether the baptism was validly conferred. Only if the doubt remains after a serious investigation of the relevant facts can the minister proceed to baptize conditionally. The investigation should include an examination of the matter and the form of words used in the conferral of baptism and a consideration of the intention of an adult being baptized and of the minister of baptism. It is important to note that prior to the liturgical reforms of the Second Vatican Council the prevailing pastoral practice could be summarized as follows: if there was a doubt whether someone was baptized, or whether the baptism was validly conferred, the person was baptized conditionally. Today all effort must be made to resolve the doubt. Indiscriminate conditional baptism of those seeking full communion is forbidden.

Finally, the Catholic Church affirms the validity of the sacrament of confirmation only in those Churches that have the valid sacrament of holy orders. Besides the separated Eastern Churches, this would include the Polish National Catholic Church and most of the other Old Catholic Churches. Persons baptized in non-Catholic ecclesial communities which are not recognized as having valid orders are to be confirmed during the rite of reception into full communion.

THE DISRUPTIVE RELIGIOUS

Part I: Religious Authority and the Disruptive Religious

SISTER ELISSA A. RINERE, CP

This workshop will treat two sides of a very complex issue: authority in religious institutes and the disruptive individual religious. Put another way, we will address the situation of conflict between the institute and the individual. We will begin with principles, and then apply them to cases. Hopefully, we will be able to generate some discussion and participation from those who have come to hear the presentation. Most of what will be said applies equally to men or women religious. The cases will deal with clerical and non-clerical institutes.

PART ONE: AUTHORITY OR LEADERSHIP

Very often these days in religious life, the word “authority” is avoided and the word “leadership” is used in its place. The choice of wording usually indicates a fundamental preference for a certain exercise of *moral* authority or leadership, rather than coercive authority. Whichever word is used, those elected to office in religious institutes have a very difficult task to negotiate.

As we know, the task of the office holder is both juridic and inspirational. It is juridic insofar as it concerns the administration of goods and property, admission to novitiate or to profession, and the juridic aspects of the vows. (See cc. 625; 639; 647; 686.)

Office is inspirational in its concern for fostering the vitality of charism, community building, fostering commitment to the mission of the institute, and meeting the personal needs of individual members, not necessarily in that order. This dual character of leadership is certainly clear in the canons, as well as in several post-conciliar documents. The familiar *Mutuae relationes* (May 18, 1978)¹ presents religious authority in terms of the prophetic, priestly and royal functions common to all the baptized. The prophetic function (office of teaching) is exercised through the “veritable spiritual direction of the entire congregation” – the spiritual aspect – “in harmony with the authentic magisterium” – the juridical aspect – (n.

¹ Congregation for Religious and Secular Institutes, norms *Mutuae relationes*, 14 May 1978: AAS 70 (1978) 473-506.

13a). The priestly function (office of sanctifying) of those in leadership is found in their efforts to foster perfection of charity in the membership – spiritual – and personal fidelity to the evangelical counsels – juridical – (n. 13b). The royal function (office of governing) is found in “ordering the life of the community” for the sake of the mission – spiritual – and seeing to it that the mission is integrated within the Church under the leadership of the bishops – juridical (n. 13c).

The 1994 document on community life, *Congregavit nos in unum*, (also called “Fraternal Life in Community”)² describes the superior’s task as the spiritual, communal and apostolic animation of the community (n. 50a). Within this task, the document specifies the creation of a climate favorable to sharing and co-responsibility; the promotion of voluntary obedience through respect for the individual; an atmosphere of dialogue; creation of a balance between prayer and work, apostolate and formation, work and rest. This description, especially, is easily restated in terms of the leader’s responsibility to maintain the common good: that set of circumstances in which every individual in the group is enabled to reach his or her full potential.³ The leaders are the guardians of the common good; the whole and the individual parts. Religious institutes will differ in character depending on whether or not leadership carries out the several aspects of its task well or poorly.

Some of the concerns of leadership are interior to the institute – charism, vows, community life – but many are exterior – concerned with mission, relationship to local community and relationship to the larger Church. Whatever the specific situation, it is elected leadership, office holder and council, who bear a primary responsibility to be concerned for all aspects of the life of the institute.

In some instances needs conflict: interior with exterior, personal with communal, communal with ecclesial. In an ideal world such conflicts would never arise, but in the real world they do arise. The common good, those circumstances in which both individuals and the group thrive best, is not always easily discernible. It falls to those in leadership positions to make a determination, for instance, that a situation or an individual is harmful to the group, or even that the group in some way is harmful to the individual. Once that determination is made leadership must decide what steps are to be taken to resolve the difficulty and protect the institute as well as act for the benefit of the individual. How an individual leader approaches these difficult conflictual situations might be called the jurisprudence of exercising authority.

PART TWO: THE JURISPRUDENCE OF EXERCISING AUTHORITY

We know from other areas of the law, particularly marriage, that jurisprudence is an individual’s – usually the judge’s – application of the law to a particular

² Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *Congregavit nos in unum*, 2 February 1994: English translation in *Origins* 23/40 (March 24, 1994) 693, 695-712.

³ See Vatican II, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, n. 26.

situation. We know the various grounds of nullity, and we acknowledge that several judges can study the same collection of evidence and reach different conclusions about a given case. The objective aspects of matrimonial jurisprudence are found in procedures and the rules of evidence. We are familiar with these objective elements. If procedures are followed, then a certain degree of structure and consultation is assured in processing and decision making. The rules of evidence assure an orderly collection of information on which the eventual decision will be based.

The subjective aspects of this matrimonial jurisprudence are too numerous to mention. They include: the judge himself/herself and all the complexity of personality and background, the circumstances of the day, the circumstances of the case at hand, the level of education and insight brought to the evidence, and, of course, the point at which the judge reaches moral certitude. Because of all these variables, judges interpret differently and consequently act differently, despite the presence of the objective elements of the process. That's matrimonial jurisprudence.

And so, in religious life there is a jurisprudence involved in exercising authority. It has objective and subjective elements which yield different results for different leaders. First, we will consider three objective elements which are brought into any superior's jurisprudence in exercising authority. My point here is that the exercise of leadership/authority in times of crisis – or any time – is both a reflection of the institute and a product of the institute.

A. Objective elements

1. Vocation and Formation Policies

These objective elements of the jurisprudence of exercising authority do for persons in leadership what matrimonial procedures and rules of evidence do for decrees of nullity.

The first major objective element in this jurisprudence of exercising authority is the vocation and formation policies and practices of the institute. We know that much has been written on screening of candidates at the various stages of formation, on the need for psychological testing and the confidentiality of any records gathered. Perhaps not as much has been explicitly written about the need to discern carefully the line of demarcation between personal desire and suitability. Sometimes, the personal desire for religious life, in common parlance the "call from God" or the "attraction to the charism," overrides concerns for the individual's suitability for religious life. Troublesome practices or attitudes can be excused or accommodated because an individual has "good intentions." The presumption of "good intentions" can then, later in religious life, lead to toleration of disruptive behavior long beyond the point of acceptability.

Also, in the formation process, theological development must be adequate as well as challenging. This theological development forms the basis for whatever

degree of conscience development an individual undergoes within the context of religious life. By conscience development, I mean the development of the critical skills needed to enable the individual to bring together the internal forum of the conscience and the external forum of behavior. However one describes the fundamentals of theological formation, the goal is always the integrated person, or the integration of faith and life, to use the words of Vatican II. Theological formation must challenge the individual to live out in behavior what is believed in the heart. Even if initial formation addresses this issue of the relationship between theological formation and conscience formation, the process must be evident in ongoing formation for every person in the institute. Later in religious life, a dichotomy between faith and life can be at the root of disruptive behavior.

This whole issue of ongoing and initial formation comes together to form a certain aspect of the culture of the institute, which might be described as a theological and spiritual vitality. The communal level of theological and spiritual vitality is the summation of the integration of faith and life found in each individual.

This whole complex of initial and ongoing formation issues forms part of the first objective element in the jurisprudence of the exercise of authority. The exercise of authority will never surpass the quality of the initial and ongoing formation in the institute as a whole.

2. The Election Process

The second objective element contributing to the jurisprudence of the exercise of authority by elected leadership is the health of the election process within the given institute. This means that the institute itself, in whatever means it chooses to utilize for this task of electing, must elect effective leaders. In general, women tend to focus more on a deliberate process of discernment either before and/or during a chapter of elections than do men, but the important factor is that those elected to leadership can actually fulfill the office to which they are elected, in all its juridic and inspirational aspects.

The law's main expectation for those elected to leadership is found in canon 619: to build communities in which God is sought and loved above all things. To do this, leaders exercise the three baptismal *munera* on behalf of the community members, as mentioned earlier. They are liturgical leaders, they nourish the community with the word of God, and are examples of virtue and examples of fidelity to the Church.

The groundbreaking 1993 Nygren-Ukeritis⁴ study told us that outstanding leaders in religious life are those persons who take strong initiative in dealing with problems before they occur. That is, they are more focused on the implications of immediate situations and tend to address them before the situations get out of hand.

⁴ David Nygren and Miriam Ukeritis, *The Future of Religious Orders in the United States: Transformation and Commitment*, (Westport: Praeger Publishers, 1993). The third chapter of the study, 37-98, deals with leadership.

The study also told us that outstanding leaders use their authority to mobilize the group toward commitment and consensus. Such an orientation necessarily brings out the importance of every individual in the group.

With respect to the vow of obedience, so often invoked in “disruptive religious” situations, the outstanding leader is able to address the inspirational aspects of obedience by eliciting voluntary obedience from the membership – as is stated in canon 618:

[T]hey are to govern their subjects as sons and daughters of God, and promoting voluntary obedience . . . with reverence for the human person, they are to listen willingly . . .

Nygren-Ukeritis: Outstanding leaders act more often through persuasion and use a variety of means to influence the members to support and commit themselves to group goals.

The leader can also, when necessary for the good of the group and the individual demand obedience from individuals, in accord with the juridic aspects of the vow. As canon 618 states :

[T]hey listen willingly, but without prejudice to the authority of superiors to decide and prescribe what must be done.

Thus, the quality of leadership, as determined by the election process within a given institute, is the second objective element in the jurisprudence of exercising authority. The quality of jurisprudence in a conflict situation will not rise above the capacities of the individual leader to actually lead.

3. The Institute's Approach to Conflict

The third objective element contributing to this jurisprudence of the exercise of authority is the culture of the individual institute with respect to the resolution of disputes. Is conflict understood to be a normal part of life, even religious life; or is conflict of any sort avoided and covered up in some way? Are there structures set up for conflict resolution within the institute? The example for such structures is presented to us in canons 1713 to 1716 and canon 1733, and we know that the CLSA has a long and proud history of working for due process boards at the diocesan level throughout the country. In a given religious institute, a leader faced with a situation of conflict will approach it more collegially, with more consultation and advice, and ultimately more productively, if the institute itself has the history and the expectation of such an approach.

The conflict resolution procedures stated in canons 1713 and 1716 are quite specific. They present arbitration as a means of avoiding trials. Canon 1733, on the other hand, presents conciliation and mediation as means to settle disagreements arising from recourse against administrative decisions. Although the situations

differ widely, the spirit of the canons is remarkably Christian. Each of these forms of conflict resolution, arbitration, conciliation or mediation, requires that each party in the dispute to step back from it to some degree and to recognize that others not directly involved can be trusted to seek the best result. Concern shifts from personal to communal benefit; from anger to discussion, from personal justification to resolution.

The contribution to the jurisprudence of the exercise of authority is determined by whether or not a given religious institute has, not the structures provided by these canons with respect to conflict resolution, but their Gospel spirit. Is conflict dealt with as an ordinary and healthy part of life, or is it swept under the rug?⁵

The approach to conflict resolution of the individual leader will seldom go above the approach to conflict resolution already present in the culture of the institute. If the institute does not have a healthy and mature approach to conflict resolution as part of its communal value system, probably neither will the elected leader.

B. Subjective elements in the jurisprudence of exercising authority

These are the three objective elements in the jurisprudence of exercising authority: the health of the formation process, the health of the election process, the culture of conflict resolution within the life of the institute. Even with these in place, there are other subjective elements in this jurisprudence. As with matrimonial matters, once the judge has utilized the rules of procedure and rules of evidence, he or she is left with the one great variable – human nature. Is the individual leader/judge prayerful, insightful, angry, knowledgeable, objective, afraid, collaborative, Christian? A defensive leader will act differently in a crisis than a self-assured leader, and so on. On this point, the Nygren-Ukeritis study pointed out that outstanding leaders, because they are self-assured, will risk incurring the disapproval of the group in order to take needed action. When called upon to make difficult decisions, these leaders are not hindered or held back by the need for approval or even acceptance by the group.

When all these elements come together; the objective elements of vocation and formation policies, the health of the election process and the cultural approach of the institute to conflict resolution, and the subjective element of the person of the leader, there will arise a jurisprudence which will be applied to a specific instance of conflict. For our purposes today, the conflict is between the leader/institute and the disruptive individual.

⁵ The Gospel approach to reconciliation is emphasized beautifully in a May 2004 press release issued by the International Union of Superiors General in which the organization pledges to “intensify efforts toward healing, reconciliation and right relationships between men and women, especially within the Catholic Church.” The entire statement is available at www.uisg.org.

PART THREE: WHAT LEADERS MUST CONSIDER

In situations of conflict, leaders are in a very difficult situation. First, the elected leader is obligated to protect the institute. But also, the leader is obligated to respect the rights and meet the needs of the disruptive individual. (More will be said about this facet of the problem in the next section of the presentation.) Now, going back to the canons, the leader we will focus on his or her responsibilities toward the rest of the institute, the non-disruptive persons.

A. Internal Elements

In addition to the specifics of particular law, the elected leader is:

- to be an example to all in cultivating virtue (canon 619)
- to foster the apostolate of the institute (canon 618)
- to enable all members of the institute to pursue perfection through the practice of the evangelical counsels (canon 576)

B. External Elements

Because the institute is dedicated to service in the Church, the leader must attend to:

- preservation of the nature, purpose, spirit and character of the institute which has been sanctioned by ecclesiastical authority (canon 576)
- the calling of the institute to be to the people of God “an outstanding sign, foretelling heavenly glory” (canon 573, §1)
- being accountable to the Holy See and/or the diocesan bishop with respect to service to the Church

In other words, in situations of conflict, elected leaders must keep an eye on the “big picture” of the health and vitality and public perception of the institute within the whole community of the Church, clergy and laity alike.

C. Available Options

Lastly, the elected leader who is dealing with a disruptive religious has several options which might apply in any given situation. Canonists called in to assist would already be familiar with them, therefore we will only mention them:

dialogue and discussion
repentance and forgiveness
arbitration and conciliation
a “leave of absence” for the individual (time apart according to canon 665)
voluntary exlaustration
enforced exlaustration
any of the three forms of dismissal (canons 694-696)
 ipso facto
 facultative
 discretionary
voluntary departure
transfer (canons 684-685)

Keep all these things in mind as we go to the second part of the presentation and then to the cases.

Part II: A Focus on the Individual

REVEREND ARTHUR J. ESPELAGE, O.F.M.

INTRODUCTION:

This part of the presentation will hopefully join the other side of the coin, which focused on religious authority and the disruptive religious. Sometimes life's experience are such that authority may delay in responding or worse yet abdicate responsibility for dealing with disruptive behavior. There is a need, therefore, for individual members, whether the disruptive person himself or herself or other members of the local or regional community, to give some thought to his/her responsibilities and rights before problems arise. Central to any consideration in this area must be the reality that freedom cannot be separated from responsibility.

Every community has a disruptive person or two. Plays and movies are complete with them: The cleverly amusing song, "What are we going to do about Maria?" was witty, humorous, popular lyric in the *Sound of Music* while characters in the *Nun's Story* and *Name of the Rose* addressed more somber and darker sides of disruption in religious life. What is new is our need to understand and respond to what creates, motivates, and may explain actions by today's disruptive religious if we are to offer possible solutions to save a vocation and preserve the community.

By way of introduction, I wish to offer to preliminary notes. The first concerns determining when a member might be labeled disruptive. The second point to keep in mind is that there are grades of disruptive behavior so it is necessary to begin with a general principle in looking at an individuals responsibilities and rights.

EVALUATING AT THE LOCAL LEVEL WHETHER OR NOT ONE IS DISRUPTIVE

Evaluation requires an acceptable starting place. The disruptive religious develops neither out of a genetic disposition nor in a vacuum. There are a number of questions which may be asked in beginning to evaluate a person's behavior. How does the individual's view of the community contribute to the creation of one's "disruptive" status? What are the true causes of the disruption? How are an individual's activities becoming disruptive? Is the local life style one exhibiting unity and allowing diversity rather than uniformity which allows for an exception?

From a "common sense perspective," each of us as a member of an institute of consecrated life can evaluate whether or not our activities are "out of balance" when it comes to sanctifying, teaching, or governing activities. Similarly, authority figures within the institute can make a decision as to when an individual's activities are "out of balance." For example, is the individual's commitment to charismatic new ministries out of balance with existing juridic recognized ministries? In terms

of teaching, is the individual “pushing the envelope” with academic ideas difficult to reconcile with official or established teaching on an item. In terms of governance, is the good of the individual out of balance with the common good of the institute?

When imbalance reaches a point there where there are real questions regarding control, a member may judge or be judged as disruptive. Long before a point of judgment is reached, the individuals who live with the disruptive individual, as well as the disruptive person himself or herself need guide his/her words and actions according to accepted principles as opposed to personal feelings and/or personal beliefs.

RESPONSIBILITIES AND RIGHTS OF THE DISRUPTIVE RELIGIOUS IN A COMMUNITY

Most members entering religious life focus on their vows and the practical aspects of living in community life. Members often regulate daily life according to custom and tradition without viewing the larger picture as to *why* this or that tradition is held important. Older members viewed religious life as *leaving the world*. Few in the past considered that their responsibility to live the vowed life did not take away their civil rights as citizens and baptism as well as religious profession accorded them certain rights within the Church to be lived out in his/her local community.

“Difficult decisions must be made when the rights of the individual come into conflict with the common good, either of the institute or the larger society.”⁶ In the case of the severely disturbed member, there have to be limits.⁷ In other situations where personal and institutional boundaries are unclear and relationships among members are immature or dishonest, navigating one’s actions to respect rights and to demand responsibility become problematic. At such moments it is essential to remember the general principle that each member enjoys those civil rights accorded to all citizens of a particular country as well as those ecclesial and institutional rights coming by baptism and incorporation into his/her institute.⁸

Among civil rights of members, we might identify the following five areas which the disruptive person should be aware.

- *Protections accorded the citizens of national, state, and municipal jurisdictions:* Few religious would envision the need for a civil attorney

⁶ Emmett J. Gavin, O.Carm., “Membership: Fully Incorporated Members,” in *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, (Washington: Canon Law Society of America, 2001) 127.

⁷ “A religious with an active substance abuse problem or uncontrolled and debilitating psychiatric problems cannot demand a right to privacy and good name at the expense of unsuspecting people who are potential victims.” Ibid.

⁸ Canons 671 and 672 list restrictions on the activities of religious as inconsistent with membership. For a treatment of these canons see Gavin, *Procedural Handbook*, 128-133.

before speaking with law enforcement. Many religious are accustomed to “kicking” such problems to the major superior. Others have little concept of a civil right to not incriminate oneself and to be represented by counsel in the case of a criminal accusation.

- *Confidentiality* is a right recognized in civil society since World War II. The Universal Declaration of Human Rights of the 16th of December 1948 speaks of confidentiality as responding to two rights: the right to privacy and the right to one’s reputation.⁹
- Exclaustrated or departed religious, have the same rights as other citizens with respect to residence according to norm of civil law.
- They have the right to vote, to freedom of movement, in short to live a civil life according to the customs and laws of the nation in which they reside.
- Responsibilities inherent in all citizens apply to religious. If they observe a crime being committed, they must call the police. For example, reporting laws in cases of sexual abuse of minors must be observed by all citizen members of an institute.

While the exercise of civil liberties by Christians is always to be imbued with the spirit of the gospel and teaching of the Church, concrete situations will arise in which there will be differing opinions. Prudence requires religious to be especially vigilant in his/her behavior. They are citizens with public visibility. It would be an inappropriate exercise of a right, for example, to bear arms in a state which authorizes citizens to carry conceal weapons for a religious to “strap on the old sidearm.” What I am suggesting is that those who seek to be an *alter Christus* or to walk in the *vestigia Christi*, or footsteps of Christ, should forgo some of those rights which “Caesar” allows.

Among baptismal and ecclesiastical rights, we might identify the following.

- *The right to live religious life:* Canon 654 focuses on incorporation into the institute by the *traditio* of the individual and *acceptatio* by the institute creating an institutional contract from which the right and obligations arise by reason of universal law of the Church, especially canons 662-672, and the particular or proper law of the institute.¹⁰

⁹ Article 12: “No one shall be subjected to arbitrary interference with his or her privacy, family home, or correspondence, nor attacks upon her honor or reputation. Everyone has the right to protection of law against such interference or attack.”

¹⁰ See Domingo J. Andrés, CMF, *Exegetical Commentary on the Code of Canon Law*, ed. Ángel Marzoa et al. English language edition (Chicago: Midwest Theological Forum, 2004) 2/2:1737-1738, hereafter *Exegetical Commentary on the Code of Canon Law*.

- *The right to a good reputation:* Canon 220 articulates as a basic human right most often cited by the disruptive religious: good reputation, or the public opinion that is held of someone. This is a natural duty to respect the good reputation of others.¹¹ Thus calumny, denunciation, insults, slander and spreading of rumors would be contrary to this right. Moreover, church law provides that whoever brings a calumnious denunciation for some delict to the attention of ecclesiastical superiors can be punished with a just penalty.¹²

One of the innovations of the revised code of 1983 and one of the most effective protections of the right to a good reputation is the disappearance of the *ex informata conscientia* suspension of the 1917 code¹³ as well as the other special procedures in which the right of defense was not sufficiently safeguarded.¹⁴

But anyone who acts dishonorably has a conditional right. Disclosure can be lawful to preserve from unjust damage, restrain the dishonorable conduct, or bring about the correction of the offender.¹⁵ At the level of the individuals involved with disruptive behavior, the most serious question is the utilization of silence, that is, a lack of comment or disclosure by others, to protect an individual's reputation and/or the common good of the local community.

- *The right to privacy:* Canon 220 provides for a religious' right to privacy. Earlier versions of this right referred to "correspondence and other personal matters" but the canon speaks in more general terms.¹⁶ Relinquishment of an individual's right would require: a proportionate just cause for seeking such information; some clear limit on how much privacy and concerning what matters one is being asked to relinquish; and prior, free consent regarding the use to which the material will be used; who will see it; what

¹¹ S.Th. , II, II, q. 73, a. 2 c and a. 3 c.

¹² For a treatment of possible remedies see Daniel Cenalmor, *Exegetical 2/1*: 129-30.

¹³ 1917 *CIC* cc. 2186-2194.

¹⁴ "This right now remains guaranteed in all judicial proceedings (c. 1598, 1) even during administrative proceedings (c. 1342, 2), despite the fact that the *CIC* does not expressly indicate, for example, the right of the accused party to learn the name of his accuser, or the right to always know the motivation underlying the acts of the ecclesiastical authority who intends to impose sanctions." Daniel Cenalmor, *Exegetical 2/1*:130.

¹⁵ See Bernard Haring, "The Law of Christ: Moral Theology for Priests and Laity" 3:620-621.

¹⁶ James H. Provost, "The Obligations and Rights of All the Christian Faithful," in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden, Thomas J. Green, and Donald E. Heintschel (New York/Mahwah: Paulist Press, 1985) 153. Hereafter Provost, *Commentary*.

will happen to the material afterwards.¹⁷ Health care issues demand that the nature of any condition and/or the progress of treatment not be disclosed without an individual's consent. Personnel files are not mentioned in the common law of the Church; specific guidelines should allow a member to know the content of his/her personnel file; who has access to that file and under what circumstances.

- *The right to necessities:* This right expressed in canon 670 can be a source of contention with a disruptive religious and leadership. One position would be to view necessities in an objective and equitable manner as to what can be provided within the norms, structures, lifestyle, and resources of the institute.¹⁸ A second position would be to start with the level of dependence of a member on the institute and view canons 670 and 661 as complementary so that the needs of the disruptive member may require greater disbursement.¹⁹
- *The right to common life:* The right to live in a house of the institute is clearly stated in canon 609; the obligation of canon 665 to live the common life focuses on absences allowed by law. "The superior does not have the power to command a religious to leave the house, since that violates an essential element of religious life, one that is also a basic right and obligation."²⁰ A real concern has to be when does aberrant and destructive behavior void the obligation and the right? Canon 686 does provide for involuntary excommunication of a member and the praxis of the Holy See in recent years allowed the period of time to exist, *durante necessitate*.
- *The right to intervention:*²¹ This right of a member rests upon the obligation

¹⁷ Stephen E. Kain, O.F.M. "The Diocesan Bishop and Confidential Information Concerning Religious Being Assigned to an External Apostolate," JCL thesis. (Washington: The Catholic University of America, 1990) 32-33.

¹⁸ Elizabeth McDonough, "The Protection of Rights in Religious Institutes," *The Jurist* 46 (1986) 168-169. See also "The Troubling Religious: Further Considerations," *Review for Religious* 49 (1990) 618-624.

¹⁹ David F. O'Connor, "Obligations and Rights: Canons 662-672," in *A Handbook on Canons 662-746: Religious Institutes, Secular Institutes, Societies of the Apostolic Life*, ed. Jordan Hite, Sharon Holland and Daniel Ward (Collegeville: The Liturgical Press, 1985) 188; and Jordan Hite, "Chapter IV: The Obligations and Rights of Institutes and Their Members," in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden, Thomas J. Green, and Donald E. Heintschel (New York/Mahwah: Paulist Press, 1985) 505-506. Hereafter Jordan, *Commentary*.

²⁰ John Huels, "Unlawful Command by a Major Superior" *CLSA Advisory Opinions 1994-2000* (Washington: CLSA, 2002) 168.

²¹ This particular right was identified by James G. Karaffa, C.S.C., *Selected Rights of Religious in Chemical Dependence Intervention: An Analysis of the Chemical Dependency Policy of the Indiana Province of the Congregation of the Holy Cross* (Washington: The Catholic University of America, 1966) 43-50.

of the superior articulated in canons 619 and 703. A member might expect such intervention to meet personal needs, to address sickness, discontent, or situations of exterior scandal or imminent harm to the institute as in situations, for example, where a member's health may deteriorate due to substance abuse or his or her visiting neighborhood bars or attending meetings or religious services under the influence of substances. In short, when intervention might be expected there is an interference with a person's effective performance of ministry, a reduction of dependability, an impairment of interpersonal relationships, deterioration of health, or discredit to one's office.²²

- *The juridic protection of ecclesial rights:* Canon 221 enunciates a basic fundamental right of all Christians believers, the right in times of accusation to be treated according to due process; to defend and vindicate oneself in a court of law;²³ and to have no penalties imposed except according to norm of law.²⁴ Members of institutes of consecrated life or societies of apostolic life do not lose this right with religious profession as it remains a fundamental human right.²⁵ Moreover, the proper law of the institute can and often does provide greater specification to this right, as for example, when a religious is removed from public ministry (c. 682), given a post-treatment assignment (cc. 677 & 671), expelled from a religious house (c. 703), transferred to another community (c. 665), or declared impeded from the exercise of orders (c. 1044).
- *The Right to Choose One's Medical Care:* Disruptive individuals have a right to refuse assignment to a specific treatment program, and superiors may not proceed by reason of canon 601 to force them into treatment programs. Granted this canon gives canonical form to the doctrine of obedience for religious established in *Perfectae caritatis* 14, but the individual's juridical obligation to submit to the will of lawful superiors must be balanced by the fact that lawful superiors give commands in

²² John P. Beal, "Leaves of Absence," in *Clergy Procedural Handbook*, ed. Randolph R. Calvo and Nevin J. Klinger (Washington: Canon Law Society of America, 1992) 146.

²³ Canon 1728, §2 states, for example, states the right against self-incrimination saying "the accused is not bound to confess the delict nor can an oath be administered to the accused." There is parallel legislation in *CCEO* canon 1472, §2. All procedural rights due a defendant must assiduously be observed by the court. This includes the right to know the charges (i.e. the citation, including the names of the court officials), to submit proofs, to inspect all acts of the case, to submit a written defense, to receive a copy of the definitive sentence, and to challenge the sentence itself.

²⁴ For example, see Sharon Euart, RSM and Daniel J. Ward, OSB, "Procedures for Referral of Cases of Sexual Abuse of Minors by Religious Priests and Deacons for Accusations Made after April 30, 2001" *The Legal Bulletin* 76 (2003) 23-38.

²⁵ Elizabeth McDonough, "Understanding 'Obligations and Rights' in Church Law," *Review for Religious* 49 (1990) 780.

accordance with the constitutions of the institute.²⁶ Moreover canon 630, §5 forbids superiors to induce subjects in any way whatever to make a manifestation of conscience to them.²⁷

As guidance in this area, the code suggests in canon 281, §2 that the provisions established for priests who are ill, incapacitated, or in old age be a model.²⁸ It would make sense for institutes to create policies and procedures in these particular areas to serve as guidelines for individuals and individual communities.

Moreover, the praxis of the Holy See has consistently maintained that individual members cannot be compelled by authority to undergo a specific program of psychological counseling. The rationale for this discipline lies in the fact that an investigation of the intimate psychological and moral status of one's interior life cannot be carried on except with the consent of the one to undergo such an evaluation.²⁹ This creates a difficulty when an individual religious demonstrates public-aberrant behavior of a disruptive nature and still refuses to seek medical help. In such a situation authority in the institute may impose restrictions, i.e. living situation, travel, spending money, to protect the common good of the institute and, perhaps society in general.³⁰

On the other hand, the disruptive individual needs to understand that if very serious reasons exist, reasons sufficient for lawful authority to begin a process of involuntary excommunication or dismissal, a command to seek psychological counseling may not be a violation of fundamental right.

- *The right to engage in an apostolate of the community:* While the apostolate of the institute is carried out by individual members, an

²⁶ Tomás Rincón-Pérez, *Exegetical Commentary on the Code of Canon Law*, 2/2:1563.

²⁷ As John Huels writes, "under manifestation of conscience comes all matters of the internal forum, matters such as sins, thought, feelings, namely matters treated in the sacrament of penance, in spiritual direction, and in counseling. These are privileged matters that the member is free to reveal or not reveal to superiors, but superiors are prohibited from using their authority to exact such matters from a subject. [...] superiors cannot demand such a report from members already professed unless they agree to it. That would violate the privacy right and would violate the law against a compulsory manifestation of conscience. Huels in *CLSA Advisory Opinions* 2:167-168.

²⁸ This is a right enunciated by Pope John XXIII in *Pacem in terris*, 11.

²⁹ See Daniel J. Ward, OSB, "Privacy/Confidentiality Issues in Religious Institutes," *CLSA Proceedings* 61 (1999) 311.

³⁰ Dan Ward points out the civil society handles these matters in a similar way. "A [civil] court can confine a person to a treatment center to protect society and the person. But the court cannot force a competent person to undergo evaluation, or treatment, or even medical procedures." Ward, *Proceedings* 61:312.

individual has no right to a particular apostolate.³¹ Moreover canon 671 requires a religious not to accept duties and offices outside the institute without the permission of the legitimate superior, and canon 274, §2 adds more stress to the permission of the legitimate superior in order to undertake duties of a clerical nature. "It is by the obligation of obedience that individual religious are assigned specific apostolic works by superiors acting in the name of the institute."³² Of particular interest in this time of declining membership and fulfilling commitments to parishes is the whole issue of entrusting parishes to the care of religious.³³

Transfer of members, or re-assignment of members, into parishes after the clergy sex abuse scandals in North America, is now a significant event for all concerned. The Conference of Major Superiors of Men continue to work with the United States Conference of Bishops on this particular issue.

- *The Right to Review One's Personnel Files:* Members of institutes of consecrated life and societies of apostolic life should periodically review the contents of his/her personnel files. Such files should indicate which ones are simple personnel matters from others which contain confidential communication³⁴ between a bishop and a priest. Focus should be upon carelessly kept and incomplete records, ambiguous notes, dubious letters, errant recollections, unsubstantiated allegations, and confidential information. Superiors, personnel directors, and vicars should have clear protocols for what a religious' confidential file should contain.³⁵

Finally, there are those rights which a disruptive member may exercise in certain circumstances. Unfortunately, these rights arise only when one judges that there is no other means available to resolve one's difficulties with the institute.

- *The possibility of a transfer to another institute:* Canon 684 raises this

³¹ See James J. Conn, S.J., "Bishops and the Apostolates of Religious," *CLSA Proceedings* 63 (2001) 49-83.

³² Karaffa, 55.

³³ For a study of this issue, I would recommend Monsignor Alexander J. Palmieri, "Parishes Entrusted to the Care of Religious: Starting Afresh From Christ," *CLSA Proceedings* 64 (2002) 209-239.

³⁴ Confidentiality, either in oral or written form, recognizes privileged communications between a client and a professional, i.e., doctor or lawyer; however, the one who decides whether a particular communication is privileged is a judge. See Patrick T. Shea, O.F.M., "Clergy Records: Civil Law Considerations," *CLSA Proceedings* 58 (1996) 326

³⁵ For example, information from an individual's relationships with medical or mental health professionals should be given to superiors only with written permission and for a specific purpose. Once permission is granted, an individual should know how and with whom the information is to be shared and there should be clear limits on how long such information is to be kept, and the purpose for which the information was released is not longer pertinent. Gavin, 127.

possibility for perpetually professed religious in a negative statement which points out that transfer is an extraordinary event.³⁶ Causes for transfer can be personal or institutional. For example, physical or mental health or an individual could be ameliorated by transfer to another institute. Another cause might be the situation of the institute of origin if it cannot offer what the religious has a right to expect of it. A final reason for transfer might be vocational discernment by the individual.³⁷ Permissions to transfer are reserved to the general superiors of the two institutes with the consent of their councils by reason of canon 127, §1, and the intervention of the Holy See is not required.³⁸

- *A member professed by perpetual vows can request an indult of exclausturation:* Canon 686 provides clear instructions for a grant of voluntary exclausturation and the time limits. Grants fall to the proper law of the institute by reason of canon 638, §§ 1 and 2 as well as universal law. For the grant of an indult of exclausturation, a “grave reason” is required as for example, family situations or “grave circumstantial difficulties in communal life.”³⁹
- *Voluntary departure from an institute:* Canons 688 and 691 take up cases where a member wishes to leave his or her community. The first canon pertains to temporarily professed and the second to perpetually professed.

The procedure for departure for temporarily professed remains similar to that of *CIC1917* canon 637 as well as subsequent legislation before 1983.⁴⁰ The procedure for departure by a perpetually professed is again stated in the negative to illustrate that only the “gravest of reasons before the Lord” permit departure. In cases of voluntary departure, once the individual makes his or her decision, a written petition needs to be presented to the supreme moderator of the institute. The religious should set forth: (a) when and in what circumstances he/she took vows; (b) the reasons for taking those vows; (c) a history of one’s vowed life, enumerating the important steps and

³⁶ Transfer of those in temporary vows is covered by canons 657, §1; and 688, §§ 1 and 2. Moreover, if the transferred temporarily professed wishes to return to the original institute, the superiors by reason of canon 643, §1 may re-admit, even dispensing from the novitiate requirements, canon 690, §1

³⁷ See Francisco J. Ramos, OP, “Transfer to Another Institute,” *Exegetical Commentary on the Code of Canon Law*, II/2:1835.

³⁸ If the transfer is to a secular institute or a society of apostolic action by reason of canon 684, §5 the permission of the Holy See is required.

³⁹ Francesco Ramos, OP, “Departure from the Institute,” *Exegetical Commentary on the Code of Canon Law*, II/2:1841.

⁴⁰ See *Cum admotae*, n. 14 of November 6, 1964 in AAS 59 (1967) 374-378; *Decr. Religionum laicalium*, 31 May 1966, I, 3 in AAS 59 (1967) 362-364 and *Decr. Cum superiores generales*, of 27 November 1969 in AAS 61 (1969) 738-739.

circumstances leading to this decision; and (d) why the individual wishes to leave the institute at this time.⁴¹

CONCLUSION:

Knowledge and observance must go hand in hand if institutes and individuals are to minimize cases of a disruptive religious. Initial and ongoing formation within institutes must educate members as to his/her individual responsibilities and rights in theoretical and practical ways. Profession of the evangelical counsels by reason of canon 573, neither absolves an individual by reason of “blind obedience” to one’s superiors from exercising one’s rights-responsibilities; nor does it allow an individual to “bend the rules” and consider himself or herself above responsibilities and rights.

⁴¹ Ramos, *op. cit.* II/2:1857.

PART III

SCENARIOS FOR APPLYING PRINCIPLES

Case One

Sister X began her formation in a community of cloistered women (a monastery *sui iuris*) when in her early 20's. She always appeared to be prayerful, happy and well-adjusted. Sister had an uneventful novitiate and first profession.

After ten years with the community, Sister X made her solemn profession. One year after that she began showing signs tension and anger, exhibited primarily in a critical attitude toward the other nuns. The community "learned" to avoid confrontations with Sister X, and managed to keep peace in the house.

Ten years after her solemn profession, Sister X began praying aloud in the chapel, claiming to have visions of Christ and Mary during these times. Her behavior toward the nuns became much more aggressive. Sister was asked to see a counselor.

After three visits, the counselor said that she saw no serious problems with Sister X and discontinued treatment.

Within the next two years, Sister's behavior went from criticizing to shoving and slapping the other nuns. The cloister was in turmoil, one nun left the community, and Sister X was adamant that she was not in the wrong. Rather, she blamed the lax practices of the community for her reactions of anger and criticism.

Finally, the superior, with encouragement from the entire community, called the Vicar for Religious of the diocese and asked for help. The Vicar called a canonist and they went to the monastery for a meeting.

1. What difficulties are presented by the community's "culture" of conflict resolution?
2. What claims for rights of the community can be made?
3. What rights can the disruptive individual claim?
4. Can the situation be resolved by arbitration or conciliation?
5. What would be the most advantageous resolution of the situation?

Case Two

Canon 679: When a most grave cause demands it, a diocesan bishop can prohibit a member of a religious institute from residing in the diocese if his or her major superior, after having been informed, has neglected to make provision; moreover, the matter is to be referred immediately to the Holy See.

The religious institute of the Priests for Holiness was founded 35 years ago by the then-bishop of Diocese A. Father X has been a professed member of the community for 30 years and has been ordained for 26 years. For his whole religious life, Father X has been teaching in one of the two schools the community runs in Diocese A. Each of the schools has a priory close by where the community lives. The members of the community are routinely transferred between the two priories and the two schools.

Last year a former student of one of the schools came forward and accused Father X of one incident of sexual abuse. Father X was immediately removed from the school faculty. However, he remained living at the priory. When two more former students came forward to accuse Father X, his faculties were suspended and he was directed, under obedience, not to leave the priory grounds under any circumstances. Father X admitted that the three allegations were true, that they occurred 25 years ago, and there had been no other incidents since that time.

The diocesan bishop has contacted the major superior of the institute and asked, in virtue of canon 679, that Father X leave the diocese immediately. The major superior has refused to send Father X away, especially since the institute has no houses outside the diocese. To do so, the superior maintains, is to deprive Father X of community life, to which he has a right by profession. Also, the superior feels that sufficient actions have been taken against Father X at this time.

In response, the diocesan bishop is threatening to transfer the staffing of the two schools to another religious institute, and to revoke all the diocesan faculties given to members of "Priests for Holiness."

1. Is the diocesan bishop correct to invoke upon canon 679 in this instance?
2. Is the major superior correct in insisting that Father X cannot be sent away?
3. Would any potential civil or criminal liability on the part of the diocese or the institute play a part in whatever decision is made about where Father X is to live?
4. How should the elected leader balance his concerns for the individual and the institute?

Case Three

A terrible rift came to the surface within the local community composed of professed and two factions of student formation members. The causes and the specifics of the rift focused upon reformation of the institute to meet the “needs of the times.”

The local community at this internal school had Fr. John serving as superior and Fr. Luke as *Magister* at that time. They faced an enormous task to calm and move forward the young men entrusted to their care as well as process the solutions being offered by their peers. Luke spent countless hours in his office and over the coffee table, keeping each of the students talking. He kept trying to broaden minds to life beyond the limitations that their rampaging feelings vocalized. John, as local superior, approached faculty and student factions attempting to calm the troubled waters by reminders of their institute’s charism.

When the controversy was first publicly acknowledged within the local community in the late Fall, John’s first attempt was an appeal to religious obligations. Both sides of the controversy were called to a small private chapel where John declared the hostility was incompatible with vowed life. With his declaration that the controversy was over, the students were dismissed with the admonition that under their vow of obedience, they were never to speak of this matter again with one another. This was not, however, the final solution. Both sides of the students sought “allies” and “support” from individuals on the faculty, and little acts of disrespect toward other students continued to grow.

In the Spring of 1967, another attempt at resolution came in two steps. First, John and representatives of the faculty called selected members of the two groups together in separate meetings for what might be termed a declaration of cessation of hostilities. The meeting took place in a room that the faculty used for official meetings. The atmosphere was tense, and there was a sort of “non nonsense” approach to the meeting. There were a series of “do” and “do nots” delivered to assembled students.

Step two of the resolution occurred with the surprise arrival of the minister provincial, members of the provincial council and a Roman representative of the institute. An appeal by a group of students to the general superior and the Congregation for Religious had engaged the legal apparatus of the institute.

The provincial provided an experience of a canonical solution. He employed the “rule by law,” that is the general constitutions to create a structure and to provide procedures whereby resolution, healing and, possibly, reconciliation, would have a chance to survive. He listened to individuals from both sides raise their complaints and grievances. He measured each of his steps as a response to the

initiatives of others. There are always consequences to choices, and he would point out the possible consequences to initiatives at various stages of reconciliation. His approach was not based on “feelings” but “rules.” The “final solution” was not so much an imposition by either the provincial superior or the community or the Church as a ratification of choices adopted by individuals.

Case Four

Father Anthony's journey from a vibrant, active, and dynamic priest to a disruptive member of his religious community who suffered from the disease of alcoholism is more easily diagnosed now that his life ended. Family, friends, and confreres can cite examples of early "hints" of difficulty, missed opportunities, refusals to seek medical help, failures of "tough love approaches," and even the failure of the civil authorities to control his behavior at certain times of his life. Some believe he never "got over" the close deaths of his mother, father, and only sibling with six months. Others write him off as mentally ill. I remember him with sadness; he liked me, but there was nothing I could do to help him.

Anthony at the height of his priestly ministry was a brilliant preacher who carried a hefty schedule that left little personal time. Gregarious by nature, he loved to sit up in the recreation room in the late evenings and talk with a highball in one hand and a cigarette in the other. In the early years of his disease, he was a likeable and entertaining fellow, but there was at times a dark side. I remember one time as a visiting student member in his community, I came into the house late one evening to find him walking around with a baseball bat in his hands. He was convinced one of the local neighborhood kids was somehow breaking into the locked beer and pop room to pilfer, and Anthony was determined to catch him in the act.

Over the years one local community after another determined either mildly or strongly that Anthony could not reside in peace with them. Interventions failed, court imposed treatment programs failed. Nothing seemed to work! Finally, Anthony ended up living in a large inner city house where most of the community members worked outside and returned only in the evenings. For the most healthy of members, the living situation could cause great loneliness. His drinking and his delusions reached a low point where he was at times verbally and physically abusive to other members. People were afraid of him. One day, for example, he turned his attention on a member of the community; he took the man's professional books out of his office-bedroom and burned them in the community courtyard. On another occasion, he cut a good number of two by six's the length of a doorway and proceeded to nail up the member's door – with the member inside his room. Everyone in the house was awakened by the clamor, but no one came out to investigate. The poor member imprisoned in his room passed a sleepless night.

Anthony's story does not have a happy ending. His drinking increased to a point where he could have not access to a car. He was pretty confined to his community house and neighborhood in the inner city. He took to taunting people in the neighborhood and would find his way into the local bars where he would drink and make a disturbance until the police arrived. People began to dismiss him as just being "*loco en la cabeza*." Late one evening, the police ambulance pulled up outside the front door of the community house. The police wanted one of the members of the community to identify Anthony. It was hard to do because his face was so broken and bruised.

CALLING GOD'S SPECIAL CHILDREN TO HOLINESS: SACRAMENTAL ACCESS FOR THE MENTALLY AND COGNITIVELY CHALLENGED

MR. PETER J. VERE, J.C.L.

Before I begin, I wish to thank Reverend Joseph Amato for leading us in an opening prayer. Prayer is important to our ministry as canonists. In fact, it is important to all of Christ's faithful, including those whom we will discuss today, namely, the mentally and the cognitively challenged. Thus I was honored to accept this invitation to give a talk today on sacramental access for our special brothers and sisters in Christ. This is an issue dear to my heart. More so, even, than issues pertaining to the traditionalist movement.

In preparing for today's presentation, I turned to Reverend Thomas Cassidy, O.M.I. who teaches the undergrad canon law course at Saint Paul University. "Fr. Tom," as we called him in class, first introduced me to the science of canon law. He is an excellent teacher and a fine practitioner. He also understands the subject matter of today's presentation. Fr. Tom is the brother of a special child. One of his first experiences as a deacon involved the vindication of his brother's right to receive the sacrament of confirmation. Tom shares this story with all his undergraduate students, and it is his sharing of this story that sparked my own professional interest in this topic.

Concerning today's talk, Tom offered me the following advice: "Canon law is clear. The mentally and cognitively challenged have a right to receive the sacraments. What we need is a clear presentation of the law; one that canonists can share with pastors, parents, DREs and others charged with the sacramental preparation of our special friends. Oh, and don't try to play academic in giving this talk. Just be yourself."

Perhaps not coincidentally, Mary Jane Owen, who many of you know as the Executive Director of the National Catholic Partnership on Disability, gave me the same advice. So did Ian Burgess from Canon Law Professionals. Ian is a friend and colleague with whom I have co-authored several articles on this subject, including the second part of today's presentation.¹

With this in mind, I would like to establish some parameters to today's presentation. I will begin with some ecclesiological considerations when it comes

¹ Cf., Peter Vere and Ian Burgess, "The Canonical Rights of God's Special Children," in *Homiletic and Pastoral Review*, vol. CIII, n. 7 (April 2003) 61-66.

to our special brothers and sisters in Christ. I will then touch upon the right of the mentally and cognitively challenged to catechetical instruction, before moving on to their right to access the sacraments.

With regards to specific sacraments, I will limit the discussion to confirmation, the Holy Eucharist, reconciliation and anointing of the sick. As the right to baptism is seldom denied to our special brothers and sisters in Christ, it is not as pressing an issue. In contrast, the canonical issues surrounding the potential for the mentally and cognitively challenged to marry are so numerous and so delicate as to merit their own presentation. And, at least for the foreseeable future, ordination is off limits.

As for the style of today's presentation, like many Generation-X writers, regardless of academic discipline, I prefer a *New Journalism* style. This style prefers to keep things informal, to illustrate as much as possible from personal experience, and to work citations into the main text rather than list them as footnotes. I will, however, resist the urge to use contractions.

SOME PERSONAL EXPERIENCES

So allow me to begin with some personal background. My grandmother use to teach arts and crafts at the local Catholic school for the mentally and cognitively challenged. She viewed them more as her special friends than as students. They kept an otherwise lonely old lady company throughout the day while my grandfather worked in the steel mill. My grandmother's students became my special friends whenever I visited. Thus as far back as I can remember, I have experienced the blessings that comes from sharing in friendship with the mentally and cognitively challenged.

Over the past three years, I have volunteered with the International Order of Alhambra.² The Alhambra is a 100 year-old Catholic fraternal organization dedicated to serving the needs of the mentally and cognitively challenged. Along with Cardinal Maida, the Archbishop of Detroit and a formidable canonist, I have spent the last year as a member of the Alhambra's Board of Directors. Through this volunteer work with the Alhambra, I have met many special friends within the context of the Catholic Church, as well as the parents and other people who care for them.

Sadly, these initial meetings are not always positive. Often, the parents and other care-givers find themselves frustrated with the local church community that denies their special children the sacraments. Just as often, the parents and care-givers are not frustrated because they simply accept this denial as the way things are.

Not too long ago, I experienced the latter within a Catholic writer's circle to which I belong. Beth Matthews has published several works on Catholic

² Cf., www.orderalhambra.org.

spirituality. She is the mother of ten children. One of her children, Patrick, is a child with special needs. Beth asked me to critique an essay in which she shares various spiritual lessons that she has learned from being the mother of an autistic child. Here is an excerpt:

Many years later, it was time to prepare my own little son Patrick for First Communion, but my husband and I were told he could not receive our Lord in the Eucharist. It was not because there was no priest or that we lived high on a mountain. No, what stood in the way was much greater than the Andes. It's called autism. My son Patrick is autistic, and he does not have a functional form of communication. We never knew for sure what he would do or how he would behave in any given situation. He could throw himself on the floor and laugh hysterically, and a few moments later he would be crying. Through many tears and prayers, we trusted that if God wanted him to receive Him in the Eucharist, He would find a way.

The years went by, and we waited, hoping and praying. One Easter Sunday, I wrote this in a letter to Patrick:

"Surrounded by the beauty of spring, we drove to Mass. There, in the presence of Christ in the Eucharist, I felt the joy and hope of the Resurrection. Patrick, Christ has shown us that it is in giving of ourselves that we receive, and in dying that we are born to eternal life. You have helped me to give and give and give, and with what great joy! Because of you, Patrick, my soul longs to receive the Eucharist, the bread of life, that you may never be able to receive."

"When our friends' children who are your age made their first Holy Communion, Daddy and I were very sad. We wanted so much for you to be with them. I was at a mothers' lunch, and the children who were preparing for First Communion came out to sing to the mothers. I couldn't hold back the tears, so I had to leave."

"You have had to miss out on so many special occasions in your life. You've never played Little League or sung in a school play. You've never been invited to a birthday party or had a friend over to play. We take so many things like that for granted, but as usual, you have taught us that those kinds of things don't matter so much. Your Daddy and I never had those kinds of plans for you when you were born. Sure, it would be nice if you could play with friends or be on a baseball team, but what is more important is that you are with Christ. Even though you can't receive the Eucharist, you will be perfected in heaven. You are our special saint here on earth. Maybe

the world doesn't recognize the beauty and holiness that you possess, but Daddy and I do. Thank you for being our beautiful son. God bless you, my little one."³

As a writer, I found this a beautiful piece of prose – despite the fact its beauty lay in the gut-wrenching experience being shared by the mother of a special child. What Catholic mother does not wish to see her child receive his or her first Communion? As a canonist, however, I found the situation scandalous. Why should one of Christ's faithful be denied access to the sacraments because of his or her special needs? Which brings us back to the topic of today's presentation.

AN ECCLESIOLOGY OF INCLUSION

Too often, when carrying out the Church's public ministry, our local Catholic communities neglect the rights of those who are mentally and cognitively challenged. This happens, unfortunately, despite the admonition of canon 213: "Christ's faithful have the right to be assisted by their Pastors from the spiritual riches of the Church, especially by the word of God and the sacraments."⁴

Canon 213 makes no distinction based upon one's race, gender, age, or whether one is lay, religious or clergy. Likewise, it makes no distinction between Catholics with special needs and those without. Among Christ's faithful with special needs, we may include the mentally and the cognitively challenged. Like all other Catholics, the mentally and cognitively challenged possess the canonical right to be assisted by the Church through catechesis and the administration of the sacraments.

Those of you who studied canon law at Saint Paul University will have likely taken a course with Msgr. Roch Pagé. "Tell me your ecclesiology," Roch would tell us as students, "and I will tell you who you are as a canon lawyer." The principle is clear – ecclesiology is intricately linked to the practice of canon law. How we treat the least of our brethren within the local church community tells us who we are as a community. By nature, the mentally and cognitively challenged, for the most part, lack the capacity and the understanding to defend their rights within the Church. So they depend upon us to vindicate their rights on their behalf. If we accept them as part of our Church community, in both the local and the universal sense, then we will practice canon law in a manner that is sensitive to their rights.

Yet in my ministry as a canonist, I have encountered several situations where the rights of our special brothers and sisters were not properly understood. A lesson I quickly learned is that in a certain sense, discrimination does not discriminate in

³ For the full story of Patrick, cf Elizabeth Matthews, *Precious Treasure: The Story of Patrick*, (Steubenville: Emmaus Road Publishing, 2002).

⁴ *Code of Canon Law Annotated* by E. Caparros, M. Thériault, J. Thorn (Montréal: Wilson & Lafleur Limitée, 1993) 192. Hereafter *Canon Law Annotated*.

its *raison d'être*. When it comes to denying our special brothers and sisters their right to the sacraments, they are just as likely to be discriminated against for so-called liberal reasons as for so-called conservative reasons. At least this is my experience.

Typically, the conservative parish will cite fears about the possible desecration of the sacraments, while the liberal parish cites something about the mentally and cognitively challenged individual not being able to participate in the sacraments “with an adult understanding of the Catholic faith.” In one particularly egregious example, and I will not mention how it came to my attention, a care-giver was instructed by a liturgist to stop bringing his charges with special needs to Mass. “Their physical deformities and grunting sounds distract everyone else,” the care-giver heard to his disbelief, “and besides, they neither contribute nor gain anything from the liturgy. God loves them just as much if they stay home as He does if they come to church.”

Didn't the Apostles put forward the same argument in the Gospel of Matthew? Yet Our Lord gently rebuked them, saying: “Suffer the little children, and forbid them not to come to me.” Although the reasons for discrimination may differ, the results are the same – we forbid the least of our brethren to come to Christ. As licentiate students, Fr. Francis Morrissey warned us to “Pick and choose your battles carefully.” My response to this liturgist, although harsh, is one I have never regretted.

But aren't the sacraments merely the ordinary means through which we come to Christ? Can God not use other, extraordinary, means? And given that the mentally and the cognitively challenged are for the most part incapable of serious sin, why do they need the sacraments?

Every time I hear these objections, I think of canon 840. This canon opens with the following sentence: “The sacraments of the New Testament were instituted by Christ the Lord and entrusted to the Church.”⁵

In short, the sacraments belong to the Church. Through their baptism, our special brothers and sisters also belong to the Church. This is reason enough to ensure their full-participation in the Church's liturgical life. Thus the availability of extraordinary means is no reason to cut off the mentally and the cognitively challenged from the ordinary means through which Christ draws His faithful closer to Him.

“As actions of Christ and of the Church,” canon 840 continues, “[the sacraments] are signs and means by which faith is expressed and strengthened, worship is offered to God and our sanctification is brought about. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion. Accordingly, in the celebration of the sacraments both sacred ministers and the other members of Christ's faithful must show the proper

⁵ *Canon Law Annotated*, 552.

reverence and due care.”⁶

This goes to the heart of the second objection. The sacraments not only help us overcome sin; they strengthen our communion with the rest of the Church. They also help us grow in holiness. If there is one recurring theme throughout the Second Vatican Council, it is the Council’s universal call-to-holiness. Jesus calls all of His faithful to grow in holiness, not just His clergy and religious. Thus while our special brothers and sisters may for the most part be incapable of serious sin, who is to say they cannot grow in holiness? Who is to say that Christ has called only those with ordinary mental and a cognitive capacity?

THE RIGHT TO CATECHETICAL INSTRUCTION

Moving on to more practical considerations, let us begin with the right to catechesis. Canon 773 introduces us to the Church’s ideal pastoral praxis concerning this topic. This canon states: “It is pastors of souls especially who have the serious duty of attending to the catechesis of the Christian people, so that, through doctrinal formation and the experience of the Christian life, the faith of the people may be living, manifest and active.”⁷ In short, canon law places upon pastors a serious duty. “By virtue of his office,” canon 776 explains, “the parish priest is bound to ensure the catechetical formation of adults, young people and children.”⁸

Notice from these two canons cited above that the pastor’s duty is to instruct the Christian faithful in the truths of the Catholic faith. He is to help the faithful form their consciences according to these same truths. This duty comes by virtue of his office, meaning by the very fact a priest has been appointed pastor of a parish. The parish priest is to see to the catechesis of all the faithful entrusted to his care, regardless of age. As part of catechetical formation, the pastor is also to assist the faithful in leading an active spiritual life. Thus the faith of Catholics, without prejudice to one’s age, state of life, or social status, ought to be living, visible to all, and ongoing. This is the Church’s universal call to holiness, as expressed at the Second Vatican Council.

Yet what about God’s special children? Does canon law envision a duty for pastors to catechize and instruct the mentally and cognitively challenged? Canon 777 provides an appropriate answer to this question. “In a special way,” this canon states, “the parish priest is to ensure, in accordance with the norms laid down by the diocesan Bishop, that: 1) an adequate catechesis is given for the celebration of the sacraments [and] 4) as far as their condition allows, catechetical formation is given to the mentally and physically handicapped.”⁹

⁶ Ibid., 552-553.

⁷ Ibid., 507.

⁸ Ibid., 509.

⁹ Ibid., 510.

In short, a parish priest is to insure that God's special children receive ongoing catechesis insofar as they are capable. Of course, mentally and cognitively challenged children will not comprehend and retain knowledge of the Church's teaching at the same level as others their age. Often, even the most elementary catechesis must be repeated during the course of their lifetime. Nevertheless, pastors have a canonical duty to catechize God's special children and, insofar as they are capable of receiving it, a pastor should ensure that our special friends are adequately catechized to receive the sacraments.

At this point in the discussion, a number of you have asked whether a program exists to help parishes establish religious education for the mentally and cognitively challenged. One of the best programs, in my experience, is the SPRED program. SPRED stands for *Special Religious Development* and the program exists in several dioceses around the world. As they mention in the mission statement posted to their website, "The goal of SPRED is to assist people in parish churches [...] to integrate persons with developmental disabilities and persons with learning problems into parish assemblies of worship through the process of education in faith." Here in North America, the Archdiocese of Chicago has implemented one of the strongest SPRED programs that I have come across. Those seeking more information may call (312) 842-1039 or visit their website at www.spred.org.

THE RIGHT TO THE SACRAMENTS

This raises a second issue, namely, the canonical right of the mentally and cognitively challenged to assistance from the Church's pastors in the administration of the sacraments. "Through the liturgy a complete public worship is offered to God by the head and members of the mystical body of Christ." This teaching, excerpted from the first paragraph of canon 834, is significant for various reasons. First, it comes as the opening canon of Book IV within the *Code of Canon Law* — the section of the code that governs the administration of the sacraments and other acts of worship within the Church.

Secondly, this statement is theological and provides canonists with a guiding principle through which we interpret all subsequent canons pertaining to the administration of the sacraments and all other acts of public worship. The mentally and cognitively challenged, like all the baptized, are members of the Church. As Pope John Paul II declared, while discussing catechesis, those suffering from physical or mental challenges "have a right like others of their age, to know the 'mystery of faith'."¹⁰

¹⁰ Pope John Paul II, *Catechesi Tradendae*, trans. as *On Catechesis in Our Time*, art. 41, (promulgated October 16, 1979), found at www.vatican.va

CONFIRMATION

The Church is reminded, both in the first paragraph of canon 889, and in article 1306 of the *Catechism of the Catholic Church*, that those who have been baptized “can and should” receive the Sacrament of Confirmation.¹¹ Yet before someone receives the sacrament in the Latin Church, they should be properly educated as to what they are receiving. Nevertheless, the inability to receive the proper catechesis does not exclude one from this sacrament. In fact, catechesis can and should be adapted to suit the particular need of God’s special children.

Although canon 890 specifies that “parents” and “especially pastors of souls” are to instruct the faithful with regard to the reception of this sacrament, and although canon 889 clearly states the person must have the “use of reason,” the absence of such is not an obstacle for the mentally and cognitively challenged receiving confirmation. For even if catechesis cannot be adapted to their mental capacity, one cannot immediately refuse them this sacrament. In canonical language, the necessity of the “use of reason” and/or “suitable instruction” merely pertains to what is necessary for the *licit* reception of the sacrament under normal circumstances.

On the other hand, the plight of the mentally and developmentally challenged presents special circumstances. Within these special circumstances, the U.S. bishops, under guideline number sixteen of their *Guidelines for Celebration of the Sacraments with Persons with Disabilities* encourage Christ’s faithful with special needs to ask for the sacrament. If they are incapable of so doing, or if they lack the requisite mental capacity to make this request, their parents or legal guardians may petition on their behalf for the administration of the sacrament.¹² Thus the U.S. bishops guard against any rigid application of the law, opting instead to follow the canonical principle of *favors are to be multiplied, and burdens restricted*.

THE HOLY EUCHARIST

Moving on to the sacrament of Holy Eucharist, the *Catechism of the Catholic Church*, quoting from the Second Vatican Council, upholds this Most Blessed Sacrament as the *source* and *summit* of the Christian life.¹³ Because the Eucharist is the focus of the Christian life, the spiritual life of any Catholic would be incomplete if he or she was not permitted to receive the Eucharist. For this reason, canon 912 states, “Any baptized person not prohibited by law can and must be admitted to holy communion.”¹⁴

¹¹ *Ibid.*, for reference to c. 889, §1 and for art. 1306. Cf., the CCC reference the Latin typical edition, trans for the USCCB (New York: First Image Books Edition, 1995) 364.

¹² USCCB, *Guidelines for Celebration of the Sacraments with Persons with Disabilities*, (June 1995), posted to www.catholicculture.org/docs/doc_view.cfm?recnum=5254.

¹³ *Sacrosanctum Concilium*, art. 10. Cf., www.vatican.va.

¹⁴ *Code of Canon Law, Latin-English Edition* (Washington: CLSA, 1999) 297.

In the Latin Church, one is usually first admitted to this sacrament at around the age of seven. This is the age, within canon law, when someone is seen to have obtained the use of reason. The use of reason helps the person receive the proper instruction for the sacrament.

The law does, however, admit an exception. The second paragraph of canon 913 allows children in danger of death to receive the Eucharist “if they can distinguish the body of Christ from ordinary food and receive communion reverently.”¹⁵ Now granted, most special children do not ordinarily find themselves in danger of death. Nevertheless, the code is silent concerning the reception of Holy Communion by the mentally and cognitively challenged. Therefore, it seems appropriate to invoke the principle of canon 17 in these circumstances – that is to say, have recourse to the exception outlined in canon 913 as a “parallel place” within the universal law.

This being said, the capacity to distinguish need not necessarily be verbal, especially as such a requirement could potentially continue to exclude some of God’s special children. Rather, it may be through some other means – one better suited to the particular condition of the individual with special needs. Even a gesture or reverential silence is a possible indication of their ability to receive the sacrament.¹⁶ Again, the U.S. bishops remind us that “Cases of doubt should be resolved in favor of the right of the baptized person to receive the Sacrament. The existence of a disability is not considered in and of itself as disqualifying a person from receiving the Eucharist.”

This reminds me of an interesting experience our colleague Dr. Ernest Caparros invited me to share with you. While visiting friends and family in Spain, Dr. Caparros attended Mass at a parish where a special child was receiving his first Holy Communion. When the time came to administer the Eucharist, the priest discovered the child’s mouth full of candy.

“Why did you do this?” the child’s mother asked after Mass. “Didn’t we teach you that the Eucharist is special?”

“I wanted Jesus to have a sweet welcome,” the child replied in all sincerity.

Like Dr. Caparros, I find the incident humorous but the child’s faith inspiring. This incident is similar to my own experiences with the mentally and cognitively challenged who approach Our Lord in the Eucharist for the first time. Namely, while their responses may differ, it is usually motivated by a faith that is deep in its childlike simplicity.

In a broad sense, the right to receive the Eucharist also gives way to questions concerning access to the Eucharist, especially within the Holy Sacrifice of the Mass. Our parishes should also examine what steps have been taken to make the parish accessible to the mentally and cognitively challenged. As members of the parish community, they should also be invited to participate in the life of the

¹⁵ *Ibid.*, 298.

¹⁶ USCCB, *Guidelines for Celebration of the Sacraments with Persons with Disabilities*, no. 20 .

community. Mass might also be adapted to suit their needs on special occasions or for special events. It might also be advantageous to establish or draw upon the assistance of Catholic organizations like the *International Order of Alhambra* and *L'Arche* – Catholic organizations experienced in involving God's special children within the active life of a parish.

A 1994 Archdiocese of Seattle study found that perhaps 10 percent of a parish has some form of disability.¹⁷ This statistic would include the mentally and cognitively challenged. Thus we must ask ourselves: are God's special children being fully integrated and welcomed into Church life? Or are they being unjustly excluded through either ignorance or error when it comes to their canonical status and rights?

ANOIDTING OF THE SICK

Moving on to the Sacrament of Anointing of the Sick, ordinarily this sacrament is administered to those who have reached the use of reason. In accordance with the first paragraph of canon 1004, the sacrament is intended for those who find themselves suffering from serious illness, injury or effects of old age.

In many places, a custom has arisen whereby pastors administer this sacrament to those whose sickness or injury does not fulfill the strict criteria outlined within canon law. For example, you may be familiar with, or may have witnessed for yourself, nursing home residents receiving this sacrament with no regard to particular condition. You may also have participated in parish liturgies where everyone present is invited indiscriminately to receive the Anointing of the Sick.

This custom is well intentioned, in that it reinforces the idea this is the Sacrament of the Sick and not merely of the dying. Nevertheless, it often degenerates into a liturgical abuse, and the potential risk is that it be indiscriminately extended to God's special children. An individual in a nursing home or parish should not receive the sacrament unless he or she suffers from some serious effects of illness or of old age. Similarly, neither should the sacrament be administered to one of God's special children simply because he or she is mentally or cognitively challenged.

In other words, there is a difference between disability and illness. Disability is not necessarily a sickness that calls for the administration of the Sacrament of the Sick. It would indeed show great ignorance on the part of the community if the disabled were called to receive this sacrament for no other reason than their disability. So that disability is not reduced to a type of sickness, the U.S. bishops suggest that the disabled be admitted to the sacrament under the same standards as "any other member of the Christian community."

Thus God's special children should be admitted to the sacrament if their life is threatened because of injury, illness or the effects of old age. If there is a question

¹⁷ Seattle Archdiocese, "People with Disabilities: A Study of Ministry," *Origins* 24:13 (1994) 233-240.

concerning the individual's "use of reason," the question should be resolved in favor of the mentally or cognitively challenged individual receiving the sacrament.

THE SACRAMENT OF RECONCILIATION

Along with the Anointing of the Sick, the Sacrament of Penance and Reconciliation is a sacrament of healing. The penitent who approaches this sacrament seeks healing and absolution from his or her sins. Before one can receive the healing and pardon, canon 987 declares the penitent must be resolved to reject the sins committed and have a firm purpose of amendment. With regards to grave sin, canon law requires that those who have reached the age of reason receive this sacrament at least once a year.

Yet one encounters a unique set of circumstances when applying sacramental law to the mentally and cognitively challenged. Simply put, many of God's special children are incapable of forming the requisite intention to commit serious sin. Nevertheless, they might still have a sense of sin over various venial sins they may have committed, and they might feel that their sin is grave before God. Sometimes, what they feel remorse over is simple mistake where no sinful intention was present.

With this in mind, we should remember that what troubles the special child's conscience is serious to him or her. Thus while the confessor may feel like he is being pelted with popcorn, to use one of Fr. Tom Cassidy's expressions, our special brothers and sisters can still benefit from the peace of conscience offered through this sacrament.

Additionally, this sense of sin contrition may be expressed in another manner if the special child is not capable of expressing contrition like other members of the Christian faithful. "Even if he/she cannot describe the sin precisely in words," the U.S. bishops state, "the contrite disabled person can receive the sacrament."¹⁸ Of course, nobody is bound to the impossible. Thus a confessor should not feel obligated to indiscriminately approach special children in his parish for confession who are incapable even the most basic communication.

Yet returning to the subject of serious vs. venial sin, what then is to be said of confession of serious sin by the mentally and cognitively challenged? Following the teachings of the Church and sound moral theology which requires that full knowledge and deliberate consent be present for the commission of a mortal sin, both are probably lacking with the severely mentally and cognitively challenged.¹⁹ In this case, there is no obligation to confess mortal sins at least once a year, although they still may approach the sacrament for other sins.

Nevertheless, as Fr. William Woestman often noted in his classes on sacramental law, "We should not prohibit little children from approaching the sacrament of

¹⁸ USCCB, *Guidelines for Celebration of the Sacraments with Persons with Disabilities*.

¹⁹ CCC art. 1857, 507.

confession simply because they are not capable of committing serious sin. After all, the Church encourages her priests and religious to approach this sacrament frequently, although she certainly does not expect her priests to commit frequent mortal sins.” In a similar spirit, it is imprudent to suggest that the mentally and developmentally challenged are simply incapable of serious sin, and thus have no need of frequenting the sacrament. It remains the confessor’s prerogative to question the individual penitent about his or her full knowledge and deliberate consent.

CONCLUDING THOUGHTS

In conclusion, the Second Vatican Council’s universal call to holiness applies to all baptized Catholics. This includes the mentally and cognitively challenged. Hence, God’s special children have the canonical right, according to their capacity, to receive catechesis and the sacraments. Both pastors and parents should be aware of these canonical rights and see that they are respected within the local parish.

As canonists, we must instruct pastors, parents and catechists within our diocese about these rights. When necessary, we must vindicate these canonical rights on behalf of our special brothers and sisters. For Our Lord also desires their salvation, their growth in holiness, and their participation in the Church’s public worship.

SACRAMENTAL LIFE OF PARISHES WITHOUT A RESIDENT PASTOR

Part I: The Parish

REV. GARY D. YANUS, J.C.D.

I. AN EXPERIENCE OF SACRAMENTAL MINISTRY IN A PARISH WITHOUT A RESIDENT PASTOR

A. Introduction: Saint Procop Parish, Cleveland, Ohio

On a Saturday evening in January 2004 the temperature hovered close to 10° F. Members of the congregation of Saint Procop Church on Cleveland's Near West Side were beginning to arrive. They entered a church in which the temperature on the thermometer on the thermostat registered 36° F. Late the previous night a tunnel which runs from the Great Depression era boiler house which shelters the Korean War vintage boiler had collapsed, cutting off all heat. Upon closer examination the following Monday, it was discovered that the boiler house itself was in danger of collapse, posing not just a threat to the comfort of parishioners but because of the questionable state of the natural gas lines running in and out of the building, a potential disaster for the entire neighborhood.

More recently, a series of violent thunderstorms blew off a significant portion of the roof of the one hundred and one year old church. The state of the roof was examined, and the decision to replace it was made. A committee was formed, estimates were taken, and provisions for finding the necessary funds to pay for a new roof were made. Work began in September.

The parish possesses a convent that once housed more than twenty religious women. The convent has not had any sisters in residence for more than thirty years. After the convent was vacated by the members of the religious congregation, various diocesan and neighborhood programs have used the ample space of the old building, but the last four years the convent has been vacant and falling into disrepair. A proactive approach was taken to find an appropriate use for a basically sound building. Contacts were made. Individuals came to inspect the facility. Eventually an ecumenical group expressed interest in the building which they desired to transform into a facility for transitional housing for men. Contacts were made with various city officials. The necessary permits were obtained. Meetings with the neighbors were arranged and held. Work goes forward, and many in the

parish are involved in the project.

Friday evenings throughout the year a free hot meal is prepared and served in the hall of the school. Two suburban parishes assist on the second and third Fridays of the month. Because of the age and health of a number of individuals from Saint Procop Parish who prepare and serve the meal, a need developed to find assistance for one of the Friday meals each month. Contacts were made, and a city parish committed to preparing and serving the meal on the fourth Friday of each month.

After a period of several years with very few weddings, this past June six were celebrated in the parish church. Diocesan guidelines for preparing couples for marriage were followed. The couples received instructions. The Cleveland Diocesan Evaluation for Marriage was administered and discussed. The marriage liturgies were planned with care. The wedding rehearsals were conducted. Sacred celebrations were the result of pastoral instruction and sensible planning.

I am the priest supervisor, *presbyteral moderator*, of Saint Procop. My involvement with these few but typical scenarios of life and ministry of Saint Procop Church was primarily supportive and cooperative. The parish director, *parish life coordinator*, Sister Annette Amendolia, SND, took charge of each administrative and pastoral challenge. She and the lay people of St. Procop proposed solutions and came up with initiatives. The parish is an urban island of Christian charity and worship thanks to the creative pastoral arrangement permitted by the Bishop of Cleveland.

On April 16, 2002 Bishop Anthony M. Pilla, Bishop of Cleveland, appointed me to the office of presbyteral moderator of Saint Procop Parish. The letter of appointment stated that I was to be endowed "with the powers and faculties of a pastor, to provide supervision of the pastoral care given by Sister Annette Amendolia, SND, whom I have appointed parish life coordinator of Saint Procop Parish, and to assist her in those areas which require priestly ordination."

The job description as assembled by the diocese states:

The presbyteral moderator is appointed by the bishop of the diocese to provide supervision of the pastoral care given by the parish life coordinator. He is given the rights and responsibilities of a pastor for canonical purposes. He is accountable to the bishop and collaborates with the parish life coordinator. Where the priest also serves as the sacramental minister, he is to ensure that sacramental and pastoral care, which require ordination to the priesthood, are provided to a parish entrusted to a parish life coordinator.

The qualifications of the presbyteral moderator are:

- A deep understanding of the nature of collaborative ministry, a good communicator, and an openness to working with and accepting the role of a parish life coordinator;
- An understanding of the baptismal call of every Christian to share in

ministry to the degree possible given the current discipline of the church; and

- An ecclesiology deeply rooted in Vatican II theology and liturgical reform. An awareness of the authorized rituals for the celebration of the sacraments.

The responsibilities have been delineated as:

- To supervise the pastoral care of the parish and in that capacity to seek to be informed of the parish life, needs, growth, and development;
- To assist the parish life coordinator in the regular evaluation of the effectiveness of parish ministry;
- To ensure observance of all canonical/diocesan policies;
- To be available to the parish life coordinator for information, advice, clarification, mutual support as needed;
- To accept, assist and support the role of the parish life coordinator among the staff and parishioners;
- To preside at Eucharistic celebrations on Sunday and Holy Days of Obligation according to the schedule mutually arranged by him and the parish life coordinator; and
- To celebrate the sacraments according to a schedule mutually arranged between him and the parish life coordinator. (At the time of his appointment, the priest is granted general delegation to assist at all marriages within the territory of the parish.)

As his schedule permits, the presbyteral moderator is to participate in meetings at which the planning takes place for liturgies at which he will preside. The priest will be invited to attend, as his schedule permits parish social events and meetings in order to establish and support pastoral contacts among the people with whom he celebrates sacraments.

- To meet regularly with the parish life coordinator to mutually assess and plan the entire scope of pastoral care provided;
- To afford the laity their rightful place in the celebration of the liturgy; and

- To serve the parish life coordinator as spiritual advisor in the affairs of the parish.

The responsibilities given to the parish director, *parish life coordinator*, have been divided among four principal areas: the ministry of worship, the ministry of education, the ministry of pastoral services, and the ministry of administration.

Within the ministry of worship the parish life coordinator is:

- To preside at daily liturgy (morning prayer, liturgy of the word and communion service) subject to the *Code of Canon Law* and the norms of the local Church;
- To preach when pastorally and canonically appropriate;
- To participate in the spiritual life and worship commission of the parish, providing spiritual and liturgical vision;
- To share in planning/evaluating of Sunday liturgies/homilies, children's and other special group or home liturgies, seasonal liturgies, Lenten mission/renewal;
- To recruit/train/organize/schedule liturgical ministers;
- To share in planning of communal penance services;
- To participate in planning and coordination of Rite of Anointing during Mass;
- To work with couples planning weddings;
- To provide guidance and direction to families arranging funerals; and
- To share in planning and coordination of the Rite of Christian Initiation of Adults.

Within the ministry of education, the parish life coordinator is:

- To participate with the Pastoral Council, providing spiritual and educational vision;
- To coordinate/direct sacramental catechesis: pre-baptismal instruction of parents, First Communion, First Penance, and Confirmation preparation, marriage preparation;

- To share in development and implementation of evangelization program;
- To direct or assist with all stages of catechumenate process;
- To organize or to facilitate adult Bible studies, prayer groups, discussions;
- To be a resource with the director of religious education for religious education programs; and
- To supervise and develop a parish book rack.

Within the ministry of pastoral services, the parish life coordinator is:

- To participate with the Pastoral Council in responding to social concerns;
- To coordinate pastoral care of the sick and elderly, enable parishioners' involvement in ministry to shut-ins and those in hospitals and nursing homes;
- To provide pastoral counseling or refer people to appropriate counseling services;
- To facilitate/coordinate parish involvement in existing community projects, i.e., the parish life coordinator provides a liaison between parish and community agencies in meeting needs of the poor;
- To organize parish projects and on-going programs to respond to local needs;
- To be aware of available social services and make referrals as needed;
- To assist with tribunal marriage cases; and
- To serve as spiritual advisor for parish committees and groups;

Within the ministry of administration, the parish life coordinator is:

- To participate in all juridic affairs of the parish in accordance with canon law;
- To administer parish properties and income in accordance with the law;

- To participate responsibly in the business management of the parish;
- To participate actively in the establishment of policy and procedure regarding property control, equipment, and supplies in accordance with the guidelines of the Diocesan Finance Office;
- To evaluate programs periodically;
- To accept responsibility for general parish office activities;
- To utilize a planning process with the Pastoral Council and Finance Council and others to ensure effective functioning of parish programs;
- To maintain parish books of income and expenses;
- To prepare annual reports requested by the diocese;
- To prepare an annual budget of income and expenses in accordance with particular law; and
- To register and meet with new parishioners.

There are many similar pastoral/canonical arrangements operative in the Church in the United States and throughout the world. I am going to discuss only the one with which I am familiar.

The challenge of a sacramental ministry is connected necessarily to comprehending the individual and unique pastoral landscape of the parish and how priestly ministry fits into that landscape. This is no different than a more normative pastoral arrangement in which the parish priest is a more visible and present part of that landscape. Assessing the sacramental needs of the people of a “certain community of the Christian faithful stably constituted in a particular church”¹ requires familiarity with the identity of the community itself.

Saint Procop is a non-territorial parish erected for the care of Bohemian Roman Catholics in the late nineteenth century. The flight to the suburbs which began in earnest in the period following World War II reached its apex in the late 1960s. The parish, which once operated both a grade school and a high school, included 2,410 registered parishioners in 1960. In 2003 the *Status Animarum* reported to the Diocese of Cleveland listed a total of 361 individuals registered at Saint Procop Parish. In 1960 there were 74 baptisms, 56 first communions, 27 marriages and 58

¹ Canon 515, §1, *Code of Canon Law, Latin-English Edition* (Washington: Canon Law Society of American, 1998) 168-169. Hereafter *Code of Canon Law*.

deaths. In 2003 there were eight baptisms, one first communion, two marriages and seven deaths.

The sacramental ministry of the parish is identified by the immediate needs of those who are elderly and homebound. The regular celebration of the Eucharist, the anointing of the sick and the sacrament of reconciliation are understood as the center of the parish's sacramental ministry. Although a priest is not present in the parish twenty-four hours a day, seven days a week, the sacramental needs of the people are being met while the other forms of ministry important to the community as a whole thrive under the direction of the parish life coordinator.

B. Role of the Priest Supervisor (Presbyteral Moderator) in the Sacramental Ministry of the Parish

The diocesan job description included four specific references to the sacramental ministry of the presbyteral moderator: "1) To preside at Eucharistic celebrations; 2) To celebrate other sacraments according to a schedule mutually arranged between him and the parish life coordinator; 3) To afford the laity their rightful place in the celebration of the liturgy; and 4) The priest will be invited to attend, as his schedule permits, parish social events and meetings in order to establish and support pastoral contacts among the people with whom he celebrates sacraments." The last provision may appear to be related only remotely to the sacramental ministry of the priest. Those who have "supplied Mass help" on weekends perhaps realize more keenly than others that effective sacramental ministry builds on relationships. The celebration of Eucharist in all contexts, Sundays, weddings, funerals, anniversaries, etc. is enhanced by pastoral familiarity. The sacraments of reconciliation and anointing are also more meaningful and more closely attached to the Paschal Mystery when celebrated by someone whose proclamation of the Word has been heard and whose preaching content has been adjusted to the specific community. The presence of the presbyteral moderator at social functions fosters a friendly dialogue that assists in the full celebration of the sacraments.

The presbyteral moderator is appointed "endowed with the powers and faculties of a pastor."² The "powers and faculties" of a pastor must be understood with some discretion and with appreciation for a unique pastoral situation not accepted as normative in the current legislation. The sacramental ministry of the presbyteral moderator in a pastoral arrangement foreseen by canon 517, §2 and as directed by diocesan guidelines is an essential collaborative complement to the ministry of the parish life coordinator. The job description of the sacramental minister uses the term "mutually arranged" when referring to the celebration of the sacraments. With due respect given to canonical requirements regarding the celebration of the sacraments, the presbyteral moderator is also asked to work in close cooperation with the parish life coordinator in scheduling and planning the specific celebrations.

² Bishop Anthony M. Pilla, Letter of Appointment, protocol number, 221a/2002, April 16, 2002.

The arranging of weddings, funerals, baptisms, the sacrament of reconciliation, communal penance services, and the sacrament of confirmation is to be a joint effort. The process of bringing adults into the Church through the celebration of the *Rite of Christian Initiation of Adults* is to be also a collaborative effort.

II. THE TEACHING OF THE CHURCH REGARDING THE ROLE OF THE PRIEST IN PARISH LIFE

Pope John Paul II in an allocution to the Plenary Assembly of the Congregation for the Clergy, stated:

The function of guiding the community as shepherd, the proper function of the parish priest, stems from his unique relation to Christ the Head and Shepherd. It is a function having a sacramental character. It is not entrusted to the priest by the community, but, through the Bishop, it comes from the Lord. To reaffirm this clearly and exercise this function with humble authority is an indispensable service to truth and to ecclesial communion. The collaboration of others, who have not received this sacramental configuration to Christ, is hoped for and often necessary.

However, these cannot in any way substitute the task of the pastor proper to the parish priest. The extreme cases of shortage of priests, that advise a more intense and extended collaboration of the faithful not honored with priestly ministry, in the pastoral care of a parish, do not constitute an exception to this essential criterion for the care of souls, as is indisputably established by the canonical norms (cf. *Code of Canon law*, c. 517, §2). . . In fulfilling his duty as guide, which is his personal responsibility, the pastor will surely obtain help from the consultative bodies foreseen by canon law (cf. *Code of Canon Law*, cc. 536-537); but these must remain faithful to their reality as consultative bodies. Therefore it will be necessary to guard oneself from any form that tends *de facto* to weaken the leadership of the parish priest, because the very structure of the parish community would be distorted. . .³

The Church's magisterium is not reticent to protect the sacred and unique nature of priestly ministry. There is no substitute for the parochial ministry of a priest as noted in the instruction of the Congregation for the Clergy, *The Priest, Pastor and Leader of the Parish Community*. The full care of souls "absolutely requires" the exercise of priestly orders.⁴ The essential obligations of the pastor are outlined in

³ Address of John Paul II to the Plenary Session of the Congregation for the Clergy, November 23, 2001.

⁴ See Instruction of the Congregation of the Clergy, *The Priest, Pastor and Leader of the Parish Community*, August 4, 2002.

canon 528: 1) he is obliged to see that the word of God is preached in its entirety, through the preaching of the homily and through catechetical instruction; 2) he is to foster social justice; 3) he is to promote Catholic education; 4) he is to strive to bring the Gospel message to those outside the Church; 5) he is to make the Eucharist the center of parish life; 6) he is to nourish the faith of his people through the celebration of the sacraments, especially the Most Holy Eucharist and the sacrament of penance; and 7) he is to encourage the practice of prayer in the family, active participation in the liturgy of the Church which he must supervise under the authority of the diocesan bishop.

The ministerial expectations of the parish priest are enumerated in canon 529 of the 1983 *Code of Canon Law*. The parish priest must make great effort to know the people entrusted to his care. He must visit families, seek out the poor, the afflicted, the lonely. The following duties are entrusted to the pastor in canon 530: 1) the administration of baptism; 2) the administration of the sacrament of confirmation to those in danger of death; 3) the administration of Viaticum and the anointing of the sick; 4) the assistance at marriages; 5) the celebration of funerals; 6) the blessing of the baptismal font during the Easter season, the leading of processions, and the imparting of solemn blessings outside the church; and 7) the more solemn celebration of the Eucharist on Sundays and holy days of obligation.

It is clear that the thrust of the current canonical legislation and Roman documents is to protect the sacred and unique nature of priestly ministry. In those cases in which a collaboration with the ordained ministry has been entrusted to the non-ordained faithful, “a priest must necessarily be appointed as moderator and invested with the power and duties of a parish priest, personally to direct pastoral care.”⁵

There is opposition to permit the use of titles for a lay person in a parochial ministerial setting which include in some way the words, “pastor,” “director,” “coordinator,” “moderator,” and the like. In an instruction of the Congregation for the Clergy, *On Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priest*, approved in *forma specifica* by the Holy Father and promulgated on August 15, 1997, is found the following admonition regarding the collaboration of lay persons in the pastoral ministry closely associated with that of parish priest:

The right understanding of canon 517, §2 . . . requires that this exceptional provision be used only with strict adherence to conditions contained in it. These are:

- a. *ob sacerdotum penuriam* and not for reasons of convenience or ambiguous “advancement of the laity,” etc.

⁵ Ibid.

b. This is *participatio in exercitio curae pastoralis* and not directing, coordinating, moderating or governing the parish; these competencies, according to the canon, are the competencies of a priest alone.

The instruction adds,

Because these are exceptional cases, before employing them, other possibilities should be availed of, such as using the services of retired priests still capable of such service, or entrusting several parishes to one priest or to a *coetus sacerdotum* (c. 517, §1).⁶

The solution to a shortage of ordained priests in certain parts of the world is envisioned in Roman documents not by the sharing of ministry proper to the priesthood but rather in “programs which give priority to the promotion of vocations to the Sacrament of Holy Orders.”⁷ In a discourse regarding the participation of the lay faithful in priestly ministry, the Holy Father concluded,

In some local situations, generous, intelligent, solutions (to the priest shortage) have been sought. The legislation of the *Code of Canon Law* has itself provided new possibilities, which however, must be applied correctly, so as not to fall into the ambiguity of considering as ordinary and normal, solutions that were meant for extraordinary situations in which priests were lacking or in short supply.⁸

III. THE SOLUTION OF CANON 517, §2

Canon 517 is an innovation found in the current canonical legislation.⁹ The provisions of paragraph two of canon 517 permits the entrusting of pastoral care of a parish to a deacon, a non-ordained person, or a community of presumably non-ordained persons when, due to a “scarcity” of priests, a pastor cannot be appointed. The discussion during the revision process of the code regarding this particular innovation did not enjoy unanimous enthusiasm regarding the proposal.¹⁰ The support of the secretary of the code commission, Archbishop Rosalio José Castillo Lara, led to the eventual acceptance of the proposed law.

⁶ Instruction of the Congregation for the Clergy, *On Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priest*, August 15, 1997.

⁷ See John Paul II, Discourse at the Symposium on “The Participation of the Lay Faithful in the Priestly Ministry” (May 11, 1994).

⁸ *Ibid.*

⁹ See John P. Beal and others, ed., *New Commentary on the Code of Canon Law* (New York/Mahwah: Paulist Press, 2000) 682-688.

¹⁰ See *Communicationes* 13 (1981) 147.

Archbishop Castillo Lara had been an enthusiastic supporter in his native Venezuela of religious women who had been given the care of Christian communities in rural areas. The only source of the second paragraph of canon 517 is listed as an instruction of November 19, 1976 of Propaganda Fidei, *La fonction évangélisatrice* which speaks of the role of religious women in mission territories.

Similar to the vision of the document of Propaganda Fidei, the vision of the *coetus* was that the provisions found in canon 517, §2 were to be extraordinary and temporary. The pastoral care of the parish is to be entrusted to a deacon, lay person, or group of lay persons under the supervision of a priest only because there is no pastor available due to a shortage of priests. Although the position is an ecclesiastical office,¹¹ no official title is given to it. The absence of an official title appears to emphasize the temporary and transitional nature of the provision for pastoral care. If and when the situation within the particular church changes and vocations are readily available to fill all diocesan offices, the parish is to be given a pastor and the arrangement under canon 517, §2 is to cease.

A "shortage," "lack," "dearth," of priests¹² is open to interpretation by the diocesan bishop. What a shortage of priests may mean to the Bishop of Cheyenne, Wyoming may mean something entirely different to the Bishop of Cleveland, Ohio. It would be reasonable also to assess the wisdom of naming a pastor to a small parish with limited needs in the context of the needs of the entire diocese. In the case of Saint Procop, the ministry of a full-time pastor entrusted with the care of less than two hundred active members is difficult to justify when there are within the same diocese parishes of over twelve hundred families with one parish priest.

The authority of the priest supervisor is not vague or inexact in the context of canon 517, §2. The canon specifies that in his role of *curam pastoralem moderetur* he is equipped with the power and faculties of a pastor although canonically the office of pastor is vacant. Faculties *ipso iure* which universal or particular legislation grants to a pastor would also be granted to a priest who is appointed by the bishop to supervise or moderate the pastoral care of a parish under the direction of a parish director.¹³ Faculties to celebrate the sacrament of penance, to preach, to preside at the celebration of the sacrament of matrimony, the power to delegate other priests or deacons to preside at marriage are provided by the law itself. Additional faculties granted by the diocesan bishop would also be granted the priest

¹¹ Canon 145: §1. An ecclesiastical office is any function constituted in a stable manner by divine or ecclesiastical ordinance to be exercised for a spiritual purpose. §2. The obligations and rights proper to individual ecclesiastical offices are defined either in the law by which the office is constituted or in the decree of a competent authority by which the office is at the same time constituted and conferred." *Code of Canon*, 43

¹² *Si ob sacerdotum penuriam* (c. 517, §2).

¹³ Barbara Ann Cusack and Therese Guerin Sullivan, SP, *Pastoral Care in Parishes without a Pastor: Applications of Canon 517, §2* (Washington: Canon Law Society of America, 1995) 22.

supervisor.¹⁴

As stated above, the priest supervisor is not the pastor of the parish. But because he possesses the powers and faculties of a pastor, he may wish to “mandate” the lay minister or the deacon certain areas of responsibility. The mandates, not faculties, come from the priest supervisor and not the bishop because they are proper to him.¹⁵ John Huels states in his recent book, *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers*, that if the priest supervisor is not to assume the duties of administering the parish, he would be well advised to grant three mandates to the deacon or lay pastoral minister.

The deacon or pastoral minister should be mandated to act in the name of the priest supervisor to provide legal representation of the parish in accord with civil and ecclesiastical laws within the bounds of the minister’s job description.^{16 17} The lay minister or deacon should also be mandated to preside at the meetings of the parish pastoral council and finance council which canon 536, §1¹⁸ and canon 537¹⁹ specifically allocate to the competence of the pastor.²⁰

The third mandate counseled by Huels is more inclusive. A sample of this mandate states,

You may make decisions necessary for the fulfillment of the duties enumerated in your job description and for implementing an approved pastoral plan and project. The more important decisions, as determined by the priest supervisor, and all decisions adversely affecting the rights of persons, require the prior consent of the priest supervisor; but if he cannot be reached, you may decide the matter, which decision must be confirmed by him or the local ordinary.²¹

¹⁴ Ibid, 24. See also Appendix C, “Sample List of Faculties for Priest Supervisor,” Cusack and Sullivan, 28-30.

¹⁵ John M. Huels, J.C.D., *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Minister*. (New York/Mahwah: Paulist Press, 2003) 171.

¹⁶ Canon 532: “In all juridic affairs the pastor represents the parish according to the norm of law. He is to take care that the goods of the parish are administered according to the norm of cann. 1281-1288.” *Code of Canon Law*, 175

¹⁷ Huels, *Empowerment for Ministry*, 172.

¹⁸ Canon 536, §1: “If the diocesan bishop judges it opportune after he has heard the presbyteral council, a pastoral council is to be established in each parish, over which the pastor presides and in which the Christian faithful, together with those who share in pastoral care by virtue of their office in the parish, assist in fostering pastoral activity.” *Code of Canon Law*, 177.

¹⁹ Canon 537: “In each parish there is to be a finance council which is governed, in addition to universal law, by norms issued by the diocesan bishop and in which the Christian faithful, selected according to these same norms, are to assist the pastor in the administration of the goods of the parish, without prejudice to the prescript of can. 532. *Code of Canon Law*, 178.

²⁰ Huels, *Empowerment for Ministry*, 173.

²¹ Huels, *Empowerment for Ministry*, 173.

Huels believes that this particular mandate permits the pastoral minister to make the mundane decisions which arrive at a pastor's door as well as those more serious decision affecting the rights of the faithful. The priest as a "supervisor" thus maintains the right to overturn a decision of the lay minister if he was not first consulted. The day to day decisions may not need to be brought before the priest supervisor. Issues involving the right to the sacraments,²² the right to have a Christian burial with the rites of the Church,²³ and functioning as a godparent²⁴ or a sponsor for confirmation²⁵ are of such importance that the involvement of the priest supervisor can be a both a safeguard and a means of pastoral support.

IV. CONCLUSION

Pope Paul VI called the parish the center in which one lives the Christian faith. The parish is the normative and primary place in which the care of souls happens.²⁶ The vision of the parish as a community of faithful, he believed, implies surpassing the vision of the parish as a juridic structure for the care of souls. The parish exists for the care of souls, but it is also something more. The parish is the presence of the universal Church in a particular environment. It is of its nature missionary.

Ecclesiae imago describes the elements which make the parish the presence of the Church in large cities:

The parish must be a community of faith, of worship, and of charity, a sign of the presence of God in the world. It must offer a certain continuity in the preaching of the Word of God and in the exercise of worship. It must constitute in every quarter of the city the personified presence of the Universal Church and the Diocesan Church, the presence in which Christ is ministering to the needs of the sick, the poor, the immigrants, and all the smallest brothers and sisters. The parish must assist the christianization of human relationships. It must represent the visible point of unity and universalism for the small Christian communities existing within its territory.²⁷

The *Code of Canon Law* of 1983 does not ignore the pastoral problems occasioned by diminishing vocations to the ordained priesthood. It also does not ignore the great shifts in population which have occurred in the last thirty years.

²² See cc. 843, §1; 851, 2°; 868, §1, 2°; 913, §1; 914; 915; and 1125.

²³ See cc. 1183, §§2, 3; and 1184.

²⁴ See c. 874, §1, 3°.

²⁵ See c. 893, §1.

²⁶ Paul VI, Discourse to the XVI Week of Pastoral Renewal, September 9, 1966. *Insegnamenti di Paolo VI*, (Romae: Tipografia Poliglotta Vaticana, 1966) 391.

²⁷ *Ecclesiae imago*, 175.

Into these movements within the life of the Church, the code attempts to integrate the vocations of lay persons. Canon 517 is located in the code among the canons on the parish. But the canon does not refer to a different type of parish as much as it refers to a different way to provide for pastoral care.²⁸

The pastoral care of a parish, the traditional *munera* of teaching, sanctifying, and governing, is intimately connected to the exercise of priestly orders.²⁹ The parish priest supervisor is a collaborator in the mission of the parish who directs the scope, content, and style of pastoral care. His essential sacramental ministry nourishes and sustains the parish while uniting it to the diocesan bishop and to the universal Church. But priests are called to fulfill their responsibilities in an ecclesial spirit, as part of the community of the local church and “in collaboration with all the pastoral agents, avoiding acting in an independent, autonomous way, and fitting in with the pace of the community in achieving its goals, with patience and flexibility.”³⁰

Immediate needs may not be the best catalyst of legislation. The Holy See has expressed its concerns regarding the implementation of canon 517, §2. The law allows for the means to meet the needs of the faithful in a responsible and ecclesially authentic manner which diminishes neither the image nor the ministry of the parish priest. Collaboration between the priest supervisor and parish director permits the Church to exist in sectors of the community in which there is an urgent need for the presence of the people of God. The priest in such situations is in a position to encourage convergence of action in justice, foster a spirit of unity, promote identity as a Catholic, all the while positioning himself to be an agent of transformation through the power of the sacramental life of the Church.

²⁸ Francisco Ramos, OP, *Le Diocesi nel Codice di Diritto Canonico*. (Romae: Millennium Romae, 1997) 448.

²⁹ Canon 521, §1: “To become a pastor validly, one must be in the sacred order of the presbyterate.” *Code of Canon Law*, 171.

³⁰ Congregation for the Evangelization of Peoples, *Pastoral Guide: For Diocesan Priests in Churches Dependent on the Congregation for the Evangelization of Peoples*, October 1, 1989.

Part: II: The Role of the Parish Administrator

SISTER THERESE GUERIN SULLIVAN, SP, J.C.L.

I. PASTORAL CARE

A. Full Pastoral Care

Full pastoral care³¹ is reserved to the priest in any parish including one where a pastoral minister is designated. The Pastor is to carry out for his community the duties of teaching, sanctifying and governing, with the cooperation of other presbyters or deacons and the assistance of lay members of the Christian faithful. In parishes without a resident pastor, the role of the pastoral minister then, is to work very closely with, and follow the guidance of the priest-moderator who supervises the pastoral care given to the parish. The priest supervisor is to provide a mentoring role from his own experience. Regular communication between the priest supervisor and the pastoral minister is essential. Respect and trust are needed for mutual understanding.

The text of canons 528, 529 and 530 provide a list of responsibilities that is all encompassing and impossible to accomplish without collaboration of others. In many situations a pastoral minister is given administration tasks. Our focus here is the sacramental life of the parish without a resident pastor.³² In particular, we will explore the role of pastoral minister in the areas of ministry of the word, the catechumenate and baptism, Eucharist, marriage and other acts of divine worship.

Canon 528 sets forth the pastor's obligations in general. The canon reads:

§1. A pastor is obliged to make provision so that the word of God is proclaimed in its entirety to those living in the parish; for this reason, he is to take care that the lay members of the Christian faithful are instructed in the truths of the faith, especially by giving a homily on Sundays and holy days of obligation and by offering catechetical

³¹ Canon 519 states: "The pastor (*parochus*) is the proper pastor (*pastor*) of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for the same community he carries out the functions of teaching, sanctifying, and governing, also with the cooperation of other presbyters or deacons and with the assistance of lay members of the Christian faithful, according to the norm of law." *Code of Canon Law*, 170.

³² See *The New Commentary on the Code of Canon Law* (New York/Mahwah: Paulist Press, 2000) 600-700 for cross referencing of specific canons.

instruction. He is to foster works through which the spirit of the gospel is promoted, even in what pertains to social justice. He is to have particular care for the Catholic education of children and youth. He is to make every effort, even with the collaboration of the Christian faithful, so that the message of the gospel comes also to those who have ceased the practice of their religion or do not profess the true faith. §2. The pastor is to see to it that the Most Holy Eucharist is the center of the parish assembly of the faithful. He is to work so that the Christian faithful are nourished through the devout celebration of the sacraments and, in a special way, that they frequently approach the sacraments of the Most Holy Eucharist and penance. He is also to endeavor that they are led to practice prayer even as families and take part consciously and actively in the sacred liturgy which, under the authority of the diocesan bishop, the pastor must direct in his own parish and is bound to watch over so that no abuses creep in. *Code of Canon Law*, 173.

Canon 529 addresses values a pastor should have. Again the canon states:

§1. In order to fulfill his office diligently, a pastor is to strive to know the faithful entrusted to his care. Therefore he is to visit families, sharing especially in the cares, anxieties, and griefs of the faithful, strengthening them in the Lord, and prudently correcting them if they are failing in certain areas. With generous love he is to help the sick, particularly those close to death, by refreshing them solicitously with the sacraments and commending their souls to God; with particular diligence he is to seek out the poor, the afflicted, the lonely, those exiled from their country, and similarly those weighted down by special difficulties. He is to work so that spouses and parents are supported in fulfilling their proper duties and is to foster growth of Christian life in the family. §2. A pastor is to recognize and promote the proper part which the lay members of the Christian faithful have in the mission of the Church, by fostering their associations for the purposes of religion. He is to cooperate with his own bishop and the *presbyterium* of the diocese, also working so that the faithful have concern for parochial communion, consider themselves members of the diocese and of the universal Church, and participate in and sustain efforts to promote this same communion. *Code of Canon Law*, 174.

Canon 530 addresses the functions of a pastor:

The following functions are especially entrusted to a pastor: 1° the administration of baptism; 2° the administration of the sacrament of

confirmation to those who are in danger of death, according to the norm of can. 883, n. 3; 3° the administration of Viaticum and of the anointing of the sick, without prejudice to the prescript of can. 1003, §§2 and 3, and the imparting of the apostolic blessing; 4° the assistance at marriages and the nuptial blessing; 5° the performance of funeral rites; 6° the blessing of the baptismal font at Easter time, the leading of processions outside the church, and solemn blessing outside the church; 7° the more solemn eucharistic celebration on Sundays and holy days of obligation. *Code of Canon Law*, 174-175.

B. Collaboration

Canon 517, §2 states “that participation in the exercise of pastoral care of a parish” is to be entrusted to a deacon or some other person who is not a priest or to a community of persons when the condition of a “dearth of priests” exists.³³ The bishop makes the determination. The code does not specify in detail what particular roles should be given to the pastoral minister. The code simply says that the pastoral minister may be given *that participation in the exercise of the pastoral care of a parish*. The priest possessing the powers and faculties of a pastor “directs” the pastoral care.

Pastoral care is broadly described as teaching, sanctifying and governing in such a manner that parishioners and parish communities will really see that they are members of both the diocese and the universal Church.

In 1997, six congregations and two pontifical councils joined in creating the interdicastal Instruction “On Certain Questions Regarding the Collaboration of the Non-ordained Faithful in the Sacred Ministry of Priest.” The congregations were the Congregation for the Clergy, for the Doctrine of the Faith, for Divine Worship and the Discipline of the Sacraments, for Bishops, for the Evangelization of Peoples and for Institutes of Consecrated Life and Societies of Apostolic Life. The pontifical councils were the Pontifical Council for the Laity and for the Interpretation of Legislative Texts. The document promulgated had as its object to outline specific directives to ensure the effective collaboration of the non-ordained while safeguarding the integrity of the pastoral ministry of priests. The document revoked all particular laws, customs and faculties conceded by the Holy See *ad experimentum* or other ecclesiastical authorities which are contrary to the norms it sets. The document emphasizes lay persons may be deputed to participation in ministry for certain offices and roles.

Among the various aspects of the participation of the non-ordained faithful in the Church’s mission considered by the conciliar documents, that of their direct collaboration with the ministry of the

³³ *Code of Canon Law*, 169-170.

Church's pastors is considered. Indeed, when necessity and expediency in the Church require it, the Pastors, according to established norms from universal law, can entrust to the lay faithful certain offices and roles that are connected to their pastoral ministry but do not require the character of Orders. In this way, it is not one merely of assistance but of mutual enrichment of the common Christian vocation. This collaboration was regulated by successive post-conciliar legislation and particularly by the *Codex Iuris Canonici*.

The code, having referred to the rights and duties of all the faithful, in the subsequent title devoted to the rights and duties of the lay faithful, treats not only of those which are theirs by virtue of their secular condition, but also of those tasks and functions which are not exclusively theirs. Some of these latter refer to any member of the faithful, whether ordained or not, while others are considered along the lines of collaboration with the sacred ministry of cleric. With regard to these last mentioned areas or functions, the non-ordained faithful do not enjoy a right to such tasks and functions. Rather, they are capable of being admitted by the sacred Pastors to those functions which, in accordance with the provisions of law, they can discharge or where ministers are not available they can supply certain of their functions in accordance with the provisions of law.

The document cautioned "only with constant reference to the one source, the 'ministry of Christ' may the term ministry be applied to a certain extent and without ambiguity to the lay faithful: that is, without it being perceived and lived as an undue aspiration to the ordained ministry or as a progressive erosion of its specific nature."

The non-ordained faithful may be generically designated extraordinary ministers when deputed by competent authority to discharge, solely by way of supply, those offices mentioned in canon 230, §3³⁴ and in canons 943 and 1112. Naturally, the concrete term may be applied to those to whom functions are canonically entrusted e.g. catechists, acolytes, lectors, etc. Temporary deputation for liturgical purposes mentioned in canon 230, §2 does not confer any special or permanent title on the non-ordained faithful.

³⁴ Cf. Pontifical Council for the Interpretation of Legislative Texts, Response (1 June 1988): AAS 80 (1988) 1373.

Collaboration of the deacon or lay person is key to ministry in parishes without a resident pastor.

Since these tasks are most closely linked to the duties of pastors, (which office requires reception of the sacrament of Orders), it is necessary that all who are in any way involved in this collaboration, exercise particular care to safeguard the nature and mission of sacred ministry and the vocation and secular character of the lay faithful. It must be remembered that “collaboration with” does not, in fact, mean “substitution for.”³⁵

II. DEACONS AND LAY PERSONS PARTICIPATING IN PASTORAL CARE

The individuals mentioned in canon 517, §2 are a deacon, a lay person, or a community of persons who are not priests. The office for the deacon or lay minister appointed to the pastoral care of a parish in this situation has no official title in the universal law. The section on parishes in the code says very little about the role of deacons and lay persons in parish ministry. The Eastern code does not mention deacons and lay persons as having a share in pastoral care of parishes without a resident pastor but this occurs in Eastern churches when a resident pastor is not available.³⁶

The 2002 Instruction: The Priest, Pastor and Leader of the Parish Community³⁷ states the preference for the assigning of a deacon in a parish without a resident pastor.

Where permanent deacons participate in the pastoral care of parishes which, because of shortage of priests, do not have the immediate benefit of a parish priest, they should have precedence over the non-ordained faithful.³⁸ In virtue of Sacred Orders, the deacon is teacher in so far as he preaches and bears witness to the word of God; he sanctifies when he administers the Sacrament of Baptism, the Holy Eucharist and the sacramentals, he participates at the Holy Eucharist as “a minister of the Blood” and conserves and distributes the Blessed Eucharist; he is a guide in as much as he animates the

³⁵ CFC et al., Instruction: On Certain Questions regarding the Collaboration of the Non-ordained Faithful in the Sacred Ministry of Priest (Washington: United States Catholic Conference, 1997).

³⁶ John M. Huels, J.C.D., *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, (Quincy: Franciscan Press, 2002) 354.

³⁷ Congregation for Clergy, The Priest, Pastor and Leader of the Parish Community, *L'Osservatore Romano*, English Edition, January 15, 2003.

³⁸ Congregation for Clergy, Directory for Ministry and Life of Permanent Deacons *Diaconatus Originem* (22 February 1998), n. 41: AAS 90 (1998) 901.

community or a section of ecclesial life.³⁹

The bishop should ensure that lay ministers are prepared to assume the duties given to them.⁴⁰ The preparation of lay ministers ought to include completion of a program of theological and pastoral education integrated with spiritual formation. Knowledge of scripture and of canon law as well as the teachings of the Magisterium are to be considered basic qualifications.

It is important that the deacon or lay pastoral minister be given a detailed job description of the rights and obligations of the administration of a parish entrusted to them. Such job descriptions ought to delineate areas of responsibility and define administrative functions.

It is for the bishop to decide whether special authorizations and faculties are to be given. Special authorizations or faculties given to persons who administer a parish in the absence of a resident pastor are found in the *Code of Canon Law* as well as other sources of law such as liturgical books, the Directory for the Application of the Principles and Norms on Ecumenism and other documents from the Holy See. The topic of faculties is very complex.⁴¹ It is to be particularly noted that no one should be granted faculties and authorizations unless they are capable of understanding and using them the way the law intends. Some basic information on faculties in general is given here as introduction.

Faculties grant authorization and powers that person lack in the law. All diocesan faculties and authorizations are granted by the bishop to individuals for the good of the Christian faithful. Diocesan officials, priests, deacons and some lay persons are deputed to act in public ministries in the name of the Church. Without faculties and authorizations the person act in their own behalf and not in the name of the Church. Huels states the purposes of faculties being granted: (1) to ensure that only qualified persons are assigned to perform certain acts of ministry or administration; (2) to facilitate diocesan and/or parochial administration and the pastoral ministry; and, rarely, (3) to benefit the Church's ministers personally.⁴² All diocesan faculties can be divided into acts of power of governance and authorizations for other acts. In general, acts of power of governance can be delegated and subdelegated unless the one granting the faculty has excluded subdelegation. Authorizations for other acts may not be subdelegated with the exception of the faculty to assist at marriages.

Some faculties are granted by the law itself at ordination, by provision of an office and apart from an office. Delegation must be done by one capable and

³⁹ Ibid., n. 22: 1.c., 889.

⁴⁰ Canon 231, §1 "Lay persons who permanently or temporarily devote themselves to special service of the Church are obliged to acquire the appropriate formation required to fulfill their function properly and to carry out this function conscientiously, eagerly, and diligently." *Code of Canon Law*, 68.

⁴¹ See John M. Huels, J.C.D., *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers* for a comprehensive examination of faculties and model.

⁴² Ibid., 20.

competent to place the act; include those things that essentially constitute the act itself and include the formalities and requirements imposed by the law for the validity of the act.⁴³ For validity the faculty granted should be in writing and given each person individually. Both the individual and the diocese should have a record. The faculty should be signed by the bishop in his own hand and should state the extent of their use.

Authorizations that may be granted to the deacon differ from those that may be granted to a lay person. Faculties granted at ordination to the diaconate are noted as such in the text below. It is for the competent authority to grant other authorizations. References to the lay person and authorizations are ones that may be granted depending on the circumstances of the diocese, parish or other community.⁴⁴

Ministry of the Word

The deacon at ordination is granted the faculty to catechize and preach to the faithful apart from the liturgy;⁴⁵ to preside at the liturgy of the hours, celebrations of the word, and Sunday celebrations in the absence of a priest where this is permitted; and to preach at the liturgies at which he presides.⁴⁶ He may proclaim the gospel at Mass and may give the homily at Mass at the direction of the priest celebrant.⁴⁷

The lay person may preside at liturgies of the word apart from the Eucharistic celebration, penitential celebrations apart from the sacrament of penance, and the liturgy of the hours. If the lay person will be absent, he or she may subdelegate this faculty to another suitably instructed lay person.⁴⁸ On Sundays and holy days of obligation, the lay person may preside at the liturgy of the word, morning prayer at

⁴³ Canon 124, §1 "For the validity of a juridic act it is required that the act is placed by a qualified person and includes those things which essentially constitute the act itself as well as the formalities and requirements imposed by law for the validity of the act. §2. A juridic act placed correctly with respect to its external elements is presumed valid." Canon 125, §1. "An act placed out of force inflicted on a person from without, which the person was not able to resist in any way, is considered as never to have taken place. §2. An act placed out of grave fear, unjustly inflicted, or out of malice is valid unless the law provides otherwise. It can be rescinded, however, through the sentence of a judge, either at the instance of the injured party or of the party's successors in law, or *ex officio*." Canon 126 "An act placed out of ignorance or out of error concerning something which constitutes its substance or which amounts to a condition *sine qua non* is invalid. Otherwise it is valid unless the law makes other provision. An act entered into out of ignorance or error, however, can give rise to a rescissory action according to the norm of law." *Code of Canon Law*, 36-37.

⁴⁴ See John M. Huels, J.C.D., *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers*, 157-190.

⁴⁵ Cc. 757 and 762; *Sacrum Diaconatus Ordinem*, 22, 6°.

⁴⁶ C. 764; General Instruction of the Liturgy of the Hours, 1971; *Sacrum Diaconatus Ordinem* 22, nn7-8; Directory for Sunday Celebrations in the Absence of a Priest, (Congregation for Divine Worship), June 2, 1988.

⁴⁷ *General Instruction of the Roman Missal*, 3rd edition (2000) 174, 171c.

⁴⁸ Cc. 230, §3, and 1174, §2; *General Instruction of the Roman Missal*, 3rd edition (2000) 258.

which holy communion is distributed in accord with the approved rite.⁴⁹ This may be done only for the benefit of the faithful who are unable to go to another church for the Eucharist; it may not be done more than once a day in any one place or when Mass is celebrated there that day.⁵⁰ With the permission of the priest supervisor, the lay person may subdelegate this faculty when he or she is absent, but only to a person who has been suitably instructed. It belongs to the diocesan bishop, after hearing the presbyteral council, to decide whether Sunday assemblies without the celebration of the Eucharist should be held regularly in his diocese.⁵¹

The lay person may preach in the parish church [in keeping with the policy on lay preaching of the conference of bishops and/or the diocese] and at all liturgical celebrations at which he or she lawfully presides.⁵² The lay person may read a homily prepared by the priest supervisor.⁵³ The lay person may preach the word of God apart from the liturgy. Preaching outside a church or oratory requires no faculty. The lay person may not preach at Mass. With permission of the presiding priest, the lay person may give a brief instruction or personal testimony by way of explanation of the homily given by the priest or speak as part of a dialogue homily.⁵⁴

The Catechumenate and Baptism

The deacon at ordination is granted the faculty to administer baptism to infants – those under seven and those lacking the use of reason.⁵⁵ To deacons serving in parishes, the bishop may grant the faculty to confer infant baptism in a private house for a grave reason that makes it difficult or dangerous for the infant to be brought to the church.⁵⁶

John M. Huels in *Empowerment for Ministry* recommends deacon pastoral administrators be granted two pagellae. One with the faculties given to all deacons

⁴⁹ In the USA, the approved ritual book is *Sunday Celebrations in the Absence of a Priest: Leader's Edition* (New York: The Catholic Book Publishing Company, 1994). In Canada, the approved rites are found in *Sunday Celebration of the Word and Hours* (Ottawa: CCCB, 1995).

⁵⁰ Congregation for Divine Worship, *Directory for Sunday Celebrations in the Absence of a Priest*, translated by the International Committee on English in the Liturgy (Washington: United States Catholic Conference, 1988) n. 24; *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 7.

⁵¹ Ibid.

⁵² C. 766; *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 2.

⁵³ *Directory for Sunday Celebrations in the Absence of a Priest*, Congregation for Divine Worship (June 2, 1988) n. 43.

⁵⁴ *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 3 §§ 2-3.

⁵⁵ Cc. 861, §1.

⁵⁶ C. 860, §1; *Rite of Baptism of Children*, 2nd ed., 1973, n. 12.

and those serving in parishes, and one with any additional faculties.

The most important consideration in granting special faculties to deacon pastoral administrators is the involvement of the priest who supervises the pastoral care of the parish (priest supervisor). Sometimes, the priest supervisor is a retired priest or a priest who has one or more apostolates elsewhere; he has responsibility for only minimal pastoral care in the parish. Mainly, he celebrates the sacraments that require presbyteral orders, but he does little else that could be done by the deacon administrator. In that case, the faculties granted the deacon should be as wide as possible, matching those that would be given to the pastor of a parish, to the extent permitted by law and the ability of the deacon. However, if the priest supervisor has greater time to devote to overseeing the pastoral care of the parish, even if not resident there, the need for some faculties in section four will be less.⁵⁷

The bishop may grant some or all of the additional faculties below to the deacon serving in pastoral administration of a parish.

The deacon may depute catechists, truly worthy and properly prepared, to celebrate the minor exorcism of the catechuminate and the blessings of the catechumens when a priest or deacon cannot be present.⁵⁸ The deacon may permit the simple rite for the initiation of an adult in the exceptional circumstances envisioned in the law, namely, sickness, old age, change of residence, long absence for travel, or a depth of Christian conversion and degree of religious maturity in the catechumen. In all other cases, the permission of the diocesan bishop is necessary to use the abbreviated rite.⁵⁹ The deacon may dispense from one scrutiny for a serious reason or, in extraordinary circumstances, even from two. The extraordinary circumstances for granting the dispensation from two scrutinizes are the exceptional circumstances in permitting the simple rite of initiation. For pastoral reasons, in particular circumstances, the deacon may invite a minister of another church or ecclesial community to take part in the celebration of baptism by reading a lesson, offering a prayer, or the like. The actual baptism is to be celebrated by the Catholic minister alone.⁶⁰

The lay person may celebrate the minor exorcisms of the catechuminate and the

⁵⁷ John M. Huels, J.C.D., *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers*. (New York/Mahwah: Paulist Press, 2003) 165-171.

⁵⁸ *Ordo initiationis christianae adultorum*, editio typica, 1972, n. 44, 48, 109, 119; *Rite of Christian Initiation of Adults* 1989 (USA) and 1987 (Canada) n. 12, 16, 91, 97.

⁵⁹ C. 851, 1°; *Ordo initiationis christianae adultorum*, editio typica, 1972, n. 240, 274; *Rite of Christian Initiation of Adults* 1989 (USA) 331-332, and 1987 (Canada) 307-308.

⁶⁰ *Directory for the Application of the Principles and Norms on Ecumenism* (Pontifical Council for Promoting Christian Unity), 1993, n. 97.

blessings of catechumens.⁶¹ The lay person may use the abbreviated catechumenate in the exceptional circumstances envisioned in the law, namely, sickness, old age, change of residence, long absence for travel, or a depth of Christian conversion and degree of religious maturity in the catechumen. In all other cases, the permission of the diocesan bishop is necessary to use the abbreviated process.⁶² Apart from danger of death, in individual instances, the lay person may celebrate infant baptism only if one of the following conditions applies: (1) a priest or deacon has already scheduled the baptism, but he is unable to come and another priest or deacon is not available; or (2) no priest or deacon can celebrate the baptism within four weeks after the child's birth.⁶³ Under the same circumstances, the lay person may confer infant baptism in a private house for a grave reason that makes it difficult or dangerous for the infant to be brought to the church.⁶⁴ The lay person may not celebrate the baptism of anyone seven years of age or older with the use of reason, except in danger of death when a priest is unavailable, since the presbyter who baptizes must administer confirmation at the time of adult baptism. For pastoral reasons, in particular circumstances, the lay person may invite a minister of another church or ecclesial community to take part in the celebration of baptism by reading a lesson, offering a prayer, or the like. The actual baptism is to be celebrated by the Catholic minister alone. This can only be done with the consent of the priest or deacon who celebrates the baptism unless it is with the faculties above on infant baptism in danger of death and baptism in a private house.

Eucharist

The deacon is granted at ordination the faculty to assist the presiding priest at Mass and other liturgical celebrations as indicated in the rites.⁶⁵ The deacon may administer the blood of Christ at Mass or, when communion is given only under the species bread, the body of Christ.⁶⁶ The deacon may preside at the Rite of Distributing Holy Communion Outside Mass, and bring holy communion to the sick and infirm.⁶⁷ The deacon may preside at benediction and give the blessing with the reserved Eucharist.⁶⁸ The deacon granted the faculty may appoint a

⁶¹ *Ordo initiationis christianae adultorum*, editio typical, 1972, n. 44, 48, 109, 119; *Rite of Christian Initiation of Adults* n. 12, 16, 91, 97.

⁶² C. 851, 1°; *Ordo initiationis christianae adultorum*, editio typical, 1972, n. 240, 274; *Rite of Christian Initiation of Adults* 1989 (USA) 331-332, and 1987 (Canada) 307-308.

⁶³ *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 11.

⁶⁴ C. 860, §1; *Rite of Baptism of Children*, 2nd ed., 1973, n. 12.

⁶⁵ *Sacrum Diaconatus Ordinem*, 22, 1°.

⁶⁶ C. 910, §1; *General Instruction of the Roman Missal*, n. 182.

⁶⁷ *Rite of Holy Communion and Worship of the Eucharist Outside Mass*, 17, 26; *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, 81-96.

⁶⁸ C. 943.

qualified person to distribute holy communion for single occasions when you are presiding at a communion service and there are too many communicants and insufficient ordinary and extraordinary ministers of communion or when bringing Viaticum to a dying person is necessary and no ordinary or extraordinary minister is available.⁶⁹ In the absence of a priest, deacon, acolyte or extraordinary minister of communion, the deacon may appoint, in individual instances, appoint a lay person to expose publicly the Eucharist for the adoration of the faithful and afterward to repose it.⁷⁰ When no priest is available to celebrate Mass, and neither the deacon nor another deacon is available for the Sunday celebration of the word or liturgy of the hours, the deacon may appoint a suitably instructed lay minister, approved by the bishop for this function, to take his place using the appropriate rite.⁷¹

The lay person may distribute holy communion outside Mass to the sick, infirm, and aged who cannot come to church. Whenever Mass cannot be celebrated on a weekday or Sunday, the lay person may distribute holy communion at the liturgy of the word or the liturgy of the hours. The lay person may distribute holy communion under either species during Mass when necessary.⁷² In the absence of a priest or deacon, the lay person may expose publicly the Eucharist for the adoration of the faithful and repose it afterwards. Only a priest or deacon may give the benediction.⁷³ Special mandate from the bishop is necessary for parishes without a resident pastor where the need for Sunday celebrations is ongoing.

Marriage

The deacon who is granted the faculty may, within the territory of the parish, validly assist at marriages involving at least one party who is a Catholic of the Latin church.⁷⁴ The faculty may be used only within the territory of the parish within the limits of the pastoral charge. Whether this faculty is granted or not is determined by the bishop and depends on the aptitude of the deacon. Whenever an impediment is discovered after everything has already been prepared for the wedding, and the marriage cannot be delayed without probable danger of grave harm until a

⁶⁹ C. 230, §3 and *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 8, §1.

⁷⁰ *Rite of Holy Communion and Worship of the Eucharist Outside Mass*, 91-92.

⁷¹ Directory for Sunday Celebrations in the Absence of a Priest (Congregation of Divine Worship), June 2, 1988, 24 and *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 7.

⁷² Cc. 230, §3; 910, §2 and *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 8.

⁷³ C. 943; *Rite of Holy Communion and Worship of the Eucharist Outside Mass*, 91-92.

⁷⁴ Cc.1108; 1111.

dispensation is obtained from the competent authority, the deacon may dispense in occult cases from all impediments except prior bond, impotence, consanguinity in the direct line and the second degree of the collateral line, sacred orders, and a public perpetual vow of chastity in a religious institute of pontifical right. The deacon may dispense either Catholic party, even if they live outside the parish territory, provided the marriage takes place in the parish and may dispense parishioners even if the marriage is lawfully celebrated outside the parish territory. This faculty is granted to deacons by law, provided they have the faculty to assist at marriage.⁷⁵

The deacon granted the faculty to assist at marriage, after the conditions of canon 1125 have been fulfilled, may, for a just and reasonable cause, permit a mixed marriage between a Latin Catholic and a baptized non-Catholic to be celebrated in the parish, provided there is no doubt about the validity of the baptism of the Catholic party.⁷⁶ Upon the request of the couple, if the deacon has the faculty to assist at marriage, even by special delegation, may invite the minister of the party of the other church or ecclesial community to participate in the celebration of the marriage by reading from scripture, giving a brief exhortation, and/or blessing the couple.⁷⁷

The deacon granted the faculty to assist at marriage, may permit: (1) the marriage of transients (*vagi*), provided the diocesan marriage preparation program is observed to the extent possible, and baptismal certificates or sworn affidavits show they are free to marry; (2) the marriage of a person who is bound by a natural obligation toward another party or children arising from a previous union, provided these obligations are being fulfilled; and (3) the marriage of a Catholic with another Catholic who has notoriously rejected the faith, provided the norms of canon 1125 have been observed.⁷⁸ The deacon may permit a parishioner to be married in another Catholic church or oratory.⁷⁹ The permission should be in writing and a copy retained for the archives. If the deacon has general delegation to assist at marriage, he already has the power by law to subdelegate the faculty to another cleric in individual instances. In a case of necessity when the deacon is unable to assist at a marriage, if no other cleric is available, may grant special delegation to a lay substitute, previously approved by the bishop, or to a lay minister from another parish who has been appointed by the diocesan bishop for this ministry.

As an extraordinary minister, the lay person granted the faculty to assist at marriages may, provided at least one party is Latin Catholic or is a catechumen who intends to become a Catholic of the Latin church. This faculty may be licitly used

⁷⁵ C. 1080, §1.

⁷⁶ C. 1124.

⁷⁷ Pontifical Council for Promoting Christian Unity, Directory for the Application of the Principles and Norms on Ecumenism, March 25, 1993, (Vatican City/Washington: United States Catholic Conference, 1993).

⁷⁸ C. 1071, §1, nn. 1, 3, 4; §2.

⁷⁹ C. 1118, §1.

with at least the presumed permission of the priest supervisor.⁸⁰ In individual cases, when the local ordinary or priest supervisor cannot be reached, the lay person may grant special delegation to another priest or deacon to assist at marriage. In necessity, when the lay person is unable to be present and no cleric is available, and when unable to reach the diocesan bishop, the lay person may grant special delegation to a lay substitute, previously approved by the bishop or to a lay minister from another parish whom the diocesan bishop has appointed for this ministry. At mixed marriages in the parish church, when the couple requests it, the lay person may invite the minister of the party of the other church or ecclesial community to participate in the celebration of marriage, to read from the scriptures, to give a brief exhortation, and/or to bless the couple.⁸¹

Other Acts of Divine Worship

The deacon may preside at benediction and give the blessing with the reserved Eucharist.⁸² The deacon may celebrate the minor exorcisms and blessings of catechumens.⁸³ The deacon may give the blessings of the rites at which he presides; he may preside at other blessings in accord with the *Book of Blessings*.⁸⁴ The deacon may preside at penitential celebrations when the sacrament of penance is not celebrated.⁸⁵ The deacon may celebrate the rites for visits to the sick and the prayers on the occasion of death.⁸⁶ When a priest is not available, the deacon may preside at funeral rites – the vigil, funeral liturgy outside Mass, and committal.⁸⁷ When a priest is unavailable, the deacon may celebrate the funeral liturgy in the presence of the cremated remains of a deceased person, taking into account the concrete circumstances in each individual case and always observing the following conditions: (1) There is no anti-Christian motive for choosing cremation.⁸⁸ (2) The

⁸⁰ C. 1112, §1 and *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 10.

⁸¹ Directory for the Application of the Principles and Norms on Ecumenism (Pontifical Council for Promoting Christian Unity), 1993.

⁸² C. 943.

⁸³ *Rite of Christian Initiation of Adults*, 1988 (USA) and 1987 (Canada); *Ordo initiationis christianae adultorum*, editio typica 1972

⁸⁴ *Rituale Romanum: De Benedictionibus*, editio typica 1984 and *Book of Blessings* (New York: Catholic Book Publishing Company, 1989), 1987 International Commission on English in the Liturgy, Washington, DC.

⁸⁵ Rite of Penance, 1973.

⁸⁶ *Ordo unctionis infirmorum eorumque pastoralis curae*, editio typica 1972, nn. 138, 151; *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, 1983, nn. 212, 221.

⁸⁷ *Ordo exsequiarum*, editio typica 1969 and *Order of Christian Funerals*, (Washington 1985) International Commission on English in the Liturgy, 1986 (Canada) and (New York: Catholic Publishing Company, 1989) (USA).

⁸⁸ C. 1176, §3.

cremated remains will be handled with respect and buried or entombed in a place reserved for this purpose. (3) There is no other canonical prohibition of a funeral liturgy, namely, for notorious apostates, heretics, and schismatics and other manifest sinners for whom ecclesiastical funerals cannot be granted without public scandal to the faithful.⁸⁹ Doubtful cases are to be referred to the bishop. The deacon may celebrate or impart other sacramentals in accord with the law.⁹⁰

The deacon may permit competent lay ministers and catechists to celebrate blessings from the *Book of Blessings* that are not reserved to a priest or deacon, provided sufficient clergy or instituted acolytes and readers are unavailable.⁹¹ The deacon may permit church funeral rites for children who died before baptism, provided their parents had intended to have them baptized.⁹² The deacon may celebrate the Church's funeral rites for a validly baptized member of another church or ecclesial community, provided this would not be contrary to the wishes of the deceased person and provided the minister of the deceased person is unavailable.⁹³

In individual cases and for a just cause, the deacon may dispense parishioners anywhere they are and others who are in the parish territory from the obligations to attend Mass and abstain from work on Sundays and holy days of obligation, or he may commute the obligation to another pious work. Under the same conditions the deacon may dispense from or commute the obligations of fast and abstinence on a day of penance.⁹⁴ The deacon may dispense from private vows, provided the dispensation does not injure the acquired rights of others. You may dispense from promissory oaths, unless dispensation from an oath would tend to harm one or other persons who refuse to remit its obligation. The deacon may commute the obligation of a private vow or oath to a lesser good. This faculty may be used on behalf of parishioners wherever they are staying and within the boundaries of the parish on behalf of visitors.⁹⁵

The lay person may celebrate blessings from the *Book of Blessings* that are not reserved to a priest or deacon. The local ordinary may grant this faculty to lay persons after ascertaining their proper pastoral formation and prudence in the apostolate. The lay person may preside at penitential celebrations when the sacrament of penance is not celebrated.⁹⁶ The lay person may celebrate the rites for

⁸⁹ C. 1184.

⁹⁰ Cc. 1168; 1169, §3.

⁹¹ *Rituale Romanum: De Benedictionibus*, editio typica 1984 and *Book of Blessings*, 1987 International Commission on English in the Liturgy, Washington, DC. N.18d.

⁹² C. 1183, §2.

⁹³ C. 1183, §3; Directory for the Application of the Principles and Norms on Ecumenism (Pontifical Council for Promoting Christian Unity), 1993.

⁹⁴ C. 1245.

⁹⁵ Cc. 1196, 1°; 1203.

⁹⁶ Rite of Penance, 1973, nn. 36, 37.

visits to the sick and say the prayers on the occasion of death.⁹⁷ On Ash Wednesday, the lay person may administer ashes previously blessed by the priest supervisor or another priest or deacon.⁹⁸

The lay person may celebrate the funeral rites of the Church – the vigil, the funeral liturgy outside Mass, and the rite of committal – for deceased parishioners, including a catechumen, and for non-parishioners, if this was requested by them before death or by the person in charge of the funeral arrangements.⁹⁹ This faculty may be granted by the diocesan bishop where this is permitted by decree of the conference of bishops or by indult of the Holy See.

A lay person may celebrate funeral rites for children who died before baptism, provided their parents had intended to have them baptized.¹⁰⁰ A lay person may celebrate the Church's funeral rites for a validly baptized member of another church or ecclesial community, provided this would not be contrary to the wishes of the deceased person and provided the minister of the deceased person is unavailable.¹⁰¹ A lay person may celebrate the funeral liturgy in the presence of the cremated remains of a deceased person, taking into account the concrete circumstances in each individual case, and always observing the following conditions: (1) There is no anti-Christian motive for choosing cremation.¹⁰² (2) The cremated remains will be handled with respect and buried or entombed in a place reserved for this purpose. (3) There is no other canonical prohibition of a funeral liturgy, namely, for notorious apostates, heretics, and schismatics and other manifest sinners for whom ecclesiastical funerals cannot be granted without public scandal to the faithful.¹⁰³ Doubtful cases are to be referred to the bishop.¹⁰⁴

Selected Faculties in Danger of Death

A deacon has the following faculties from ordination. These faculties may be used only if someone is in danger of death. If a priest is unavailable, a deacon may

⁹⁷ *Ordo unctionis infirmorum eorumque pastoralis curae*, editio typica 1972, nn. 138, 151 and *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, 1983, nn. 212, 221

⁹⁸ *Book of Blessings*, 1987 International Commission on English in the Liturgy, Washington, DC. N.1659.

⁹⁹ *Order of Christian Funerals*, n. 14 1985 International Commission on English in the Liturgy, Washington, DC. 1986 (Canada) and 1989 (USA); *Ordo exsequiarum*, editio typica 1969; *Ecclesiae de mysterio*, Instruction on Certain Questions Concerning the Cooperation of the Lay Faithful in the Ministry of Priests, (Congregation for the Clergy et al.), August 15, 1997 article 12; c. 1177, §2.

¹⁰⁰ C. 1183, §2.

¹⁰¹ C. 1183, §3, Directory for the Application of the Principles and Norms on Ecumenism (Pontifical Council for Promoting Christian Unity), 1993.

¹⁰² C. 1176, §3.

¹⁰³ C. 1184.

¹⁰⁴ See NCCB, *Order of Christian Funerals*, Appendix: Cremation, 426 and CCCB, *Order of Christian Funerals*, (New York: Catholic Book Publishing Company, 1989), Appendix IV: Cremation, in National Bulletin on Liturgy 26 (1993) 29.

baptize anyone not yet validly baptized, including a fetus, provided the person is alive.¹⁰⁵ Those who had the use of reason at any time during their life may not be baptized without having manifested this intention. They must also have some knowledge of the principal truths of the faith and must promise to observe the commandments of the Christian religion.¹⁰⁶ A deacon may celebrate the Rite of Viaticum Outside Mass, except the apostolic pardon, with at least the presumed permission of the pastor, chaplain, or superior, who must be notified afterwards. He may also give Viaticum to a baptized non-Catholic who is in danger of death.¹⁰⁷ A deacon may celebrate the Rite of Commendation of the Dying.¹⁰⁸

Even if he lacks the faculty to assist at marriage, when one or both parties is in danger of death and when the local ordinary cannot be reached, a deacon may dispense the parties to marriage both from the form to be observed in the celebration of marriage and from every impediment of ecclesiastical law, whether public or occult, except the impediment arising from the sacred order of the presbyterate.¹⁰⁹

If a priest or deacon is unavailable, a lay person may baptize anyone not yet validly baptized, including a fetus, provided the person is alive.¹¹⁰ Normally a priest should baptize in danger of death so that he can confirm the person immediately.¹¹¹ A lay person may celebrate the Rite of Viaticum Outside Mass, except the parts reserved to a priest or a deacon, with at least the presumed permission of the pastor, chaplain, or superior, who must be notified afterwards.¹¹² A lay person may also give Viaticum to a baptized non-Catholic who is in danger of death, in accord with the law. A lay person may celebrate the Rite of Commendation of the Dying.¹¹³

When one or both parties is in urgent danger of death and when the local ordinary and the priest supervisor cannot be reached, a lay person may dispense the parties to marriage both from the form to be observed in the celebration of marriage and from every impediment of ecclesiastical law, whether public or occult, except

¹⁰⁵ Cc. 861, §2; 868, §2; and 871.

¹⁰⁶ C. 865, §2.

¹⁰⁷ *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, 1983, nn. 197-211; c. 911, §2 and c. 844, §§3-4.

¹⁰⁸ *Ordo unctionis infirmorum eorumque pastoralis curae*, editio typica 1972, nn. 142; and *ibid.*, nn. 165, 212, 222.

¹⁰⁹ C. 1079, §2.

¹¹⁰ C. 865, §2.

¹¹¹ C. 866.

¹¹² C. 911; *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, 1983, nn. 197-211; c. 911, §2 and c. 844, §§3-4.

¹¹³ *Ordo unctionis infirmorum eorumque pastoralis curae*, editio typica 1972, nn. 142; and *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, 1983, nn. 165, 212, 222.

the impediment arising from the sacred order of the presbyterate.¹¹⁴ The faculty may be used: (1) for a marriage in the territory of the parish; (2) out-side the parish, when either party is a parishioner. The faculty is intended only for an emergency so the person may die in peace in a valid marriage.

Sacramental Preparation

The Christian faithful have the right to spiritual assistance from their pastors. The right is established in canon 213 which states “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.” Although this canon applies primarily to the Christian faithful in full communion with the Catholic Church (c. 205), canon 844, §§3-4 extends the reception of the three sacraments of penance, Eucharist, and anointing of the sick to members of the Eastern churches and other Christians who do not have full communion with the Catholic Church under certain restrictions.

Canon 834 establishes a basic principle for understanding spiritual assistance by describing the sacred liturgy through which the Church fulfills the priestly function (*munus*) of Jesus Christ. According to canon 839, the function of sanctifying includes the sacraments, prayer, works of penance and charity, and pious exercises in addition to liturgy and public worship. The sacraments “contribute in the greatest way to establish, strengthen, and manifest ecclesiastical communion” (c. 840); therefore, sacred pastors are obliged to provide for adequate preparation for their reception (c. 843, §2) and not to deny the sacraments “to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them” (c. 843, §1).

Only the person can truly know whether they seek the sacrament with the proper disposition. There is no pastoral duty to assess the faith of the person. Although a judgment of whether the person is of the proper disposition can and sometimes must be made by the minister, the canon establishes a presumption in favor of the Christian person.

The duty of canon 843 is for the pastoral ministers to provide preparation to assist the person.

Because the law imposes a duty on pastors of souls and other members of the faithful to provide sacramental preparation, there is an implied right of the faithful to have access to this preparation. The burden of the law does not fall on the faithful. The law does not say that they must have such preparation before they can receive a

¹¹⁴ C. 1079, §2. A priest or deacon can be summoned to any marriage celebrated according to the extraordinary form of canon 1116.

sacrament. The law imposes the duty on the Church's ministers to provide this preparation.¹¹⁵

The faithful have the right to preparation for the sacraments. It does not follow that they may be denied the sacraments because they have not had such preparation.

Infant Baptism (cc. 851, 2°; 868, §1)

Canon 851, 2° uses general terms of the preparation of parents and sponsors.

The celebration of baptism must be prepared properly; consequently: the parents of an infant to be baptized and those who are to undertake the function of sponsor are to be instructed properly on the meaning of this sacrament and the obligations attached to it. The pastor personally or through others is to take care that the parents are properly instructed through both pastoral advice and common prayer, bringing several families together and, where possible, visiting them.

As a general rule, the parents and sponsors should take part in the program of preparation offered at the parish. The law does not require attendance at a program. It uses exhortative language to set forth the best way of doing the preparation. In cases where parents or sponsors are unable to attend a catechetical program of the parish, the pastor or lay minister can judge whether the reason given by the parents is sufficient to excuse them.

Canon 868 states there must be a "founded hope" that the child will be raised in the Catholic faith. Most parents, even if they do not regularly practice their faith, have at least some minimal faith themselves and desire baptism for their child. They should be invited and encouraged to do so but the minister can delay the sacrament only for the reasons given in the law i.e., consent not given by at least one parent and if a founded hope the child will be raised Catholic is "altogether lacking." Then, baptism is being deferred not denied. The minister must tell the parents under what conditions baptism can later be granted.

Confirmation (c. 889, §2)

Canon law considers young children to be fit subjects for confirmation. It imposes minimal requirements for reception of the sacrament. Canon 889, §2 states "to receive confirmation licitly outside the danger of death requires that a person who has the use of reason be suitably instructed, properly disposed, and able to

¹¹⁵ John M. Huels, J.C.D., "Preparation for the Sacraments: Faith, Rights," *Studia Canonica* 28 (1994) 33-58.

renew the baptismal promises.”

The proper disposition to receive confirmation includes being in the state of grace.¹¹⁶ The minister can presume sufficient disposition in young children and adults who have been given instruction, including an admonition they are to be in the state of grace. Some instruction is ordinarily required before confirmation. The law does not require a lengthy program of instruction, retreats, service projects or other specific means of catechesis. It only requires instruction suitable to the level of the young child. Failure to participate in or complete a parish program of instruction cannot be used as the sole reason for refusing the sacrament.

First Penance and First Communion (cc. 913-914)

Canon 913, §1 requires that person “have sufficient knowledge and careful preparation so that they understand the mystery of Christ according to their capacity and are able to receive the body of the Christ with faith and devotion.” The appropriate time for the celebration of first communion is at the age of reason which in the law is presumed to be about the age of seven (c. 97, §2). Canon 914 is directed to parents and pastors. It obliges them to see that children who have reached the use of reason receive holy communion as early as possible.

It is important to recognize that parents are not required by canon law to participate in sacramental preparation programs. It is a good formative practice but a child cannot be denied holy communion, penance or confirmation based on parental non-participation. This is a violation of the child’s right to the sacraments.

Some preparation for the sacraments of first penance and first Eucharist is necessary if a child is to be admitted to these sacraments. It is helpful for pastors and lay ministers to realize that parents have the right and obligation to be the primary educators of children in the faith (c. 226, §2). A specific program of catechetical preparation is not required. Exceptions to parish programs should be permitted when there are good reasons. Adequate preparation can be provided by the parents or someone else willing to undertake the responsibility.

Some families are not registered in any parish because they do have no domicile or quasi-domicile. For legal purposes, the parish of those who do not have a domicile or quasi-domicile is whatever parish they are staying in at the time (c. 107, §2). A baptized Catholic child of such parents can and should be admitted to the sacraments of confirmation, Eucharist and penance in the parish where they are staying. Some minimal instruction would be needed so they are able to understand the meaning of the sacraments according to their capacity and celebrate and receive them properly.

¹¹⁶ *Rite of Confirmation*, 12.

Marriage (cc. 1063-1067)

As part of preparation for marriage, canon law strongly recommends that they approach the sacraments of penance and the holy Eucharist so that they are in a state of grace when they marry (c. 1065, §2). Canon 1063 is the principal canon devoted to the topic of marriage preparation. It is addressed to pastors and pastoral ministers and obliges them to see that formation in Christian marriage is provided in four ways: (1) through preaching, catechetical instruction, and the means of social communication in order to teach about the meaning of Christian marriage; (2) through the more immediate personal preparation of the engaged couple; (3) through the fruitful celebration of the marriage liturgy; and (4) through continuing assistance given to married couples.

The code leaves it to local Churches – to the conferences of bishops (c. 1067) and to dioceses (cc. 1064; 1077) to develop more specific policies regulating marriage preparation. Canon 1077, §1 is the legal basis for those marriage preparation programs that permit the delay of marriage in cases where couples lack the necessary disposition or readiness.

If marriage preparation programs are mandatory it is important they be done well. Even mandatory programs should admit of exceptions for people who cannot attend the classes. Local policies must be flexible enough to accommodate the genuine needs of persons.

We must remember the Holy Spirit who acts through the sacraments to “give growth and healing to Christ’s members.”¹¹⁷ As ministers we serve best when we facilitate persons coming to the Church for this growth and healing.

Liturgy of the Hours

The celebration of the Liturgy of the Hours can provide a means of communal prayer. The it is a complementary way to call forth the devotions of the People of God, especially adoration and worship of the Blessed Sacrament.

Canon 276, §1, 3° states “priests and deacons aspiring to the presbyterate are obliged to carry out the liturgy of the hours daily according to the proper and approved liturgical books; permanent deacons, however, are to carry out the same to the extent defined by the conference of bishops.”

The conciliar document *Sacrosanctum Concilium* imposed on bishops, priests and deacons the juridic obligation of fulfilling daily the liturgy of the hours. The celebration of the Liturgy of the Hours is meant to provide a means that the whole course of the day and night praise is given to God.

The Liturgy of the Hours is intended to become the prayer of the

¹¹⁷ *The Catechism of the Catholic Church*, (New York/Mahwah: Paulist Press, 1994) article 798.

whole People of God. In it Christ himself continues his priestly work through the Church. His members participate according to their own place in the Church and the circumstances of their lives: priests devoted to the pastoral ministry, because they are called to remain diligent in prayer and the service of the word; religious, by the charism of their consecrated lives; all the faithful as much as possible: Pastors of souls should see to it that the principal hours, especially Vespers, are celebrated in common in church on Sundays and on the more solemn feasts. The laity, too, are encouraged to recite the divine office, either with the priests, or among themselves, or even individually.¹¹⁸

The celebration of the Liturgy of the Hours can provide a means of communal prayer. It is a complementary way to call forth the devotions of the People of God, especially adoration and worship of the Blessed Sacrament.

¹¹⁸ Ibid., article 1175.

OFFICERS

REPORTS

PRESIDENTIAL REPORT

REV. MSGR. MARK L. BARTCHAK

I am pleased to present this annual report as President of the Canon Law Society of America. This report should be read in conjunction with the reports of the Treasurer, the Executive Coordinator and the various committees, which provide more detailed information about the activities of the CLSA in each of those areas.

CONVENTION RESOLUTIONS

Five resolutions were approved in October 2003 by the membership during the business meeting at the 65th Annual Convention of the CLSA in Portland, Oregon.

The *First Resolution* concerns an interdisciplinary symposium on the diocesan synod:

Be it resolved that the CLSA sponsor in conjunction with others and conduct an interdisciplinary symposium on the American experience of diocesan synods since the Second Vatican Council, publish the results of the symposium, and provide a convention presentation of the salient findings at a future convention. The financial contribution of the Canon Law Society of America is limited to \$5,000.00 with additional funding to come from other sources.

A number of members of the CLSA expressed a desire to participate in this project, even to the extent of serving on a committee to oversee it. Some have already submitted materials that are the subject of their personal research and there have been numerous recommendations submitted from experts in related disciplines who are interested in qualified in such a project. Discussions with a number of persons have taken place regarding a chair for the committee. Once the appointment as chair is completed, the committee will be fully constituted and the project will move forward. The mandate that additional funding for this symposium should come from other sources has prompted the Board of Governors to consider how such funding can be secured. Among the options that are being explored is the use of grant-writing for CLSA projects.

The *Second Resolution* concerns a comparative study of certain rights in canon law and American civil law:

Be it resolved that the CLSA Board of Governors be authorized and directed to commission a study of the canonical tradition and the positive law of the Church concerning the right of defense and all rights related thereto in canon law with a view to articulating the essential elements of the right of defense. Said study shall also consider the Anglo-American concept of “due process” and distinguish those elements of the concept which may be the same as or similar to or different from the canonical concept of the “right of defense.” *And let it be further resolved that* the Board of Governors request some person or persons to study various rationales for canonical prescription and civil statutes of limitation and make a convention presentation summarizing the findings as soon as possible, preferably at next year’s convention.

This resolution prompted the Board of Governors to work toward reconstituting the CLSA Civil and Canon Law Committee which had become “dormant.” It was rather quickly discerned that the subject matter of this resolution should be assigned to that committee. The appointment of all new members of the committee with Rev. Phillip Brown as chair made it possible to assign them the task of completing the study called for in the resolution. Thankfully, all the members of the Civil and Canon Law Committee either had a part in proposing the resolution or have a personal interest and/or experience in working with these topics. Thus, it’s a mixed blessing having the resolution move forward and giving new impetus for this committee (which is already thinking of other topics and issues in need of attention).

The *Third Resolution* concerns an index to the *CLSA Proceedings*:

Be it resolved that the CLSA Board of Governors commission the CLSA Executive Coordinator to compile and publish, at regular intervals and in a consistent manner, an author, title, and subject matter index to the volumes of the *CLSA Proceedings*. Such an index to address only the printed volumes of the *CLSA Proceedings* and to begin with the last published index and proceed forward, with no intent to address or to change previous indexes of the *CLSA Proceedings*.

The Executive Coordinator, Arthur Espelage, OFM, has already begun to implement this resolution. This project will become an ongoing function of the Executive Coordinator’s office.

The *Fourth Resolution* concerns an increase in dues for CLSA members:

Be it resolved that beginning in Fiscal Year 2004, active and associate membership dues for the Society increase by one hundred dollars (\$100.00) and student membership dues increase by seventy-five dollars (\$75.00).

[Thus, Active and Associate members will pay two hundred dollars (\$200.00) and Student members will pay one hundred dollars (\$100.00) effective 1 July 2004.]

The implementation of this resolution began when all the members received their notice for payment of dues. You will find additional comments on this in Executive Coordinator's Annual Report. It is worth noting that this increase does not mean that the CLSA bank account is overflowing. Looking toward the past, the increase does not provide for replenishing the amount that was taken from savings during the past five years to meet operating expenses. Basically, that money has been spent and the increase in dues reflects the amount the CLSA dues should have increased during that time period just to reflect the basic cost of living increases that affect everyone. Looking forward, the increased revenue from dues will have to be carefully monitored and budgeted to meet operating expenses which could continue to increase even by factors that are beyond our control (e.g., health insurance for our staff, etc.). The Board of Governors listened carefully to the numerous concerns voiced by the members at the time this resolution was discussed and adopted. During this past year we have made a concerted effort to control spending in certain areas so that we could properly fund the most important works of the CLSA. That approach is certainly reflected in the way in which the funding for committees was increased, not in an extravagant way, but in a manner that should help them to fulfill their mandates.

The *Fifth Resolution* concerns congratulations to Pope John Paul II:

Be it resolved that the members of the Canon Law Society of America gathered in convention extend congratulations to His Holiness Pope John Paul II on the occasion of the twenty-fifth anniversary of his service as universal pastor of the Catholic Church through a message sent by our president on this momentous occasion.

The message of congratulations was sent immediately by telegram. The full text of the message is published in CLSA *Proceedings* 64 (2003): 419.

COMMITTEES

There were a number of appointments made to committees during the year. These appointments are reflected in the annual reports from the various committees. The Board of Governors and the members of the CLSA were helpful in making recommendations. There are some factors that had a negative impact on the availability of CLSA members for committee work during the year. Many are doing extra duty because of their involvement in penal cases or because of cutbacks in diocesan staffing. However, special thanks are due to those who volunteered to

serve on committees and those who accepted nominations. Also, Vice-President/President-Elect, Sharon Euart, RSM, played an important role in coordinating and supporting the work of the committees.

The Task Force Committee for the Relocation of the Executive Coordinator's Office has been dissolved since the mandate to search for new office space has been fulfilled. Special thanks are extended to Rev. Lawrence DiNardo, chair, and the other members of the Relocation Task Force for their work in this area. The remaining mandate regarding future staffing needs has been transferred to the CLSA Planning Task Force which is discussed later in this report.

PUBLICATIONS

Two works have been published by the CLSA during the year. *Marriage Studies V: Sources in Matrimonial Law* was made available with an accompanying compact disk, which makes it a practical resource for those in tribunal ministry. Thanks go to Gerald Jorgensen, chair, and the other members of the Marriage Research Committee for their oversight on this project. Also, thanks are extended to the 17 authors who prepared the various chapters, and to those who assisted with editorial work on this project.

The 2004 edition of *Roman Replies and CLSA Advisory Opinions* has been completed. It continues to serve as a handy resource of recent documents of the Holy See that are useful in the proper interpretation of the law. Thanks go to Rev. F. Stephen Pedone, editor and Sr. Rose McDermott, SSJ, assistant editor. The advisory opinions section is one of the first sources consulted when canonists are searching for informed answers to specific canonical questions. This year in particular I wish to thank Rev. James I. Donlon, who is completing his service as chair of the Advisory Opinions Committee and editor for this part of the publication. Jim has done an outstanding job as editor for more than ten years.

Due to the timeliness of the work and the limited number of changes that were needed, the Board of Governors decided to issue an updated edition of the *Guide to the Implementation of the U.S. Bishops' Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, by making it available electronically on the CLSA website.

The Board of Governors will continue to give special attention to CLSA Publications which has become a significant part of this society. Wherever I visited during the year, especially in the Roman Curia, I was reminded of the important role of CLSA Publications in the field of canon law. All those who are working on publications that are due to be published in the near future (including the *Lay Ministry Handbook*, and the *Marriage Procedure Handbook*) are commended for their efforts.

MEETINGS AND VISITS

The Board of Governors met at the usual four times during the year: immediately after the close of the convention in Portland, OR (October 2003); in Orlando, FL (January 2004); in Chicago, IL (April 2004) and in Pittsburgh, PA (October 2004) immediately preceding the convention. The most challenging issue dealt with by the Board of Governors this year was the relocation of the Executive Coordinator's Office. It was an important help to the Board of Governors to have a special online discussion group so we could work on the details of the relocation and other CLSA business in between meetings. That online discussion group was arranged by Rev. Paul Hartmann.

During the year I had the unique opportunity of representing the Canon Law Society of America at three meetings with Church hierarchy. In October 2003, I met with Archbishop Gabriel Montalvo, Apostolic Nuncio to the United States. I was accompanied by CLSA Executive Coordinator, Rev. Arthur Espelage, OFM. Archbishop Montalvo was keenly interested in the work of the CLSA and he engaged us in conversation on a number of issues pertaining to Church life and governance in the United States. Archbishop Montalvo was a very gracious host as he invited us to join him for *pranzo* in his residence in the Apostolic Nunciature in Washington, DC.

I also attended the November 2003 meeting of the United States Conference of Catholic Bishops in Washington, DC. I was given guest status by USCCB General Secretary, Rev. William P. Fay, which allowed me to attend the public sessions. I was greeted by USCCB President, Most Rev. Wilton D. Gregory, who expressed his gratitude for the work of the CLSA, especially in the preparation of the *Guide to the Implementation of the U.S. Bishops' Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*. Without exception, the many bishops who stopped to speak to me expressed their gratitude for the role of canonists in the Church today.

In March 2004, Vice-President/President-Elect Sharon Euart, RSM and I made the biennial visit to the Holy See. We were accompanied by CLSA Executive Coordinator, Rev. Arthur Espelage, OFM. Special thanks go to Rev. Michael Hilbert, SJ, newly appointed Dean of the Faculty of Canon Law at the Pontifical Gregorian University in Rome, and long-time member of the CLSA. He handled much of the local arrangements in Rome, including the schedule of appointments. We are also grateful for the hospitality of Rev. Msgr. Kevin McCoy, Rector, and everyone at the Pontifical North American College where we stayed. It turned out to be a great location with easy access to most of the offices where our meetings were held.

In advance of our visit, I had written to the Prefects or Presidents of the various dicasteries in the Roman Curia and proposed a number of topics for discussion. Among the topics for discussion that were treated in more than one meeting were the handling of cases involving *graviora delicta* and the prospects for a new document involving procedures for marriage nullity cases. The issues pertaining to *graviora delicta* generated considerable discussion, but there was no answer on the promulgation of a new "*Provida Mater*." As we made our way to the various dicasteries, we consistently received quite a bit of affirmation for the work of the CLSA. The value of CLSA publications was especially emphasized, since English is fast becoming a world-language. One of the unique benefits of these meetings was the willingness of various dicasteries to share documents that the CLSA could publish in future editions of *Roman Replies* and *Canon Law Digest*. Cardinal Stafford from the Apostolic Penitentiary was especially enthusiastic in this regard and so there are a number of items from this tribunal included in the 2004 edition of *Roman Replies*.

Three appointments were scheduled after we arrived in Rome, and each one was especially meaningful. Archbishop John P. Foley, of the Pontifical Council for Social Communications accepted an invitation to join us for lunch. In that informal setting we had a chance to hear his thoughts on the effective use of the media in the Church today. On very short notice, Cardinal Walter Kasper of the Pontifical Council for Promoting Christian Unity invited us to his office where he had just returned from an important meeting in the Ukraine on relations with the Orthodox Church. Although we were optimistic about having a meeting with the Holy Father, it was only at the end of our first week in Rome that we learned we were invited to a Sunday evening audience with Pope John Paul II in his library. It was certainly a highlight of our visit to the Holy See.

We also had very good meetings with professors at most of the faculties of canon law in Rome and we hosted a reception for English-speaking students of canon law to give them an overview of the CLSA and to encourage them to join the society. CLSA member and Rector of the Casa Santa Maria, Rev. Msgr. Steven J. Raica, made the arrangements for this reception and was a gracious host. Other meetings took place with leadership of the Union of Superiors General of both men and women religious, and with Mr. James Nicholson, U.S. Ambassador to the Holy See.

I had the pleasure of representing the CLSA at several regional canon law conferences throughout the United States, including the Conference of Chancery and Tribunal Officials of the Provinces of New Orleans and Mobile in Baton Rouge, Louisiana (December 2003), the Northwest Regional Canon Law Meeting in Seattle, Washington (April 2004), the Midwest Regional Canon Law Convention in Evansville, Indiana (April 2004), Oklahoma-Arkansas Provincial Workshop in Little Rock, Arkansas (August 2004), and the Immediate Past President, Rev.

Lawrence O'Keefe represented the CLSA at the Western Regional Canon Law Conference (March 2004) and the Texas Judicial Vicars Meeting (March 2004) while I was in Rome. Vice-President, Sr. Sharon Euart, RSM, represented the CLSA at the Eastern Regional Conference of Canonists in Florida (May 2004). All who planned, hosted, or presented seminars in these regional meetings should be commended for the fine programs.

In October 2003, I was in London, Ontario, Canada for the annual convention of the Canadian Canon Law Society. Rev. Msgr. Patrick Powers, President of the CCLS, was a gracious host and it was a pleasure to meet the members of the society. I also represented the CLSA at the Canon Law Society of Great Britain & Ireland convention in Cardiff, Wales (May 2004). Rev. John Conneely was reelected President of the CLSGB&I. In addition to the convention seminars, I enjoyed a visit to the Museum of Welsh Life and shared a walking tour of Cardiff with Rev. James Coriden of the Washington Theological Union.

I participated in the annual convention of the Asociación Mexicana de Canonistas in San Juan de los Lagos, Jalisco, Mexico (July 2004). Rev. Msgr. Jorge Luis Roque Pérez, President of ASOMEXCAN provided great hospitality. It was a wonderful experience for me as a first-time visitor to Mexico. I presented a paper during the convention on *Distinctions, Coordination, and Avoidance of Conflict Among the External Forum, the Internal Forum, and the Forum of Conscience*. A Spanish translation will be published in the next volume of *Memorias*, which contains the proceedings of the ASOMEXCAN convention. During the business meeting, there was considerable discussion about ways in which ASOMEXCAN and CLSA might interact. Among the ideas suggested was a possible joint convention, similar to the experience that the CLSA and CCLS have had from time to time in the past. There is a great deal of interest among the Mexican canonists to work together on issues that affect the Christian faithful in the Church in Mexico and the United States. They are extremely proud that Msgr. Roque Pérez will be a presenter at the CLSA convention next year. As the Spanish-speaking Catholic population in the United States continues to increase, our relationship with ASOMEXCAN will likely become even more important.

I had originally planned to attend the convention of the Canon Law Society of Australia & New Zealand (September 2004) in Gold Coast, Queensland, Australia. An unforeseen conflict occurred when I was appointed to the Board of Governors and Executive Committee of the Pennsylvania Catholic Conference. However, CLSANZ President, Rev. Robert McGuckin, will provide an update on their convention when he joins us at the CLSA convention in Pittsburgh. Also expected to attend the CLSA convention in Pittsburgh are the Presidents of the CCLS, CLSGB&I, and ASOMEXCAN. Also, we anticipate a representative of the association of canonists of Argentina to join us in Pittsburgh. During the convention in Pittsburgh, the leadership of these societies will meet to discuss

issues of mutual interest. Having the opportunity to interact with our colleagues from these other places has deepened my appreciation for the value of continued contact and collaboration on an international level.

In October 2003, I visited the School of Canon Law at The Catholic University of America in Washington, DC. I had the pleasure of meeting with a number of professors and students. Rev. Msgr. Brian Ferme, Dean of the School of Canon Law, arranged for me to enjoy the hospitality of the faculty residence, Curley Hall. In February 2004, I visited the Faculty of Canon Law at St. Paul University, Ottawa, Ontario, Canada, where I was welcomed by the Dean, Rev. Roland Jacques, OMI. I also had the opportunity to meet with the other professors and a good number of students. While in Ottawa, I was invited to stay at the archbishop's residence, where I met with The Most Rev. Marcel Gervais, Archbishop of Ottawa, and Rev. Msgr. Patrick Powers, CCLS President. At both universities I gave the same lecture on *The Role of the Advocate in Cases Involving Sexual Misconduct by Clergy*. In each place I also made a presentation on the activities of the CLSA and invited students to consider membership.

I was invited to participate in a Symposium for Bishops and their Canonical Advisors on Issues of Clergy Misconduct and Related Issues in Toronto, Ontario, Canada (June 2004). This symposium was sponsored by the Canadian Canon Law Society and it proved to be an excellent meeting due to the quality of the seminars and the candid discussions of some difficult and sensitive issues. I also attended the Gregorian University Canon Law Colloquium in Philadelphia (August 2004). CLSA Vice-President/President-Elect, Sr. Sharon Euart, RSM also attended. It was a pleasure to see Bishop Velasio DePaolis, C.S., of the Supreme Tribunal of the Apostolic Signatura who remembered our visit to Rome. Bishop DePaolis gave the keynote address at the colloquium. Other presenters included CLSA members, Revs. James Conn, SJ, Robert Geisinger, SJ, and Michael Hilbert, SJ.

CLSA PLANNING

When Rev. Lawrence O'Keefe was CLSA President, the Board of Governors established a Committee on Strategic Planning. The rationale for such a committee was borne out of a number of issues that the Board of Governors have constantly revisited over the past several years. These include the future direction of CLSA Publications, the appropriate staffing of the Executive Coordinator's Office, and the proper means for discerning and providing member services. The circumstances that prompted the move of the Executive Coordinator's Office to Alexandria, VA and the resolution adopted last year to increase the membership dues are two examples that demonstrate the need for ongoing planning. All of these concerns are affected by a reality that has been a driving force in the CLSA for many years. The work of the CLSA and the direction it takes is constantly evolving as a result of the resolutions that are adopted each year.

Throughout the year the Board of Governors continued to discuss the best approach to planning for the CLSA. In the end it was decided to expand on the idea of Immediate Past-President, Rev. Lawrence O’Keefe, and include both strategic planning (what we need or want to accomplish according to the mission of the CLSA) and operational planning (how we accomplish that mission according to the resources of the CLSA).

The Strategic Planning Committee has been reconstituted as the *CLSA Planning Task Force*, with the following mandate.

The task force shall assist the CLSA in identifying and addressing issues related to strategic and operational planning in the following areas:

(1) study the staffing arrangements of the offices of the Executive Coordinator, and make recommendations to the Board of Governors regarding the adequacy of such arrangements for the mission of the CLSA;

(2) study the results of the BOG Handbook Review and propose revisions that are consistent with the mission of the CLSA;

(3) collaborate with the Publications Committee to study the ongoing needs and goals of the CLSA as a publisher of canonical works and to make recommendations to the Board of Governors regarding needs and goals in a manner that is consistent with the resources and mission of the CLSA;

(4) report to the Board of Governors any other issues for further planning that are not already identified in this mandate.

The designation of a CLSA committee as a “Task Force” usually suggests that its duration as a committee expires at the completion of the assigned task. If this special attention to planning proves to be helpful in the long-term, this Task Force may be designated an “Ongoing Committee.”

I want to assure you on behalf of the Board of Governors that the membership will be kept informed of the findings and recommendations of the CLSA Planning Task Force through the usual reports that are required of all the committees. Also, it is anticipated that the membership will be further engaged in this approach to planning by seeking your input on various issues from time to time. If there are any proposed changes in what the CLSA needs or wants to accomplish, or how those changes will be accomplished, the members of the CLSA will not only be informed, but they will be actively involved in the process, since those proposals will be moved and acted upon through the resolution process of the society.

CONCLUDING OBSERVATIONS

It has been an honor to have served as President of the Canon Law Society of America. This experience has brought me a number of very positive and pleasant experiences. Most especially I have enjoyed meeting and collaborating with so

many people. It has only deepened my appreciation for this professional society of canonists which is held in esteem by many persons throughout the world. I never expected to be elected to leadership in the CLSA, but I am grateful that it happened because it has been such an enriching experience.

I am grateful to so many people, including The Most Rev. Donald W. Trautman, Bishop of Erie, for allowing me to devote a significant portion of my time this year to the work of the CLSA.

I wish to thank the various Past-Presidents of the CLSA with whom I consulted throughout the year, especially Rev. Lawrence O'Keefe. Their advice and support has been a great help to me. I am very grateful to the members of the Board of Governors. Some of our meetings this year were extremely challenging and exhausting, but in the end the job was well done. Many thanks to Rev. Arthur Espelage, OFM and his staff for the day to day work they perform for the CLSA and for the support they provided me throughout the year. In a special way I want to thank Sr. Sharon Euart, RSM, who was my closest collaborator this year. I am most grateful for the ideas and unique insights that she has shared with me, and for her patient listening when I just wanted to think out loud. I look forward to the leadership that Sr. Sharon brings to the CLSA as she begins her term as President.

Finally, I wish to thank all the members of the CLSA. Thanks to you who serve on committees and thanks to you who at least listened to a request for your participation in a committee or project. I know that this has been an extremely busy year for me and it was a busy year for canonists in general. The Canon Law Society of America is as good as its members make it. I am pleased to have participated in a unique way alongside so many of you who work hard to further the mission of this society. May God continue to bless and sustain us in this good work.

REPORT OF THE TREASURER

VERY REV. WILLIAM J. KING

As Treasurer, I am pleased to present to the Society the annual report of our financial operations for Fiscal Year 2003-2004, and the approved budget for Fiscal Year 2004-2005. Although the following pages depict many numbers and figures, unseen behind these digits and characters is the work of the Society itself and its support staff. For this reason, I am delighted to set forth a budget for the new Fiscal Year which for the first time in several years restores to those who undertake the work of our scholarly professional Society – the committees and task forces – sufficient funding to pursue these tasks efficiently and productively.

In the “lean years” of the recent past, the diligent and daily attention of our staff allowed us to conduct the work and business of the Society, although with continuing reductions to our net assets and even with several deficit budgets and losses. During this year, major expenditures associated with the move of our Executive Coordinator’s office were kept to a minimum by the same diligence. This is a tribute to the attention paid daily to our finances and expenses by our Executive Coordinator Fr. Art Espelage, our bookkeeper Kay Winner, and our Administrative Assistant Jennifer Miller.

It must be emphasized that the Society operates with great fiscal restraint, and our financial condition in recent years has led our support staff to resort to counting sheets of paper and paper clips to avoid needless expense. Although this is commendable on the level of stewardship, it is regrettable as a matter of business operations. Nonetheless, the diligence and stewardship of our staff has allowed us to function despite budget reductions and restrictions.

The work of the committees and task forces, however, is another matter. The committees are the “engine” driving the work of our Society. As those who have served on committees past and present already know, each committee has been forced to curtail face-to-face meetings which in the past have proven productive to the publication of useful (and, as Treasurer I will add, lucrative) scholarly works of benefit to canonists and many others.

At least from a financial aspect, if not from other points of view, it may be said that our Society is entering its third generation. Our Society underwent great changes about the time of the promulgation of the 1983 *Code of Canon Law* for the Latin church, and entered its second generation. A scholarly society funded by the dues of its members grew into a major source of printed texts produced not only for canonists but for the larger public. Enhanced revenue from the sale of these

publications was, in turn, re-invested into the work of the Society by providing funding and resources to committees and projects. As a return of this investment in committees, additional publications came to be produced and sales continued. This led not only to a new set of expectations for the CLSA as a publisher of quality legal texts and commentaries, but also to a new paradigm in our fiscal operations: we grew from a dues-funded organization into one principally funded by the sales of our publications. Having hired a full-time Executive Coordinator, in time the Society found it necessary to out-source the fulfillment of publication sales along with warehousing our unsold books.

The expectation has been developed that the Canon Law Society of America will remain a principal source of scholarly and practical publications in canon law. It may be difficult to find a canon lawyer's office in which no CLSA publication rests on a desk or shelf. Practitioners, scholars, leaders, hierarchs, and parishioners all increasingly turn to the CLSA as a source of current and accurate information.

However, expectations impose demands, and with the reality that the boon of publications sales, first seen following the promulgations of the *Code of Canon Law* and also the *Code of Canons of the Eastern Churches*, has now waned, we are poised to enter our third generation. It is timely, then, that strategic planning for the Society will soon begin, to consider our mission and priorities, our staffing and operations, and in general our manner of "doing business."

For the first time we must pay rent for commercial space. Publications sales are reduced, such that the Board of Governors has authorized reductions in retail prices to reduce unsold inventory, and even the donation of unsold books to our sister organization in Mexico. Many canon lawyers find the current demands on their time and energies inadequate to allow for sufficient scholarly research and writing to maintain the CLSA's recent pace of publication. Committee work suffers for lack of time and, until this year, lack of funding. Established methods and practices must necessarily cede to new realities as we usher our Society into a new generation of activities and relationships.

With last year's vote of the membership to increase dues, we are returning at the beginning of our third generation to a dues-funded organization. Revenue from publication sales is still significant, but without additional investment in the work of our committees we would have been unable to continue production of the type and number of publications now expected of our learned society.

This year I proposed to the Board of Governors that the Society endeavor to locate partners in funding sources through grant-seeking and approaches to donors and foundations. The Board gave its approval. As specific projects are identified, and perhaps as Society members come forward with expertise in grant-writing or personal contact with donors and foundations, I am confident that this experiment

can be advanced to our great benefit. Similarly, I hope that the potential of our scholarship funds can be realized through enhanced donations, if not also grants or major gifts. The help of the Society members is needed, invited, and welcome.

Also this year, I proposed that we streamline our cash-flow operations by consolidating checking accounts. Mr. Joseph Godbout, our long-time Certified Public Accountant, concurred in this recommendation. Study of our monthly cash flow needs will allow for implementation in the near future, which will increase the amount of monies available for higher interest-bearing fiscal instruments or short-term investments.

Several changes have been made to our budgeting and accounting system. Additional line items were added to our cost centers, in part so that the membership might understand more readily the nature of Society expenses. New line items were made necessary by the move into new office space. Lastly, a fund has been created to assist in the cost of future office moves and major office expenditures, with annual contributions from General Operations and Publications income.

In the following pages you will read two reports:

- the accounts of Fiscal Year 2003-2004 as reviewed by Joseph Godbout, CPA;
- the budgets approved by the Board of Governors for Fiscal Year 2004-2005.

As you do, recognize that behind each figure is the membership of our committees, task forces, and staff, and the toil of their time and energy. Recognize, too, that each number also represents the promise of our learned society to back up the work of its committees, task forces, and staff with sufficient resources to advance the work of the CLSA responsibly and effectively.

PART I

INDEPENDENT AUDITOR'S REPORT

To the Board of Governors
and Executive Coordinator
Canon Law Society of America
Washington, D.C.

I have reviewed the accompanying statement of financial position of Canon Law Society of America (a District of Columbia not-for-profit corporation) as of June 30, 2004, and the related statements of activities and changes in net assets and cash flows for the year then ended in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Canon Law Society of America.

A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, I do not express such an opinion.

Based on my review, I am not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

My review was made for the purpose of expressing limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles. The information included in the accompanying schedules is presented for supplementary analysis purposes. Such information has been subjected to the same inquiry and analytical procedures applied in the review of the basic financial statements, and I am not aware of any material modifications that should be made to these schedules.

The financial statements for the year ended June 30, 2003 were audited by me and I expressed an unqualified opinion on them in my report dated August 27, 2003, but I have not performed any auditing procedures since that date.

JOSEPH E. GODBOUT
Certified Public Accountant

Silver Spring, Maryland
August 5, 2004

CANON LAW SOCIETY OF AMERICA
STATEMENTS OF FINANCIAL POSITION

June 30, 2004

with comparative figures for June 30, 2003

ASSETS

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 68,149	\$ 85,867
Accounts receivable-book sales	-0-	7,947
Royalties receivable	3,000	4,200
Accounts receivable-dues	1,025	3,775
Accrued interest receivable	415	952
Miscellaneous receivable	-0-	170
Current inventory of books and publications, at cost (Note 3)	22,670	28,736
Prepaid postage	1,869	1,671
Prepaid insurance	489	495
Prepaid book costs (Note 6)	-0-	40
Prepaid expenses, other	<u>10,610</u>	<u>11,070</u>
Total Current Assets	<u>108,227</u>	<u>144,923</u>
<i>Non-current Assets:</i>		
Furniture and equipment, at cost, less accumulated depreciation of \$4,795 (\$9,066 at June 30, 2003)	6,112	4,876
Long-term inventory of books and publications, at cost (Note 3)	164,910	179,789
Investments (cost \$155,375 - \$146,742 at 6/30/03), at market value (Note 4)	174,290	160,771
Investments (cost \$259,860 - \$243,721 at 6/30/03), at market value, temporarily restricted in Scholarship Fund (Note 5)	287,773	259,543
Rental security deposit	<u>802</u>	<u>-0-</u>
Total Non-current Assets	<u>633,887</u>	<u>604,979</u>
Total Assets	<u>\$742,114</u>	<u>\$749,902</u>

LIABILITIES AND NET ASSETS

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
<i>Current Liabilities:</i>		
Accounts payable	\$ 19,183	\$ 13,917
Royalties payable	1,080	549
Deferred revenue – book sales	904	6,629
Deferred revenue – convention	17,033	29,590
Deferred revenue – membership dues	<u>1,975</u>	<u>1,175</u>
Total Current Liabilities	<u>40,175</u>	<u>51,860</u>
<i>Net Assets: (Statement)</i>		
Unrestricted		
Board designated restricted reserve fund (Note 8)	55,412	55,412
Board designated for special projects (Note 9)	118,618	131,656
Other unrestricted	<u>240,136</u>	<u>251,431</u>
Total unrestricted	<u>414,166</u>	<u>438,499</u>
Temporarily restricted-scholarship fund	<u>287,773</u>	<u>259,543</u>
Permanently restricted	<u>NONE</u>	<u>NONE</u>
Total Net Assets (Statement)	<u>701,939</u>	<u>698,042</u>
Total Liabilities and Net Assets	<u>\$742,114</u>	<u>\$749,902</u>

The accompanying notes are an integral part of these financial statements.

CANON LAW SOCIETY OF AMERICA

STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS

for the year ended June 30, 2004

with comparative figures for the year ended June 30, 2003

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
Changes in unrestricted net assets:		
Revenues and Gains:		
Membership dues	\$153,525	\$161,728
Investment income (Note 14)	3,665	4,760
Sales of publications and books	124,758	199,750
Royalties	9,092	11,706
Convention and pre-convention workshops fees	99,931	104,235
Other income	11,314	5,258
Net unrealized gains on investments (Note 14)	<u>10,225</u>	<u>-0-</u>
Total unrestricted revenues and gains	412,510	487,437
Net assets released from restrictions:		
Scholarship fund expenses	<u>8,125</u>	<u>15,988</u>
Total unrestricted revenues, gains, and other support	<u>420,635</u>	<u>503,425</u>
Expenses:		
Program services (Schedules-pages 8 & 9)	300,805	330,919
Supporting services (Schedule-page 10)	143,403	121,541
Net realize loss on sale of investments (Note 14)	760	8,780
Net unrealized loss on investments (Note 14)	<u>-0-</u>	<u>4,873</u>
Total expenses and losses	<u>444,968</u>	<u>466,113</u>
Increase/(decrease) in unrestricted net assets	<u>(24,333)</u>	<u>37,312</u>

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
Changes in temporarily restricted net assets:		
Contributions to the scholarship fund	\$ 11,879	\$ 13,180
Income on long-term investments (Note 14)	5,313	5,495
Net realized gain/(loss) on sale of investments (Note 14)	(316)	(8,789)
Net unrealized gain/(loss) on appreciation of investments (Note 14)	19,479	773
Net assets released from restriction (Page 9)	<u>(8,125)</u>	<u>(15,988)</u>
Increase (decrease) in temporarily restricted net assets	<u>28,230</u>	<u>(5,329)</u>
Changes in permanently restricted net assets:	<u>NONE</u>	<u>NONE</u>
INCREASE/(DECREASE) IN NET ASSETS	3,897	31,983
Net Assets at Beginning of Year	<u>698,042</u>	<u>666,059</u>
Net Assets at End of Year	<u><u>\$701,939</u></u>	<u><u>\$698,042</u></u>

The accompanying notes are an integral part of these financial statements.

CANON LAW SOCIETY OF AMERICA

SCHEDULES OF PROGRAM SERVICES

for the year ended June 30, 2004
with comparative figures for the year ended June 30, 2003

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
<i>Publications</i>		
Cost of publications sold	\$ 27,649	\$ 35,416
Loss on inventory reduction	7,869	5,299
Executive expenses	54,381	64,046
Royalty expense	4,667	4,816
Depreciation	1,694	2,418
Bad debts	-0-	-0-
Advertising	3,082	7,273
PMDS	48,528	51,440
Legal expenses (Note 15)	<u>3,162</u>	<u>-0-</u>
Total Publication Expenses	<u>151,032</u>	<u>170,708</u>
<i>Convention and Pre-convention Workshop</i>		
Coordination (Note 13)	22,562	18,641
Pre convention expenses	12,449	13,183
Food service	28,754	26,741
Honoraria	3,800	4,550
Travel	1,998	2,309
Printing	8,880	10,505
Lodging	765	744
Freight	2,495	422
Other	1,414	2,240
Postage	2,980	2,271
Convention Chair	958	2
Liturgy	1,272	2,282
Supplies	5,865	8,625
Convention planning	922	1,175
Audio Visuals	<u>4,420</u>	<u>3,877</u>
Total Convention and Pre-convention Workshops	<u>99,534</u>	<u>97,567</u>

The accompanying notes are an integral part of these financial statements.

<i>Projects</i>		
Gift to Scholarship Fund	2,500	2,500
Canon Law Digest	657	11
Other	4	-0-
Marriage Procedures Handbook	<u>220</u>	<u>430</u>
Total Projects Expenses	<u>3,381</u>	<u>2,941</u>
<i>Membership services</i>		
Postage	6,583	6,479
Printing	6,798	15,528
Newsletter	<u>14,346</u>	<u>18,235</u>
Total Membership Services	<u>27,727</u>	<u>40,242</u>
<i>Committees</i>		
Nominations	1,843	2,591
Marriage research	37	8
Selection of Bishops	-0-	200
Advisory Opinions	45	35
Consecrated Life	1,511	414
Roman Replies	-0-	180
BOG designated committees	35	45
Resolutions	<u>31</u>	<u>-0-</u>
Total Committees	<u>3,502</u>	<u>3,473</u>
<i>Visit to Holy See</i>	<u>7,504</u>	<u>-0-</u>
<i>Scholarship Fund</i>		
Scholarships paid	6,000	6,500
Scholarship expenses	<u>2,125</u>	<u>9,488</u>
Total Scholarship Fund	<u>8,125</u>	<u>15,988</u>
Total Program Services	<u>\$300,805</u>	<u>\$330,919</u>

The accompanying notes are an integral part of these financial statements.

CANON LAW SOCIETY OF AMERICA
SCHEDULES OF SUPPORTING SERVICES

for the year ended June 30, 2004

with comparative figures for the year ended June 30, 2003

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
Board of Governors		
Rental housing	\$ 10,185	\$ 10,529
Travel	6,046	6,938
Food service	5,424	3,466
Other expenses	490	569
President	7,743	7,661
Vice President	317	404
Treasurer	488	1,732
Secretary	-0-	-0-
Transition meeting	806	1,529
Executive Coordinator Office	93,151	87,624
Depreciation expense	661	1,089
Legal expenses (Note 15)	4,037	-0-
Relocation	5,650	-0-
Rent expense (Note 11)	<u>8,405</u>	<u>-0-</u>
 Total Supporting Service	 <u>\$143,403</u>	 <u>\$121,541</u>

The accompanying notes are an integral part of these financial statements.

CANON LAW SOCIETY OF AMERICA

STATEMENT OF CHANGES IN NET ASSETS BY FUND for the year ended June 30, 2004

	Special Projects Fund	Restricted Reserve Fund	Scholar- ship Fund	Other Unrest- ricted	Total
Balance, July 1, 2003	<u>\$131,656</u>	<u>\$55,412</u>	<u>\$259,543</u>	<u>\$251,431</u>	<u>\$698,042</u>
Add: Increases					
Membership dues				153,525	153,525
Investment income			5,313	3,665	8,978
Sales of Publications	124,758				124,758
Royalties	9,092				9,902
Convention, workshops				99,931	99,931
Other Income	7,525			3,789	11,314
Contributions			11,879		11,879
Gains on investments	<u> </u>	<u> </u>	<u>19,479</u>	<u>10,225</u>	<u>29,704</u>
	<u>141,375</u>	<u>-0-</u>	<u>36,671</u>	<u>271,135</u>	<u>449,181</u>
Less: Decreases					
Publication expenses	(151,032)				(151,032)
Convention, workshops				(99,534)	(99,534)
Projects expenses	(3,381)				(3,381)
Membership services, committees and other			(8,125)	(38,733)	(46,858)
Supporting services				(143,403)	(143,403)
Losses on investments	<u> </u>	<u> </u>	<u>(316)</u>	<u>(760)</u>	<u>(1,076)</u>
	<u>(154,413)</u>	<u>-0-</u>	<u>(8,441)</u>	<u>(282,430)</u>	<u>(445,284)</u>
Balance, June 30, 2004	<u>\$118,618</u>	<u>\$55,412</u>	<u>\$287,773</u>	<u>\$240,136</u>	<u>\$701,939</u>

The accompanying notes are an integral part of these financial statements.

CANON LAW SOCIETY OF AMERICA

STATEMENTS OF CASH FLOWS

for the year ended June 30, 2004

with comparative figures for the year ended June 30, 2003

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
Cash Flows From Operating Activities:		
Membership dues	\$157,075	\$160,003
Publications and book sales	126,980	202,460
Convention and workshops	87,374	99,160
Royalties	10,292	16,906
Investment income	4,202	4,569
Other income	<u>11,314</u>	<u>5,258</u>
	397,237	488,356
Less: Cash paid to suppliers and employees	<u>406,508</u>	<u>(463,640)</u>
Net Cash From/(Used In) Operations	<u>(9,271)</u>	<u>24,716</u>
Cash Flows From Investing Activities:		
Purchase of furniture and equipment	(3,591)	(533)
Purchase of investments	(94,320)	(42,897)
Proceeds from sales of investments	90,266	28,853
Payment of rental security deposit	<u>(802)</u>	<u>-0-</u>
Net Cash From/(Used In) Investing Activities	<u>(8,447)</u>	<u>(14,577)</u>
Cash Flows From Financing Activities:	<u>NONE</u>	<u>NONE</u>
Increase/(Decrease) During Year	(17,718)	10,139
Cash and Cash Equivalents at Beginning of Year	<u>85,867</u>	<u>75,728</u>
Cash and Cash Equivalents at End of Year	<u>\$68,149</u>	<u>\$85,867</u>

	June 30, 2004 (Unaudited)	June 30, 2003 (Audited)
Reconciliation of Increase/(Decrease) in Net Assets to Net Cash Provided By/(Used In) Operating Activities:		
Increase/(Decrease) in Net Assets (Statement-page 7)	\$ 3,897	\$ 31,983
Adjustments to Reconcile:		
Depreciation	2,355	3,507
Gains/losses on long-term investments	(28,628)	21,669
Contributions to the scholarship fund	(11,879)	(13,180)
Investment income – scholarship fund	(5,313)	(5,495)
Loss on inventory reduction	7,869	5,299
(Increase)/decrease in accounts receivable – book sales	7,947	312
(Increase)/decrease in royalties receivable	1,200	5,200
(Increase)/decrease in accounts receivable - dues	2,750	(2,200)
(Increase)/decrease in accrued interest receivable	537	(191)
(Increase)/decrease in miscellaneous receivables	170	(170)
(Increase)/decrease in inventory of books	13,076	(16,198)
(Increase)/decrease in prepaid postage	(198)	1,772
(Increase)/decrease in prepaid insurance	6	(82)
(Increase)/decrease in prepaid book costs	40	(40)
(Increase)/decrease in prepaid expenses, other	460	(4,857)
Increase/(decrease) in accounts payable	5,266	(1,089)
Increase/(decrease) in royalties payable	531	(15,310)
Increase/(decrease) in deferred revenue – book sales	(5,725)	2,398
Increase/(decrease) in deferred revenue – convention	(12,557)	(5,075)
Increase/(decrease) in deferred revenue – membership dues	800	475
Expenses paid from scholarship fund	<u>8,125</u>	<u>15,988</u>
Net Cash From/(Used In) Operations	<u><u>\$(9,271)</u></u>	<u><u>\$24,716</u></u>

The accompanying notes are an integral part of these financial statements.

CANON LAW SOCIETY OF AMERICA
NOTES TO FINANCIAL STATEMENTS

June 30, 2004
and
June 30, 2003

Note 1. Summary of Significant Accounting Policies

This summary of significant accounting policies of Canon Law Society of America (CLSA), a District of Columbia not-for-profit corporation, is presented to assist in understanding the financial statements. The financial statements and notes are representations of the organization's management, who is responsible for their integrity and objectivity. These accounting policies conform to generally accepted accounting principles and have been consistently applied in the preparation of the financial statements.

Accounting Basis

CLSA prepares its financial statements on the accrual basis of accounting; that is, income is recognized when earned and expenses are recognized when the obligation is incurred.

Accounts Receivable – Books and Publications

Books and publication receivables are considered uncollectible if not collected within 90 days after sale.

Accounts Receivable – Dues

Dues are billed to members at the beginning of each fiscal year (July 1). CLSA records dues income on the basis of dues actually collected. Dues not collected by the issue date of the annual report are considered uncollectible and are written off.

Deferred Revenue

Membership dues, book sales, workshop and convention registrations, collected in advance have been included in deferred revenue in the accompanying balance sheets under current liabilities. This deferred revenue is all recognizable within one year.

Inventory of Books and Publications

The inventory of books and publications is valued at cost, on the first-in, first-out method. CLSA carries a 5 year supply of some books and publications. Because of this long-term supply, there is the possibility that part of the inventory will become obsolete and never be sold. The inventory

has been separated on the balance sheet between the estimated current portion which management believes will be sold in the next twelve months and the estimated long-term portion which management expects will be sold in the remaining four years as detailed in Note 3.

The write off for obsolete inventory for the fiscal year ended June 30, 2004 was \$7,869, and June 30, 2003 was \$5,299.

Capitalization and Depreciation Policy

Expenditures for fixed assets of \$300 or more per item are capitalized and depreciated using the straight-line method over the estimated useful lives of the assets of five years. Depreciation is computed for six months on assets additions during the year. Fully depreciation assets and their related reserves are removed from the accounts. Repairs are expensed as incurred.

Fixed assets additions during 2002-2004 were:

<u>2003-2004</u>	<u>2002-2003</u>
3-Dell computers <u>\$3,591</u>	Flat screen monitor <u>\$533</u>

Depreciation expense for the years ended June 30, 2004 and June 30, 2003, was \$2,355 and \$3,507, respectively.

Investments

Investments are carried at their fair market value on the balance sheet date. Gain or loss on investments during the year is measured by the difference between the sales price or the fair market value at the end of the year and their cost if acquired during the year or their fair market value at the end of the preceding year.

Restricted Funds

Restricted funds are recorded as either temporarily or permanently restricted in the net assets. Temporarily restricted gifts are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions when the stipulated restriction is accomplished.

Board Designated Net Assets

The Board has designated that part of the unrestricted net assets be set aside for special purposes as described in Notes 8 & 9 below.

Expenses for Convention and Workshops

Expenses for the convention and workshops have been charged with direct

costs only, and do not include overhead costs which may be associated with these functions.

Income Taxes

CLSA is a nonprofit organization exempt from federal income taxes under Section 501 (c) (3) of the Internal Revenue Code, and contributions to it are deductible by donors for income tax purposes. The organization is also exempt from state income taxes.

Cash Equivalents

For purposes of the statement of cash flows, CLSA considers only highly liquid investments with an original maturity of three months or less at the time of purchase to be cash equivalents.

Current Assets and Current Liabilities

Current assets and current liabilities are those items expected to be or which may be realized or liquidated during the next twelve-month period.

Fund Accounting

CLSA uses fund accounting because this method allows the organization to readily keep track of the various monies under its control and the purposes of those funds.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires the use of management estimates and assumptions. Accordingly, actual results may differ from those estimates.

Note 2. Organization

The Canon Law Society of America (CLSA) is a national, not-for-profit corporation, established in November, 1939 in Washington, DC to promote canonical and pastoral approaches to significant issues within the Roman Catholic Church. In addition to a publication service, CLSA convenes an annual convention and other symposia to promote a better understanding of church law and its pastoral applications. Major sources of gross income are from membership dues (37%), sales of publications and books (32%) and annual convention (24%).

Note 3. Inventory

Total inventory at June 30, 2004, at cost, was \$187,580 (\$208,525 at June 30, 2003) of which \$22,670 (\$28,736 at June 30, 2003) is reported on the statement of financial position under current assets as the estimated portion of the

inventory which management believes will be sold in the coming fiscal year. The balance of the inventory of \$164,910 (\$179,789 at June 30, 2003) is reported under non-current assets. Six recent publications make up 74% of this long-term portion.

Note 4. Investments-Canon Law Society

These investments are subject to market risks, and their values fluctuate daily. They are held in a Schwab Institutional account as follows:

	2004		2003	
	<u>Cost</u>	<u>Value</u>	<u>Cost</u>	<u>Value</u>
Stocks	\$ 76,084	\$ 96,045	\$ 66,355	\$ 79,690
Government bonds	\$ 79,291	\$ 78,245	\$ 35,068	\$ 35,430
Corporate bonds	<u>-0-</u>	<u>-0-</u>	<u>\$ 45,319</u>	<u>\$ 45,651</u>
	<u>\$155,375</u>	<u>\$174,290</u>	<u>\$146,742</u>	<u>\$160,771</u>

Note 5. Investments-Scholarship Fund

These investments are subject to market risks, and their values fluctuate daily. They are held in a Schwab Institutional account restricted for use by the Scholarship Fund as follows:

	2004		2003	
	<u>Cost</u>	<u>Value</u>	<u>Cost</u>	<u>Value</u>
Cash	\$ 19,178	\$ 19,178	\$21,848	\$21,848
Stocks	114,011	143,539	111,951	126,819
Corporate bonds	-0-	-0-	20,024	20,076
Government bonds	139,179	137,564	90,104	91,006
Intercompany receivable	-0-	-0-	5,877	5,877
Accrued interest	777	777	1,072	1,072
Less: Accounts payable	(360)	(360)	(305)	(305)

Less: Deferred – Schaaf	<u>(12,925)</u>	<u>(12,925)</u>	<u>(6,850)</u>	<u>(6,850)</u>
	<u>\$259,860</u>	<u>\$287,773</u>	<u>\$243,721</u>	<u>\$259,543</u>

Note 6. Prepaid Book Costs

Prepaid book costs of \$40 at June 30, 2003 represent expenditures to date for a publication. These costs will be expensed as this book is published and sold.

Note 7. Operating Lease Payable-Toshiba

The organization leased a new copier with a four-year lease payable to Toshiba beginning on May 1, 2004. The lease is \$310.00 per month and includes supplies and maintenance up to 15,000 copies per month.

Because this lease includes supplies and maintenance as a major part of the monthly payments, it is considered an operating lease, even though there is an option to purchase the copier at the end of the lease. The following is a schedule by years of future minimum lease payments under this lease:

Year Ended:

June 30, 2005	\$ 3,720
June 30, 2006	3,720
June 30, 2007	3,720
June 30, 2008 (10 months)	<u>3,100</u>
	<u>\$14,260</u>

Note 8. Restricted Reserve Account

The Board has designated \$55,412 as a Restricted Reserve Account to be set aside for future purposes. The income of this Restricted Reserve Account, formerly the Quasi-Endowment Fund, is to be used for operations.

Note 9. Publications Sales

The Board of Governors has also voted to use the net income from sales of publications and books to fund Special Projects.

The changes in Board Designated For Special Projects are as follows:

	6/30/04	6/30/03
Balance, beginning of year	\$131,656	\$ 88,591

Add: Publication income	124,758	199,750
Royalty income	9,092	11,706
Other income	7,525	5,258
Less: Publication expenses	(151,032)	(170,708)
Projects expenses	<u>(3,381)</u>	<u>(2,941)</u>
Balance, end of year	<u>\$118,618</u>	<u>\$131,656</u>

Note 10. Annual Meeting Site Reservation Agreements

The organization has reserved hotel space for future annual meetings. The terms of these reservation agreements provide that a fee will be assessed to CLSA if the reservation is canceled due to a site change, within a specified period prior to the meeting dates.

Note 11. Office Rental Commitments

The corporation has leased office space in Alexandria, Virginia under the terms of a sublease, dated April 15, 2004 for the period April 15, 2004 through April 14, 2005, with three successive annual options to renew. Annual rental payments are \$9,622 the first year with increases of 3.5% for the extension terms.

Minimum future payments as of June 30, 2004 are as follows:

June 30, 2005	\$ 9,706
June 30, 2006	10,046
June 30, 2007	10,398
June 30, 2008 – 9 months	<u>8,001</u>
	<u>\$38,151</u>

Note 12. Retirement Benefits

The organization contributed \$2,972 toward the retirement of the Executive Coordinator and \$3,270 toward the retirement of the administrative assistant during the fiscal year ended June 30, 2004 and \$1,471 and \$3,191 during the fiscal year ended June 30, 2003.

Note 13. Convention Coordination Company

Beginning in October of 2001, CLSA hired an outside company to coordinate its annual convention.

Note 14. Investment Income

The elements of investment income are as follows:

	6/30/04	6/30/03
Interest and dividend income		
Dividends and interest on investments held by Schwab Institutional	<u>\$ 3,665</u>	<u>\$ 4,760</u>
Net realized gains/(loss) on investments		
Realized loss on investments sold by Schwab Institutional	<u>\$ (760)</u>	<u>\$(8,780)</u>
Net unrealized gains/(loss) on investments		
Unrealized gains/(loss) on investments held by Schwab Institutional	<u>\$10,225</u>	<u>\$(4,873)</u>
Dividends and gains/(loss) on long-term investment-Temporarily Restricted Scholarship Fund		
Interest and dividend income		
Interest and dividends earned on investments held by Schwab Institutional	<u>\$ 5,313</u>	<u>\$ 5,495</u>
Net realized gains/(loss) on investments		
Realized loss-investments sold by Schwab Institutional	<u>\$ (316)</u>	<u>\$(8,789)</u>
Net unrealized gains/(loss) on investments		
Unrealized gains on investments held by Schwab Institutional	<u>\$19,479</u>	<u>\$ 773</u>

Note 15. Legal Fees

The corporation had legal expenses in 2004 for a legal audit of the society and the relocation of the office of the executive coordinator.

PART II

BUDGET SUMMARY Canon Law Society of America FY July 1, 2004 - June 30, 2005

I. GENERAL OPERATIONS

Income	\$315,600.00
Expenses	<u>\$259,661.00</u>
Excess/(Deficit)	\$55,939.00
Return to Investment Fund	<u>(\$50,000.00)</u>
Projected Balance	\$5,939.00

II. PUBLICATIONS

Income	\$204,625.00
Expenses	<u>\$204,526.00</u>
Excess/(Deficit)	\$99.00

III. CONVENTION

Income	\$116,725.00
Expenses	<u>\$112,745.00</u>
Excess/(Deficit)	\$3,980.00

IV. SCHOLARSHIP

Income	\$16,250.00
Expenses	<u>\$15,750.00</u>
Excess/(Deficit)	\$500.00

GENERAL OPERATIONS

INCOME

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Dues Income	\$ 161,727.57	\$ 178,650.00	\$ 152,500.00	\$ 310,500.00
Investment Income/C. Schwab	\$ 4,760.10	\$ 4,464.00	\$ 4,066.05	\$ 4,500.00
Interest Income/CD	\$ 0.00	\$ 500.00	\$ 0.00	\$ 100.00
Miscellaneous Income	\$	\$ 500.00	\$ 2,580.00	\$ 500.00
Transfer from Publications	\$ 10,000.00	\$ 0.00	\$ 0.00	\$ 0.00
TOTAL	\$ 176,487.67	\$ 184,114.00	\$ 159,146.05	\$ 315,600.00

EXPENSES

Staff Salaries **Staff Benefits** **Office Expenses**

(3 people)	\$ 58,524.69	\$ 63,241.00	\$ 60,965.48	\$ 65,526.00
(2 people)	\$ 12,030.00	\$ 13,842.00	\$ 13,259.16	\$ 15,503.00
Bank Service Charges	\$ 189.25	\$ 400.00	\$ 61.11	\$ 490.00
Credit Card Machine	\$ 2,297.50	\$ 4,425.00	\$ 1,861.72	\$ 3,250.00
Books & Subscriptions	\$ 549.00	\$ 550.00	\$ 530.13	\$ 1,460.00
Insurance	\$ 1,898.25	\$ 2,500.00	\$ 1,884.75	\$ 2,550.00
Postage	\$ 361.23	\$ 600.00	\$ 534.43	\$ 600.00
Office Supplies	\$ 1,437.45	\$ 2,100.00	\$ 1,819.04	\$ 2,100.00
Office Rent	\$ 0.00	\$ 60,000.00	\$ 8,405.49	\$ 6,735.00
Telephone	\$ 918.99	\$ 700.00	\$ 989.95	\$ 700.00
Internet Account and Access	\$ 0.00	\$ 0.00	\$ 0.00	\$ 720.00

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Xerox/Toshiba Lease	\$ 3,304.55 \$	3,302.00 \$	3,401.71 \$	3,302.00
OEC Hospitality	\$ 233.05 \$	750.00 \$	221.17 \$	750.00
E. C. Travel	\$ 1,904.50 \$	2,500.00 \$	525.83 \$	2,500.00

Professional Services

CS Management Fees	\$ 606.20 \$	900.00 \$	1,095.96 \$	700.00
Accountant	\$ 2,997.50 \$	4,750.00 \$	4,747.50 \$	3,750.00
Consultants	\$ 374.01 \$	1,275.00 \$	1,251.65 \$	7,275.00
Legal Services	\$ 0.00 \$	0.00 \$	4,037.24 \$	5,000.00

Membership Services

Printing of <i>Newsletter</i>	\$ 9,317.30 \$	11,000.00 \$	7,677.00 \$	11,000.00
Postage for <i>Newsletter</i>	\$ 8,917.31 \$	9,200.00 \$	6,870.34 \$	9,200.00
Postage General	\$ 2,463.76 \$	1,770.00 \$	1,224.03 \$	1,770.00
Printing General (Directory)	\$ 9,612.71 \$	200.00 \$	195.00 \$	10,200.00
Bulletin on Issues	\$ 696.00 \$	1,800.00 \$	0.00 \$	1,800.00
Printing of <i>Proceedings</i>	\$ 5,219.53 \$	7,000.00 \$	6,366.40 \$	7,000.00
Postage for <i>Proceedings</i>	\$ 4,015.23 \$	4,000.00 \$	5,393.99 \$	4,200.00
Sub-Total	\$ 81,373.32 \$	147,406.00 \$	85,612.76 \$	118,058.00

Board of Governors

Food	\$ 3,465.78 \$	6,000.00 \$	5,424.41 \$	6,000.00
Housing	\$ 10,528.99 \$	10,400.00 \$	10,185.10 \$	10,400.00
Postage	\$ 377.49 \$	500.00 \$	223.63 \$	500.00

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Supplies	\$ 162.56 \$	350.00 \$	219.91 \$	350.00
Telephone	\$ 29.21 \$	100.00 \$	46.35 \$	100.00
Travel	\$ 6,937.86 \$	11,330.00 \$	6,046.48 \$	11,330.00
Rome Trip	\$ 0.00 \$	8,000.00 \$	7,503.60 \$	0.00
Sub-Total	\$ 21,501.89 \$	36,680.00 \$	29,649.48 \$	28,680.00
President	\$ 7,661.32 \$	9,000.00 \$	7,743.29 \$	9,000.00
Vice President	\$ 404.00 \$	1,200.00 \$	317.01 \$	1,200.00
Treasurer	\$ 1,732.16 \$	2,000.00 \$	488.22 \$	2,000.00
Secretary	\$ 0.00 \$	200.00 \$	0.00 \$	200.00
Transition Meeting	\$ 1,528.58 \$	2,000.00 \$	805.65 \$	2,000.00
Sub-Total	11,326.06	14,400.00 \$	9,354.17 \$	14,400.00

Committees

Committee Expense Fund	\$ 0.00 \$	0.00 \$	0.00 \$	5,890.00
BOG Designated Committees	\$ 44.56 \$	500.00 \$	34.00 \$	2,000.00
Strategic Planning Task Force	\$ 0.00 \$	0.00 \$	0.00 \$	15,000.00
Canonical Aspects of Questions	\$ 0.00 \$	0.00 \$	0.00 \$	1,200.00
Civil and Canon Law	\$ 0.00 \$	100.00 \$	0.00 \$	1,200.00
CLSA Advisory Opinions	\$ 35.00 \$	100.00 \$	45.00 \$	1,200.00
Consecrated Life	\$ 413.54 \$	2,000.00 \$	1,511.41 \$	6,000.00
Electronic Media	\$ 0.00 \$	100.00 \$	0.83 \$	1,200.00
<i>Ex Corde Ecclesiae</i>	\$ 0.00 \$	0.00 \$	0.00 \$	10.00

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Lay Canonists	\$ 0.00 \$	500.00 \$	0.00 \$	1,200.00
Marriage Research	\$ 7.65 \$	100.00 \$	37.00 \$	1,200.00
Nominations	\$ 2,590.51 \$	2,500.00 \$	1,843.42 \$	2,500.00
Resolutions	\$ 0.00 \$	50.00 \$	30.50 \$	100.00
Roman Replies	\$ 180.38 \$	100.00 \$	0.00 \$	100.00
Undocumented Persons	\$ 0.00 \$	100.00 \$	0.00 \$	1,200.00
Sub-Total	\$ 3,271.64 \$	6,150.00 \$	3,502.16 \$	40,000.00
Contingency				
Office Logistics Fund Allocation	\$ 0.00 \$	500.00 \$	0.00 \$	500.00
Sub-Total	\$ 0.00 \$	0.00 \$	0.00 \$	3,000.00
Asset Expenditures				
Furniture/Equipment	\$ 1,089.00 \$	1,000.00 \$	0.00 \$	5,000.00
TOTAL OPERATIONS	\$ 118,561.91 \$	206,136.00 \$	128,118.57 \$	209,638.00
RETURN TO INVESTMENT	\$ 0.00 \$	0.00 \$	0.00 \$	(50,000.00)
EXCESS/DEFICIT	\$ 57,925.76 \$	(22,022.00) \$	31,027.48 \$	55,962.00

PUBLICATIONS

INCOME

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Publication Sales	\$ 108,145.82 \$	110,000.00 \$	86,948.64 \$	110,000.00
Pre-Publication Sales	\$ 71,972.47 \$	20,000.00 \$	22,114.66 \$	67,000.00
Interest Income/Checking	\$ 0.00 \$	200.00 \$	0.00 \$	100.00
Xerox Sales	\$ 5,257.80 \$	720.00 \$	5,957.15 \$	25.00
Reprint Permissions	\$ 363.00 \$	500.00 \$	650.00 \$	500.00
Royalty Income	\$ 11,706.01 \$	5,050.00 \$	9,092.06 \$	9,000.00
Shipping & Handling @ PMDS	\$ 19,268.98 \$	18,000.00 \$	15,694.41 \$	18,000.00
TOTAL	\$ 216,714.08 \$	154,470.00 \$	140,456.92 \$	204,625.00

EXPENSES

Staff Salaries **Staff Benefits** **Office Expenses**

(3 people)	\$ 37,647.02 \$	37,644.00 \$	35,354.01 \$	39,100.00
(2 people)	\$ 4,940.35 \$	5,238.00 \$	5,110.12 \$	5,312.00
Office Rent	\$ 0.00 \$	0.00 \$	0.00 \$	2,887.00
Postage-Advertising	\$ 1,149.49 \$	4,000.00 \$	490.00 \$	2,000.00
Printing-Advertising	\$ 6,123.50 \$	9,000.00 \$	889.50 \$	5,000.00
Book Production	\$ 0.00 \$	0.00 \$	0.00 \$	30,000.00
Website	\$ 1,020.48 \$	1,472.00 \$	510.21 \$	1,472.00
Bank Service Charges	\$ 262.50 \$	360.00 \$	48.75 \$	300.00
Wells Fargo Internet CC	\$ 2,310.10 \$	2,090.00 \$	2,422.82 \$	1,748.00

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Supplies	\$ 2,018.05 \$	750.00 \$	741.49 \$	2,100.00
Postage	\$ 5,443.80 \$	550.00 \$	724.43 \$	4,500.00
Copyright Permissions	\$ 0.00 \$	210.00 \$	60.00 \$	210.00
Xerox/Toshiba Lease	\$ 4,899.51 \$	3,302.00 \$	3,401.72 \$	3,302.00
PMDS – Outsourcing	\$ 51,440.18 \$	50,000.00 \$	48,527.97 \$	44,500.00
Piney Bowes	\$ 157.91 \$	322.00 \$	271.13 \$	420.00
Telephone	\$ 870.29 \$	761.00 \$	935.21 \$	900.00
Publication Travel	\$ 492.60 \$	1,500.00 \$	0.00 \$	500.00
	\$ 4,816.02 \$	4,500.00 \$	4,666.76 \$	5,300.00
Royalty Paid				
Professional Services				
Accountant	\$ 2,997.50 \$	4,750.00 \$	4,747.50 \$	3,000.00
Legal Services	\$ 612.50 \$	1,000.00 \$	3,162.26 \$	1,000.00
Consultants	\$ 373.99 \$	1,000.00 \$	53.12 \$	2,500.00
Sub-Total	\$ 94,869.12 \$	96,043.00 \$	81,873.11 \$	122,263.00

Projects

Canon Law Digest	\$ 10.65 \$	750.00 \$	657.40 \$	750.00
Lay Ministry Handbook	\$ 0.00 \$	50.00 \$	0.00 \$	1,225.00
Marriage Procedural Handbook	\$ 0.00 \$	500.00 \$	220.07 \$	500.00
New Projects	\$ 429.79 \$	500.00 \$	3.95 \$	500.00
Publications Committee	\$ 0.00 \$	500.00 \$	0.00 \$	500.00
Scholarship Fund Contribution	\$ 2,500.00 \$	0.00 \$	2,500.00 \$	0.00
Sub-Total	\$ 2,940.44 \$	2,300.00 \$	3,381.42 \$	3,475.00

Marketing

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Marketing Expense	\$ 0.00 \$	0.00 \$	0.00 \$	7,500.00
Sub-Total	\$ 0.00 \$	0.00 \$	0.00 \$	7,500.00
Depreciation	\$ 2,418.00 \$	0.00 \$	1,694.00 \$	0.00
Repl. Cost for Publications	\$ 35,416.31 \$	23,500.00 \$	27,648.86 \$	35,000.00
Inventory Write-Off	\$ 5,298.50 \$	0.00 \$	7,868.88 \$	0.00
Contingency	\$ 0.00 \$	0.00 \$	0.00 \$	500.00
Transfer to General Operations	10,000.00 \$	0.00 \$	0.00 \$	0.00
Office Logistic Fund Allocation	0.00 \$	0.00 \$	0.00 \$	2,000.00
Sub-Total	\$ 53,132.81 \$	23,500.00 \$	37,211.74 \$	37,500.00

**TOTAL
PUBLICATIONS**

\$ 150,942.37 \$ 121,843.00 \$ 122,466.27 \$ 170,738.00

EXCESS/DEFICIT

\$ 65,771.71 \$ 32,627.00 \$ 17,990.65 \$ 33,887.00

CONVENTION

INCOME

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Convention Fees	\$ 83,780.00	\$ 74,000.00	\$ 75,110.00	\$ 92,625.00
Pre-Convention Fees	\$ 14,830.00	\$ 20,150.00	\$ 16,855.00	\$ 20,000.00
Interest Income/CD	\$ 0.00	\$ 414.00	\$ 0.00	\$ 100.00
Exhibitors	\$ 3,125.00	\$ 2,800.00	\$ 2,150.00	\$ 2,000.00
Sponsors	\$ 2,500.00	\$ 4,000.00	\$ 5,815.80	\$ 2,000.00
TOTAL	\$ 104,235.00	\$ 101,364.00	\$ 99,930.80	\$ 116,725.00

EXPENSES

Pre-Convention

Food	\$ 4,955.87	\$ 5,000.00	\$ 4,446.30	\$ 5,000.00
Honoraria	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Lodging	\$ 700.00	\$ 1,416.00	\$ 379.28	\$ 1,943.00
Postage	\$ 37.44	\$ 50.00	\$ 37.93	\$ 50.00
Printing	\$ 1,455.49	\$ 1,524.00	\$ 1,415.20	\$ 1,524.00
Freight	\$ 96.79	\$ 250.00	\$ 250.00	\$ 250.00
Travel	\$ 716.08	\$ 1,200.00	\$ 1,018.95	\$ 1,200.00
Supplies	\$ 520.00	\$ 530.00	\$ 222.17	\$ 530.00
Telephone	\$ 50.00	\$ 50.00	\$ 25.00	\$ 50.00
Liturg	\$ 200.00	\$ 800.00	\$ 154.00	\$ 1,000.00
Audio Visuals	\$ 1,451.25	\$ 1,500.00	\$ 1,500.00	\$ 1,600.00
Sub-Total	\$ 13,182.92	\$ 15,320.00	\$ 12,448.83	\$ 16,147.00

Convention

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Food	\$ 26,741.07 \$	24,000.00 \$	28,754.27 \$	28,000.00
Honoraria	\$ 4,550.00 \$	4,500.00 \$	3,800.00 \$	4,100.00
Lodging	\$ 744.42 \$	4,000.00 \$	764.83 \$	4,900.00
Postage	\$ 2,270.85 \$	2,648.00 \$	2,979.50 \$	3,048.00
Printing	\$ 10,504.68 \$	8,500.00 \$	8,879.53 \$	10,000.00
Freight	\$ 422.38 \$	1,875.00 \$	2,495.07 \$	1,875.00
Travel	\$ 2,308.75 \$	1,000.00 \$	968.20 \$	1,000.00
Transportation	\$ 0.00 \$	0.00 \$	1,030.00 \$	1,500.00
Supplies	\$ 8,624.63 \$	5,700.00 \$	5,865.33 \$	6,250.00
Telephone	\$ 216.59 \$	50.00 \$	25.00 \$	50.00
Liturgy	\$ 2,281.71 \$	2,800.00 \$	1,272.00 \$	2,800.00
Audio Visuals	\$ 3,876.75 \$	3,900.00 \$	4,420.00 \$	5,000.00
Hotel Taxes	\$ 0.00 \$	400.00 \$	0.00 \$	400.00
Exhibitor Expenses	\$ 825.00 \$	1,000.00 \$	228.11 \$	1,000.00
Sub-Total	\$ 63,366.83 \$	60,373.00 \$	61,481.84 \$	69,923.00

Professional Services

General Convention Chair	\$ 2.21 \$	1,000.00 \$	957.67 \$	1,000.00
Convention Planning Committee	\$ 1,175.13 \$	1,500.00 \$	921.86 \$	1,500.00
Nix & Associates Coordination Fee	\$ 18,641.13 \$	22,600.00 \$	22,561.91 \$	23,000.00

Office Expenses

	Actual FY 02-03	Budget FY 03-04	Actual FY 03-04	Budget FY 04-05
Bank Service Charges	\$ 33.00 \$	50.00 \$	0.00 \$	50.00
Checking Supplies <i>Electronic Checks</i>	\$ 0.00 \$	100.00 \$	72.24 \$	25.00
Credit Card Charges	\$ 800.00 \$	800.00 \$	800.00 \$	800.00
Miscellaneous Expenses	\$ 365.65 \$	300.00 \$	289.72 \$	300.00
Sub-Total	\$ 21,017.12 \$	26,350.00 \$	25,603.40 \$	26,675.00
TOTAL CONVENTION	\$ 97,566.87 \$	102,043.00 \$	99,534.07 \$	112,745.00
EXCESS/DEFICIT	\$ 6,668.13 \$	(679.00) \$	396.73 \$	3,980.00

CLSA SCHOLARSHIP

INCOME

	Actual FY 02.03	Budget FY 03.04	Actual FY 03-04	Budget FY 04-05
Investment Income	\$ 1,564.27 \$	8,000.00 \$	5,820.22 \$	6,250.00
CLSA Publication Contribution	\$ 2,500.00 \$	0.00 \$	1,250.00 \$	0.00
Scholarship Donations 04-05	\$ 6,195.00 \$	8,000.00 \$	9,380.00 \$	10,000.00
TOTAL	\$ 10,259.27 \$	16,000.00 \$	16,450.22 \$	16,250.00

EXPENSES

Bank/Investment Fees	\$ 1,190.55 \$	1,000.00 \$	1,359.39 \$	1,100.00
Postage	\$ 1,207.83 \$	2,200.00 \$	392.59 \$	2,200.00
Printing	\$ 1,511.80 \$	350.00 \$	365.40 \$	350.00
Scholarship Committee	\$ 42.10 \$	100.00 \$	7.92 \$	100.00
Award	\$ 6,500.00 \$	12,000.00 \$	6,000.00 \$	12,000.00

TOTAL SCHOLARSHIP

\$ 10,452.28 \$	15,650.00 \$	8,125.30 \$	15,750.00

EXCESS/DEFICIT

\$ (193.01) \$	350.00 \$	8,324.92 \$	500.00

REPORT OF THE EXECUTIVE COORDINATOR

REV. ARTHUR J. ESPELAGE, OFM

The time between closing the Portland, Oregon, convention and opening this one in Pittsburgh, Pennsylvania, seems like yesterday. This has been a busy year for the Executive's Office, and I am most grateful for the guidance and support offered by Monsignor Mark Bartchak and the other members of the Board of Governors. My special thanks go also to the Very Reverends Lawrence DiNardo and Lawrence O'Keefe along with Sr. Margaret Stallmeyer, CDP, and Monsignors Kevin E. McKenna and Robert P. Deeley who served on the re-location project.

As in previous years, I will divide this report into four sections. Hopefully, I can highlight the major moments of each area. Should additional questions arise, please bring them to my attention.

GENERAL OPERATIONS:

Our general membership numbers remain at 1730 active, associate, and student members as of this October convention, while we recorded that fifty-nine new members joined the society since the last CLSA convention. The dues increase instituted by the members of the society at the Portland, Oregon, convention in 2003 directly or indirectly influenced membership in that twenty-one members have listed this as a reason for resigning from the CLSA. During the past year, eleven of our members passed away from information received at the Executive's Office: Monsignor Thomas F. Heneghan; the Reverend Maurice B. Walsh, S.J.; Monsignor Daniel H. Brennan; Monsignor Timothy J. Murphy; Monsignor Julius G. Walle; Reverend Michael Lynch; Monsignor Anthony L. Capitani; Reverend David J. Byrne; Reverend Charles E. Bantle, O.F.M., Cap.; Deacon Rundolph F. Lohmann, and Dr. Patrick S. Morris,

The majority of time and energy for the Executive's Office was devoted to re-location. Re-organization at The Catholic University of America required that we vacate the office space on the fourth floor of Caldwell Hall. The university simply did not have sufficient space to meet our existing and projected future needs; moreover, the CLSA lost its rent free status after some twenty plus years. Saying goodbye to our many friends and co-workers at The Catholic University of America was sad, but the future prospects necessitated by the change are exciting. The board of governors set forth criteria and created a re-location task force which directed the search for new offices at the university and in various locations around the Washington, DC area as well as other locations in the country. About sixty possibilities were explored and evaluated between November 2003 and April 2004.

As the list of potential offices became more refined, planning began in earnest to develop an efficient and economical move.

I am pleased to report that we were able to utilize almost all of the existing office furniture at the new location, and make a donation to The Catholic University of America of the drapery and carpeting which the Society installed a few years ago as well as storage shelving and two large work space desks. The Xerox lease on the printer-copier came to an end in May which freed us from moving obsolete machinery and negotiate a new contract with Toshiba which is more economical than the old contract. On April 23rd 2004, the workers from Gulliver's Movers arrived on campus at 8:00 a.m. and by 2:30 p.m. we were in our new offices in Alexandria, Virginia.

The new offices are in a three story renovated building in the old town of Alexandria. We are at the corner of King Street and Payne Street in the heart of the old city. We occupy a building with one other firm, TELENETICS, which is an aerospace firm. We have four offices on the third floor of the building with the use of a conference room on the second floor for meetings. We were able to take advantage of the existing telephone system so that our expenses were limited to purchasing four telephone consoles and installing telephone service. Likewise, we were able to take advantage of the DSL service already at the Alexandria location.

The Executive's office took the opportunity at the time of the move to update our computers which were still operating on Windows 95. We secured the services of Mr. Robert Dana who offers computer support to not-for-profit organizations like the CLSA. We selected to upgrade with Windows XP which allows us the possibility of scanning documents through our new Toshiba copier as well as a new computer based credit card system as the telephone lines at the new location would not support our old credit card terminal hardware from the university. These changes, as well as a change to a more modern, user friendly accounting software in August 2003 (because the old software failed in the midst of closing the financial records for 2002-03) have brought the CLSA computer network into the real world. The new system is now up and running thanks to our bookkeeper, Mrs. Kay Winner, and our account Mr. Joseph Godbout. We now have the ability to process credit cards for a variety of projects as well as maintaining up to date accounting practices, and the new system will allow us to grow and offer further membership services. As a "moving gift" a generous donor contributed Adobe Acrobat, 6.0 Professional to the Executive's Office.

At present, the Executive's office and the Electronics Committee continue the revitalization of the CLSA website. The contributions of Patrick Cooney, OSB, Paul Counce, and Paul Hartmann have greatly moved this project forward so that the website will reflect change more frequently. One conclusion reached at this point is that the society requires the services of a part-time webmaster to create and

maintain a professional looking and interactive website. As a barometer to calculate maximum amounts in a future budget, it is suggested that we set aside \$2000 dollars per month to invoice no more than 40 hours per month of professional service in this area. This will allow us not only to develop the website in a progressive and methodical manner, but enhance membership services.

During all of the moving activities, the Executive's Office attempted to carry on with a number of activities. I accompanied the society's president and vice president for the officers' trip to the Roman Curia in early Spring, and I accompanied the past president and president to the ASOMEXICAN meeting in San Juan de los Lagos in Jalisco, Mexico. Both international experiences were exciting, and I was deeply impressed by the respect and the encouragement which our society received from various individuals that we met on our journeys.

This October 2004, we continue the application process to establish the CLSA as a not-for-profit business with the Virginia department of taxation. The CLSA OPERATIONS MANUAL continues to grow and with further refinement. At the present time, it constitutes two binders; and it has proved the wisdom of creating these procedure protocols. In late May, a home accident kept our administrative assistant, Jennifer Miller, out of the office for six weeks. During that time we were able to access the manual for the specifics of sending out the pre-publication orders for *Marriage Studies V* as well as the 2004-2005 dues invoices. These two projects provided a few moments of mirth at the local post office when we began to carry in mailing bins. The eyes of customers waiting in line as well as the clerks behind the counter registered surprise as we stacked the bins on the floor. The local manager at the post office invited us to feel free to bring future mailings to the back loading dock!

Other major activities in the Executive's Office revolved around requests for canonical consultants for the current clergy cases as well as requests from the press on a variety of matters surrounding clergy issues, parish closures, financial issues surrounding parishes, and matrimonial matters. I am most appreciative of the members of the society who have responded to requests coming through our office to provide their canonical expertise. From my contacts with other organizations and people throughout the United States, the CLSA members provide sound and practical canonical expertise to those who seek our services.

CLSA PUBLICATIONS:

A number of meetings took place between the Executive Coordinator and the representatives of PMDS, our distribution center for CLSA Publications. While the society remains "small" in this field, we processed 913 orders during the 2003-2004 calendar year. A central area of study this year was an analysis of our shipping and handling costs. In the 2002-2003 calendar year, it became evident that our shipping

and handling costs were insufficient and we were losing money in this area. It is regrettable, but nationwide shipping costs are today more expensive, and the projections from advisors in the shipping industry is that future increases can be expected. CLSA Publications continues to keep the costs of books as economical as possible, and we will continue to look for ways to keep our costs low. Presently it offers two types of domestic shipping: United Parcel Service (UPS) or the United States Postal System (Media Mail). The first allows shipments to be tracked and insured while the second does not have these capabilities. Moreover, more and more media mail packages seem to be damaged in shipment. There seems to be no perfect solution in this area, but we shall continue to monitor and improve where possible.

A second area of study this past year came as a BOG request to manage and where possible to do inventory reduction. At its April meeting, for example, the board determined that inventory of the *Code of Canon Law* was such that a reduction in price was warranted. Once again the society's accountant and the executive coordinator conducted the annual June inventory count with the men and women in the warehouse of PMDS. We are fortunate in my estimation to have the services of these very hardworking and efficient people. They provide mail distribution for approximately one hundred other clients, and their business recommendations provide us with business expertise that is beneficial to the society.

This past year, CLSA Publications produced the *CLSA Proceedings 2003* of Portland, Oregon as well as *Roman Replies & CLSA Advisory Opinions (2003)* and *Marriage Studies V: Sources in Matrimonial Law*. As a future oriented project, the Executive's Office began compiling a CLSA STYLE MANUAL for the Publications Committee. Such a manual should be of great service to those members engaged in tasks or projects which may lead to future publications. I am also pleased to report to the membership that the production of an Index for *CLSA Proceedings* which was the object of resolution proposal #3 at the Portland Convention was completed. Sr. Francine Quillan, PBVM of the Archdiocese of Dubuque, Iowa, completed the text which will be found in this report's booklet and also the 2004 *CLSA Proceedings*.

There are a number of future CLSA Publications which remain with the committees. The Executive's Office receives two or three monthly requests on a number of specific titles. The interest demonstrates, in my opinion, the need for our canonical writings. In the very near future, we hope to have the indices for volumes 31 (1969) – 56 (1994) and volumes 57 (1995) – 63 (2003) available at www.clsa.org.

In an effort to increase the society's visibility, the board of governors directed that the Executive's Office explore further exhibiting and advertising possibilities.

This last year as an economy measure and time constraints imposed by relocation, CLSA Publications exhibited only at our on convention and at the Canadian Canon Law Society. We hope to increase our exhibiting ventures in the coming year. We also are exploring advertising possibilities in magazines and periodicals. You will discover, for example, CLSA Publications listed in the September 2004 issue of *Priest* and THE 18TH ANNUAL BUYER'S GUIDE AND SUPPLIERS DIRECTORY published by Our Sunday Visitor.

CLSA Publications continues to be a small but important part of the Canon Law Society of America. I am most appreciative of our members who take part in our pre-publication specials. It is doubtful that one of our publications will make the *New York Times* bestseller list, but our books and printed materials provide valuable English language canonical materials around the world, a fact noted and commended during the Officer's Roman Curia trip in February 2004.

CLSA CONVENTIONS:

Members should make sure to read the reports found in the this year's *CLSA Proceedings* of our General Convention Chair, Rita Joyce Ferko, and the Chair of the Convention Planning Committee, Monsignor Michael Souckar. Both have worked tirelessly to move forward the Pittsburgh 2004 convention and the Tampa, Florida, convention of 2005. Both have worked to create a good program and hotel accommodations for these meetings.

I can also report that our convention planning company, Nix & Associates, are working on hotel contracts for future conventions. The Fort Worth Renaissance will host 2006; and they are searching the West coast for 2007. Personnel changes at Nix & Associates will bring new as well as familiar faces to the Pittsburgh convention. Our best wishes go to Kristi McClung and Gina Ratayczyk who moved on to other pursuits. We are happy to have Richard Nix, Hailey Kessler, and Lori Riley with us this year.

I also wish to acknowledge and thank the Diocese of Pittsburgh and their staff for helping to make this year's convention successful. I wish to especially express our gratitude to the Duquesne University School of Law and Dean Nicholas P. Cafardi who are hosting the Monday night opening reception of the Pittsburgh convention. Finally, I wish to express my gratitude to the staff of St. Paul Cathedral for allowing the CLSA to celebrate the convention Eucharist in this beautiful church built in 1834.

Once again, there are a number of exhibitors who have joined the attendees of the CLSA convention. Our welcome and thanks to them for providing information on their goods and services available to CLSA members.

AT Merhaut Church Restoration and Supply, Gibsonia, PA
 CLSA Publications, Annapolis Junction, MD
 CM Almy, Greenwich, CT
 Digital Innovations, Inc., Forest Hill, MD
 Granda Liturgical Arts, Inc., Chicago, IL
 Guest House, Rochester, MN
 Legal Resource Center, Silver Spring, MD
 Midwest Theological Forum, Chicago, IL
 School of Canon Law, The Catholic University of America, Washington
 DC
 School of Canon Law, St. Paul University, Ottawa, Ont., CANADA
 S.D. McGreevy, Overland Park, KS
Studia Canonica, London, Ont., CANADA
 St. John Vianney Center, Downingtown, PA
 The Jurist, Washington, DC
 Tribunal Systems, Inc., Phoenix, AZ
 Trinity Church Supply, Cincinnati, OH

Since our conventions move throughout the United States, members should feel free to contact the Executive's Office with the names of possible exhibitors in your particular region.

CLSA SCHOLARSHIPS:

This year the Executive's Office processed the Advent appeal letter for Reverend Langes Silva and the Scholarship Committee and the results of that appeal can be found in the Treasurers's Report in *Proceedings*. This year the Executive's Office also continued to seek funding for the new international scholarship fund, the Valentine Schaaf O.F.M. Memorial Scholarship Fund. For more information consult: <http://bill.laudeman.com/schaaf/index.htm>. Each year the Executive's Office receives a number of requests from students from developing nations who wish to study canon law either here or in the Roman universities. The new scholarship fund will hopefully allow the Canon Law Society of America to respond to an ever present and increasing need.

CONCLUSION:

This past year was a very active and at times a hectic one for the Executive Coordinator's Office. I am pleased that we were able to make the re-location of the offices take place in a way that did not significantly cut back on membership services. As I mentioned throughout the above report, the generosity and the kindness of the members greatly enhances the effectiveness of the society on a variety of topics and issues.

The Executive's Office has set a number of goals for the future month. Presently, study is underway to evaluate existing membership services and seek ways to enhance or better those services. Secondly, we look forward to working with those committees working on future publications of the society to bring these to members and interested parties as expeditiously as possible. Finally, the Executive's Office looks forward to continuing with the strategic planning process for the society.

On behalf of Mrs. Jennifer Miller and Mrs. Kay Winner and myself, I wish to thank you, the members of the Canon Law Society of America, for your support of our endeavors on your behalf. Your questions, observations, and notes of support throughout the year mean a lot to us. We are glad that we can serve you in many ways throughout the year, and we look to providing even better service in the coming months.

COMMITTEE
REPORTS

COMMITTEE REPORTS

STANDING COMMITTEES

Committee: **Budget**

Constituted: CLSA Constitution, Article X

Charge: To prepare the annual budget of the CLSA

Membership: Rev. William J. King, *ex officio*
Rev. Paul Hartmann
Sr. Sharon Euart, R.S.M., *ex officio*

Annual Report

Committee: **Convention Planning**

Constituted: CLSA Constitution, Article X

Charge:

1. Above all to work of the attainment of the purpose of the Society set forth in Article II of the Constitution;
2. To submit to the Board of Governors for approval the names of speakers and topics for discussion at the annual general meeting;
3. To initiate or cooperate in all research projects of the Society such as seminars, symposia and special studies relative to research and discussion, and to recommend to the Board of Governors honoraria for participants in these studies as well as for speakers at the annual general meeting;
4. To cooperate with the Executive Coordinator in arranging for all publications of the Society.

Membership: Rev. Msgr. Michael Souckar, Chairperson
Rev. Msgr. Nevin Klinger
Eileen Jaramillo
Rev. Arthur J. Espelage, O.F.M., *ex officio*
Rev. Lawrence O'Keefe, *ex officio*

Annual Report

Through the courtesy and hospitality of Archbishop Favalora, the Committee met in Miami 8-11 December 2003. Father Arthur Espelage; Father Lawrence O'Keefe; and Monsignor Michael Souckar attended the meeting. The remaining Committee members, Monsignor Nevin Klinger, was unable to attend and Eileen Jaramillo had not yet been appointed. Since that time, Meg E. Romano-Hogan was appointed to replace Eileen Jaramillo who resigned her membership in the committee because of her other duties.

There were only two items regarding the 2004 Convention that needed to be finalized. Father Patrick Cogan agreed to offer a seminar on the Sacrament of Penance and Mr. Robert Flummerfelt accepted to give the closing presentation on the theology of marriage from the perspective of the Latin and Eastern Codes.

It was agreed that the 2005 Convention in Tampa should highlight the fortieth anniversary of the closing of Vatican Council II. With this in mind, the general theme was formulated as: "*Sacrae Disciplinae Leges: Forty Years After the Council.*" The three major presentations and the seminar topics were crafted from this perspective, as much as possible.

Following is a list of the 2005 Convention's topics and speakers. As of this date, almost all of the speakers have formally accepted the invitation to address the Society.

2005 CLSA Convention Tampa, Florida 3-6 October 2005

"*SACRAE DISCIPLINAE LEGES: FORTY YEARS AFTER THE COUNCIL*"

Keynote

Topic: *Sacrae Disciplinae Leges: Forty Years After the Council*
Presenter: Reverend Ladislav M. Orsy, SJ

Major Presentations

Topic: *Lex Fundamentalis: The Law Within*
Presenter: Reverend Monsignor Thomas J. Green

Topic: Advocacy and Professional Ethics for the Canonists
Presenter: Ms. Diane Barr

- Seminars -

MARRIAGE LAW

Topic: Trauma and Marital Consent

Presenter: Reverend Kenneth Schmidt

Topic: *Egoismo* in Marriage Jurisprudence¹

Presenters: Reverend Monsignor Jorge Pérez and Reverend Luis García

RELIGIOUS LAW

Topic: New Forms of Consecrated Life

Presenter: *To be determined*

EASTERN LAW

Topic: Establishment of New Eastern Jurisdictions

Presenter: Reverend Monsignor Michael G. Thomas

CHANCERY

Topic: Jurisprudence in Penal Cases

Presenter: Reverend Monsignor Ronny Jenkins

Topic: Laity in Canonical Offices

Presenter: Ms. Catherine Gilligan

PROCEDURAL LAW

Topic: Techniques for the Canonical Interview

Presenter: Mr. Charles Renati

SACRAMENTAL LAW

Topic: Fulfillment of the *Cautiones* and Prohibitions in the Preparation for Marriage by those in the RCIA

Presenter: Reverend Kenneth Schwanger

Committee: **Nominations**

Constituted: CLSA Constitution, Article X

Charge: The functions of the Committee on Membership and Nominations are:

¹ This presentation will be bi-lingual (English/Spanish) with the possibility of simultaneous translation. Translation equipment could be borrowed from the Archdiocese of Miami.

1. To submit to the active members, at least one month prior to the date of election, the names of nominees as provided for in Article IX of the Constitution;
2. To propose for approval of the Board of Governors applicants for active membership under Article III, no. 2 of the Constitution, and to propose to the Board of Governors for honorary membership in the Society those who, in its opinion, qualify according to Article III;
3. To formulate and recommend to the Board of Governors plans for maintaining and increasing the membership of the Society.

Membership: Rev. Paul Counce, Chairperson
 Rev. Edward Malesic
 Ms. Zabrina Decker
 Rev. Lawrence O'Keefe, *ex officio*

Annual Report

The CLSA Nominations Committee met in Baton Rouge, Louisiana, from February 8-11, 2004, for the purpose of fulfilling its mandate to submit a slate of nominees for election at the 66th annual convention of the Society in Pittsburgh, Pennsylvania. All members were present at the meeting: Rev. Paul Counce, chair; Rev. Edward Malesic; Ms. Zabrina Decker; and Rev. Lawrence O'Keefe.

The Committee identified likely candidates and prioritized these by consensus. The committee did its best to factor in such elements as geographic distribution, *locus* of canonical education, gender, ministerial experience, ethnicity, prior activity within the CLSA, etc., in its choices.

The Committee's work resulted in the following slate of nominees for submission in nomination at the Pittsburgh convention:

For Vice-President/President-Elect:

Msgr. Daniel F. Hoyer, J.C.L., of Fall River, MA
 Rev. Joseph J. Koury, J.C.D., of Portland, ME

For Secretary:

Sr. Marilyn R. Vassallo, C.S.J., J.C.L., of Shreveport, LA
 Sr. Victoria Vondenberger, R.S.M., J.C.L., of Cincinnati, OH

For Consultants:

Rev. Tam N. Nguyen, J.C.L., of Tulsa, OK
 Ms. Siobhan M. Verbeek, J.C.L., of Washington, DC
 Sr. M. Kathleen Kuentler, P.H.J.C., J.C.D., of Belleville, IL

Rev. Kelley M. Vandehey, J.C.L., of Portland, OR
Rev. David V. Berberian, J.C.L., of Albany, NY
Mr. Jay M. Conzemius, J.C.L., of Madison, WI

Following upon the nominees' agreement to have their names placed in nomination, each was informed in writing of what is expected of them both as regards the election itself and their subsequent duties on the Board of Governors should they be elected. The Board of Governors was informed about the foreseen slate of nominees at their April 2004 meeting. Finally, the candidates' prospective nominations were announced to the membership of the Society at the time convention-registration materials were mailed out in June of 2004. The chair of the Nominations Committee coordinated the compilation and preparation of the candidates' biographical information for publication. Mention of the nominees' candidacies is foreseen in the fall CLSA *Newsletter* which is scheduled for publication just prior to the convention.

The Committee also made remote plans regarding the now-annual "Candidates' Forum" to be held at the Pittsburgh convention. The Committee's membership again will take care of moderating this Forum, which this year will be scheduled so as not to conflict with either mealtimes or other important events so as to encourage the greatest possible attendance from the Society's membership.

Note was made again at the Committee's meeting that the Board of Governors indicated in 2003 that a special task force or subcommittee will propose revision of the CLSA *Constitution* in the not-too-distant future. In this work, revision of the Committee's mandate is foreseen (cf. the report of the Committee in *CLSA Proceedings* 65 [2003], 322).

Committee: Professional Responsibility

Constituted: *Code of Professional Responsibility*, canon 9c(i), d(i)

Charge: The three senior consultants of the Canon Law Society of America's Board of Governors constitute a standing Committee on Professional Responsibility. The committee shall receive complaints of any party aggrieved with respect to provisions of the *Code of Professional Responsibility*, to make an initial finding that the complaint is not frivolous; and in the event that a majority of the committee considers the complaint to be serious in character, to refer the matter to the hearing officers.

Membership: Rev. Patrick Cogan, S.A.
Rev. Paul Hartmann
Sr. Mary Lou Walsh, S.N.D.

Annual Report

In the past year, the Committee has received two complaints which were submitted for consideration of possible violation of the CLSA *Code of Professional Responsibility*. The first complaint was examined and concluded that there was not a basis for further action, since the allegation did not conclusively determine an action by a CLSA member, nor if this alleged action was a violation of the *Code of Professional Responsibility*. The second complaint was examined and the Committee concluded that there was not a foundation for further action since a violation of the *Code of Professional Responsibility* could not be determined. Thus, neither of the two cases submitted to the Committee were forwarded to the Hearing Officer(s).

In order to facilitate the submission of complaints to the Committee, there is under preparation a form which will accompany such submissions. This will assist the membership in their awareness of the specific competency of the Committee, and will also assist the Committee's review of a complaint.

One complaint received by Committee in 2003 was not resolved until this year. The complaint was found to have a basis for further action. In accord with the CLSA *Code of Professional Responsibility* it was assigned to a Hearing Officer. The Hearing Officer found that Kevin O. Johnson violated the CLSA *Code of Professional Responsibility*. Based on the report from the Hearing Officer, the Board of Governors decided upon the appropriate penalty. On May 6, 2004, the President of the CLSA issues a letter of reprimand to Mr. Johnson. The party who submitted the complaint was informed of the outcome.

Committee: **Hearing Officers**

Charge: To deal with complaints arising under the *Code of Professional Responsibility* originally adopted by the CLSA in October, 1983: Canon 9, c (ii).

Membership: Rev. Thomas Brundage
Rev. Kevin McDonough
Sr. Victoria Vondenberger, R.S.M.

Annual Report

No report at the time of printing.

Committee: **Resolutions**

Constituted: CLSA Constitution, Article X

Charge: The functions of the Committee on Resolutions are:

1. To solicit, develop and draft proposed resolutions which will express the concerns of the Canon Law Society of America;
2. To consult with the membership at large and, in particular with the Board of Governors, the standing and ad hoc committees of the Society, and the organizers of the convention;
3. To formulate resolutions on given points in response to requests of the members of the Society;
4. To compose differences in the formulation of similar proposals and to revise all proposals so that the meaning of each is clear;
5. To encourage resolutions which authentically express in a positive way the activities and concerns of the Society.

Membership: Rev. Kelly Vandehey, Chairperson
Rev. Msgr. Ricardo E. Bass
Ms. Catherine A. Gilligan

Annual Report

The Resolutions Committee, Ms. Catherine A. Gilligan, Msgr. Ricardo Bass and myself as Committee Chair continued our communications with regard to the request of the Board of Governors to draft a protocol or guideline for submitting resolutions to the Committee. There was a feeling that a revision of the existing guidelines would serve to further clarify any doubts concerning the manner in which resolutions should be submitted for the vote of the Society membership.

In an e-mail dated 5 May 2004 the Committee received confirmation, from the Board of Governors, of the revisions made to the *Guidelines For Presenting Resolutions* and they were published in the June 2004 *CLSA Newsletter*.

As well, throughout the past months the Committee has continued its work on another request of the Board of Governors to develop a means by which the recommendations of the Board of Governors concerning a proposed resolution might be made known to the Society membership. It is the responsibility of the Resolutions Committee to forward onto the Society resolutions that are proposed, and in the course of the Resolutions Hearing to get a "sense of the house" and to move those resolutions based on that "sense." As a result, the Board of Governors, those working most closely with the membership and who are aware of the

resources available to it, felt that their recommendations should be made known apart from the decision of the Resolutions Committee to move or not move that particular resolution.

In response to this request, the Resolution Committee has developed a script to be utilized at the Resolutions Hearing. The proposed script was submitted to the Board of Governors for their spring meeting. On 5 May 2004 the Resolutions Committee received word that the Board approved the script as provided and has asked that it put into place at the 2004 Convention in Pittsburgh. The following addition, then, will be added to the instructions at the beginning of the Resolutions Hearing:

The Board of Governors has requested that should they have a recommendation, an observation or a position regarding a resolution, that the Resolutions Committee procedures provide for that recommendation/observation/position to be made known publicly to the CLSA membership at the Resolutions Hearing. Should the Board of Governors have something they would like to make publicly known to the membership, the Resolutions Chairperson will do so following the author or representative who speaks to the resolution. The purpose of doing such is to allow the membership to know if the Board has a position on a specific resolution and what it is.

Two resolutions have been submitted to the Committee and are currently being reviewed and prepared for the October Convention. To date there have been no further resolutions submitted to the Resolutions Committee.

ON GOING COMMITTEES

Committee: **Advisory Opinions**

Constituted: 44th Annual Meeting, 1982

Charge: To issue advisory opinions on the meaning of the canons of the revised code after its promulgation. Such opinions are to provide non-official interpretations in response to requests for them.

Membership: Rev. James I. Donlon, Editor
Sr. Ann Keevan, C.S.J., Associate Editor
Sr. Mary Ann Hayes, C.S.J., Associate Editor

Annual Report

The Committee on Advisory Opinions continued to facilitate the work of soliciting opinions from the membership of the Canon Law Society of America in response to any inquiries which were received. Additionally, the Committee sought from the members of the Society opinions which they may have already rendered to various diocesan officials or religious institutes and superiors. Each inquiry received was sent to one or more canonist(s) for opinions. This procedure was generally successful despite the busy schedules of the various canonists contacted by the Committee. Once the opinions were received by the Committee, they were edited and prepared for publication in the CLSA annual volume entitled *Roman Replies and CLSA Advisory Opinions*. The finalized text was transmitted to the CLSA national office on schedule, in early July.

The Committee has also continued its endeavor at expanding the pool of canonists participating in this annual project of the Society. As it has for the past several years, the Committee has reached out to members of other canon law societies. Thus included in the 2004 edition of *Roman Replies and CLSA Advisory Opinions* will be seen contributions from members of the Canon Law Society of Australia and New Zealand, the Canadian Canon Law Society and the Canon Law Society of Great Britain and Ireland. This involvement of these canonists from other societies and nations broadens the scope and depth of opinions being presented to the membership. Further, the Committee continues in its efforts to recruit new contributors, especially the newer members of the Canon Law Society of America. This endeavor also continues to meet with success. Hopefully these efforts will continue to enhance the annual publication, reflecting the broad spectrum of the CLSA membership on the various canonical issues and thinking, and the types of questions and concerns being addressed within the various dioceses and religious communities. Thus, the Committee believes this will continue to make *Roman Replies and CLSA Advisory Opinions* a valuable tool for all canonists.

The Committee has also continued its efforts in inviting more members of the CLSA (and other canon law societies) to become involved in this annual endeavor, by submitting either responses to queries received by the Committee or responses and opinions already prepared for and submitted to diocesan officials and/or religious superiors. Often these responses already prepared for diocesan officials and/or religious superiors are particularly valuable in that the subject matter being treated concerns issues being presently confronted by other people. When the Committee receives such opinions that had been prepared for diocesan officials and/or religious superiors, the material is carefully edited so as to maintain confidentiality. All references to particular people or places are removed.

The 2004 edition of *CLSA Advisory Opinions* presents approximately fifty opinions, covering a broad spectrum of issue and canons. Thus, in the estimation

of the Committee, this year's project has been a successful one, even though the number of entries is a bit lower than the previous year. This seems attributable to the busy schedule and numerous demands being experienced by many canonists, as the Church continues to face the canonical repercussions of the clergy sexual abuse scandals. Many canonists contacted were simply over-extended and thus unable to assist with AO this year. Hopefully they will be more available to assist in the future!

In conclusion, the Committee on Advisory Opinions expresses its continuing gratitude to the members of the Canon Law Society of America and those others individuals who submitted inquiries and opinions during this past year. It is only as a result of this ongoing contributions and assistance of these canonists, generously sharing time and talent, that *CLSA Advisory Opinions* continues to meet with success and continues to be that valuable tool that so many people find it to be.

Work has already begun on the 2005 edition of *CLSA Advisory Opinions*. A number of questions and opinions have already been received. As ever, the Committee welcomes and invites the participation of all members of the Society. Members may assist in any of several ways.

- Members may volunteer to be a part of the Committee's pool of canonists to whom queries would be forwarded for response. If any member wishes to be a part of such a pool, please contact the Committee, indicating one's area of particular interests and expertise. This greatly facilitates the Committee's work in submitting questions received.
- Members are invited and encouraged to forward to the Committee opinions or advisory opinions already prepared for diocesan officials and/or religious superiors. As noted above, the Committee carefully edits these opinions so as to insure confidentiality.
- Members are invited to forward to the Committee questions that would in turn be forwarded to other canonists for opinions to be published in next year's edition of *Roman Replies and CLSA Advisory Opinions*.
- The Committee welcomes any other suggestions or the recommendations members may have.

Contributions and suggestions may be forwarded to the Committee on Advisory Opinions at the following address:

Rev. James I. Donlon
Diocese of Albany
40 North Main Avenue
Albany, New York 12203
(518) 453-6620
james.donlon@rcda.org

Committee: **Canonical Aspects of Question Regarding Sexual Abuse of Minors**

Constituted: 2003

- Charge:
1. To monitor and evaluate the canonical implications of issues arising with respect to the protection of ecclesial rights of children and vulnerable adults who have been abused and the accused clergy;
 2. To recommend to, and coordinate under the supervision of the Board of Governors, CLSA tasks consistent with this mandate;
 3. To serve as a liaison between the CLSA and other interested groups.

Membership: Rev. Msgr. Frederick C. Easton, Chairperson
Sr. Sharon Euart, R.S.M.
Ms. Diane Barr
Rev. Msgr. Robert Deeley

Annual Report

The membership of this committee for most of the past year consisted of Fred C. Easton (chairperson); Diane Barr, Sharon Euart, RSM, Robert Deeley. Msgr. Robert Deeley was recently assigned as one of two canonists from the USA to serve as assessors for the Congregation for the Doctrine of the Faith. Therefore, he has resigned his position as a member of the committee. The committee is grateful for his contribution during the past year.

On November 24, 2003 this Committee submitted an updated version of the *Guide To The Implementation Of The U.S. Bishops – Essential Norms For Diocesan/Eparchial Policies Dealing With Allegations Of Sexual Abuse*. It was later decided by the Board of Governors that, in view of the somewhat rapid developments in this area, the more practical manner of publication of the revisions would be to have it posted on the CLSA website. The revised text is available at www.clsa.org/briefs.htm.

The undersigned committee chair attended the two-day special seminar on penal law and the right of defense sponsored by the Pontifical University of Santa Croce in Rome, March 25-26. He has shared some of this experience with the rest of the committee. However, there was a plan to publish in English the entire seminar or as much of it as possible. A summer mailing from the Office of the Executive Coordinator announced that the book is now available from Midwest Theological Forum.

Committee: *Canon Law Digest*

Constituted: Board of Governors, 1998

Charge: To prepare volume XIII (1991-1995) and volume XIV (1996-2000) within eighteen months of October 2002 Convention; volume XV (2001-2005) in the normal course of time.

Membership: Rev. Msgr. John A. Renken
Rev. Msgr. Ronny Jenkins
Rev. Msgr. Frederick Easton

Annual Report

No report at the time of printing.

Committee: **Civil and Canon Law**

Constituted: 47th Annual Meeting, 1985

Charge:

1. Identify those norms of the code which require the Church to defer to secular law;
2. Clarify the effects of secular law on canon law in various states and local jurisdictions;
3. Identify those issues, organizations, resources, publications, and personnel to facilitate communications between canon and secular law;
4. Identify possible areas of cooperation between canon and secular law.

Membership: Rev Philip Brown, Chairperson
Mr. Charles Renati
Ms. Donna Sauer

Annual Report

In addition to its general mandate the committee has been charged with the responsibility of locating individuals to implement two resolutions passed at the October 2003 Convention. The first resolution calls for a comparative study of the canonical institute of Prescription and the rationales underlying the civil common law institute of Statutes of Limitation. The second calls for a comparative study of the Anglo-American concept of “due process” in relation to the canonical concept of the “right of defense” and related canonical rights, procedures and concepts.

The Committee is ordinarily made up of three members including the Chair.

After a period of limited activity, the committee wishes to become more active in carrying out its mandate. The comparative studies called for by the 2003 convention is already serving as a spur to greater activity, and towards bringing other aspects of the committee’s mandate into clearer perspective and allowing them to become more focus. The committee solicits the interest and contributions of any and all CLSA members who have an interest in its areas of concern and activities.

PROGRESS OF COMMITTEE WORK

1. Convention Resolution Studies.

a. Resolution 1: Prescription.

The Committee has located a canon law doctoral candidate in Rome who is preparing a thesis on a topic related to the canonical institute of prescription who has agreed to make relevant portions of his research available in the form of a research report for incorporation into a larger research report on the topic of the rationales underlying “statutes of limitation” in civil law. It is anticipated that this research will be incorporated into the larger report on civil law statutes of limitation for purposes of comparison. The researcher agreed to provide the Committee with the results of his research by September 1, 2004. This report will be supplemented by the time of the Annual Meeting with whatever has been completed by this researcher by convention week.

b. Resolution 2: Due Process and the Right of Defense.

The committee has located a third-year law student at the Columbus School of Law (The Catholic University of America) who has agreed to undertake the task of researching and reporting on the subjects of “due process” in American civil law (including the historical background and antecedents of this legal concept) and the rationales underlying “statutes of limitation” in civil law. The researcher has

manifested an awareness that “statutes of limitation” actually have their origins in the emergence of the concept of “prescription” in medieval canon law. Thus, at this point it appears that a researcher has been found who may have a special ability to achieve the results called for in the convention resolutions (relating canon and civil law concepts to one another, and identifying their similarities and differences).

The intended time frame for completing the convention resolution research projects is that they will be completed in time for the 2004 CLSA Annual Meeting in Pittsburgh. If that goal is met, this report will be supplemented at the time of the convention with the reports or as much of the research as has been completed at that time.

c. The Right of Defense.

No one has been found as of the date of preparation of this report to complete the portion of the research called for in Resolution 2 to be devoted to elaborating the history and elements of the “right of defense” in canon law. Efforts are continuing to locate someone capable of completing this research. This report will be supplemented in accordance with whatever progress is made in locating someone to do this part of the research. The Committee is very open to input and suggestions for locating someone to complete this portion of the research.

2. Facilitation of Communication and Cooperation between Canon and Civil Law.

It is suggested that contacts be made with the USCCB office of legal affairs and also with the association of diocesan attorneys, and any other organizations that might involve civil lawyers who work on behalf of or advise Church agencies, in an effort to establish some sort of liaison between the CLSA and these organizations and civil lawyers who work on behalf of the Church. It is believed that such contacts would best be made officially at the level of officers of the CLSA in an effort to establish contacts that could then be turned over to the Committee (and also to determine the willingness of these agencies and individuals to establish such contacts and communication). It is also suggested that it might be helpful for CLSA officers to broach the topic with members of the American hierarchy (especially officers of the USCCB) to ascertain their willingness to support the establishment of such contacts. The object of such contacts would be to initiate and carry out an ongoing dialogue concerning the nature of canon law as opposed to civil law in the United States, and the relevant similarities and differences between the two legal systems, in order to foster greater understanding between canonists and civil lawyers working on behalf of the Church, and to promote the avoidance of mis-communication and misunderstanding between representative of each legal system due to misunderstandings that stem from the use of terminology or from

preconceptions regarding the nature of each system by representatives of the other that may be mistaken.

Efforts are also being made to establish contacts with individual civil lawyers, especially those who work on behalf of the Church, who may be interested in being involved in such dialogues.

3. Identification of Codal Norms Regarding Civil Law; Clarification of Effects of Civil Law on Canon Law.

Because of the priority given to the elements of the Committee's work outlined above, this is the area in which the least amount of progress has been made in the past year. It is also the part of the Committee's mandate that is the most comprehensive, ongoing, and difficult to achieve in any kind of a comprehensive way, not least of all because of the limited human and other resources available for carrying out this element of the mandate. Nevertheless, this area of the Committee's work is of great importance. It is recommended that efforts be made to organize special committees on the ecclesial provincial or regional level and/or the civil regional or state level to assist in this aspect of the Committee's mandate. Civil laws relevant to the relationship between canon law and civil law differ so significantly from one state to the next in the United States, and perhaps from one province to the next in Canada, not to mention in different regions of Mexico and Central America, that it is hard to imagine how this aspect of the Committee's mandate could be carried out entirely at the national level without significant assistance from sub-committees knowledgeable of the laws existing in individual states, provinces and other jurisdictions below the national level.

MEETING OF THE COMMITTEE

It is the intention of the chair to utilize the time set aside for committee meetings at the 2004 Convention in Pittsburgh for a meeting of the Committee.

Committee: Eastern Canon Law

Constituted: 46th Annual Meeting, 1984

Charge: To serve CLSA as a resource body in the area of Eastern canon law and interritual matters, and to aid the CLSA membership in understanding the Eastern Catholic Churches.

Membership: Rev. Francis Marini, Chairperson
Rev. George D. Gallaro
Mr. Robert Flummerfelt

Annual Report

The single project in the Eastern Canon Law Committee for the last several years was the project on comparative sacramental discipline, which is now complete. There was a meeting of the Eastern Canonists at the 2003 CLSA Convention, and many CLSA members attended and participated in a question and opinion session. There has been no formal meeting of the committee, and none is planned since there are no projects presently in the committee.

The Eastern Law Committee members remain available to CLSA members and others for consultation on Eastern Canon Law issues and questions. The Chair has been consulted on an almost weekly basis by other members of the CLSA on issues of Eastern Canon Law.

Committee: Electronic Media

Constituted: Board of Governors, 1995

Charge: To explore and develop ways that the CLSA can make use of electronic media.

Membership: Rev. Paul B.R. Hartmann, Chairperson
Rev. Lucian C. Martinez, S.J.
Mr. Peter Vere
Rev. Patrick Cooney, O.S.B.
Rev. Arthur J. Espelage, O.F.M., *ex officio*

Annual Report

CLSA WEB SITE

Since the January, 2004 report, the Committee has continued, with some fits and starts, to focus primarily on the future of the CLSA website (www.clsa.org). A timeline for this process of revision and complete re-design.

Contacts have been made to both change the service provider that hosts the CLSA Website and to begin a review of options open to the Society to contract with an outside webmaster who will work with the Executive Coordinator to manage the growing functionality of the web site, and to enhance and expand web-based services from the Society.

RECOMMENDATION TO RE-NEWED PUBLICATIONS COMMITTEE

The committee re-iterates a request that the BOG consider, endorse, and forward to the newly re-formed Publications Committee a proposal that POD publishing become the standard for (semi-) annual publications; i.e. *Roman Replies*, *Advisory Opinions*, *Proceedings*, *Membership Directory*. Decisions should be made in light of a determined policy to fully utilize the CLSA web-site for electronic format materials wherever possible.

Committee: **Institutes of Consecrated Life and Societies of Apostolic Life**

Constituted: On-going Committee

Charge: Mandate is:

1. To identify and research topics with significant ramifications for institutes of consecrated life and societies of apostolic life;
2. To propose at least one topic and speaker for a convention seminar and one topic and proposed speaker for a pre-convention seminar;
3. To identify those issues, organizations, resources, publications and personnel to facilitate a better understanding of developments in canon law regarding consecrated life.

Membership: Sr. Rosemary Smith, S.C., Chairperson
Sr. Nancy Reynolds, S.P.
Rev. Warren Brown, O.M.I.

Annual Report

This past year the Committee has focused its efforts on 1) refining and fleshing out its proposal for a symposium on sponsorship in response to requests from the Board of Governors, and 2) further developing the project once approval was received from the BOG in May 2004. It is anticipated that the symposium will take place in summer 2005 with a publication resulting sometime in 2006.

To shape the project and work through the details the committee met as a group five times, once at the Portland Convention, once in person for a weekend at the Oblate Center in San Antonio (November 2003) and three times by telephone conference call. In the coming year the committee anticipates a continued focus on the organization and execution of this symposium on sponsorship.

Committee: Investment Review

Constituted: 1997

Mandate: To assist the Treasurer in review of CLSA investments

Membership: Rev. William J. King, Chairperson, (*ex officio*)
Sr. Nancy Reynolds, S.P.
Rev. Joseph Binzer
Rev. Gregory L. Parkes

Annual Report

The Investment Review Committee held a 50 minute conference call on September 28. The Agenda was as follows:

1. Review the list of current investments for adherence to CLSA investment guidelines, especially social responsibility
2. Review Investments in light of CLSA asset allocation guidelines
3. Review recent performance of investment instruments
4. Discuss the recommendation of Joseph Godbout, CPA, to investigate Christian Brother Investments for possible move of investment management
5. Discuss investment of the annual "Office Logistics Fund" allocations
6. Discuss consolidation of checking accounts

Several concerns were raised by committee members concerning the conformity of current investments to the CLSA social responsibility investment guidelines. It was recommended that we divest ourselves of several of the current stock shares in our investment portfolio. This led immediately to a discussion of our auditor's suggestion that we look at moving CLSA investments into the Christian Brothers managed portfolio. The committee believed that, based on experience with the Christian Brothers fund, that they would undertake social responsibility research effectively and in conformity with our guidelines. Performance of at least some parts of the Christian Brothers funds has greatly exceeded the growth of our current portfolio.

The Committee recommends that the Board of Governors authorize the Treasurer, the Executive Coordinator, and another member of the Board of Governors (perhaps the President, given the geographic location) to meet with a representative of the Christian Brothers Investment group to solicit a proposal from them for the management of CLSA investments.

The Committee discussed the consolidation of the CLSA checking accounts and recommends that the accounts be consolidated into two: scholarships and general account. The Executive Coordinator should determine the best time for this within the current fiscal year. The Committee further recommends that monies not anticipated to be required for immediate cash flow needs be invested either in a Money Market account or short-term instruments such as a 90 day Certificate of Deposit, as they become available through dues collection and publications sales, at the discretion of the Executive Coordinator. It is also recommended that the Treasurer or Executive Coordinator check with the Diocese of Arlington or Archdiocese of Washington to see if such funds could be deposited in an interest-bearing short-term accessible fund there.

Some members of the Committee currently receive quarterly statements and reports from Congress Asset Management, and some do not. *It is requested that the Executive Coordinator contact Congress Asset Management annually to update the names and addresses of the current committee members.*

Committee: **Lay Canonists**

Constituted: 2002

Charge: To address issues concerning lay canonists and their ministry in the church and issues concerning the laity and their ministry in the salvific role of the Church.

Membership: Ms. Siobhan Verbeek, Chairperson
Sr. Kate Kuentsler, P.H.J.C.
Mr. Eduardo Huerta

Annual Report

In the Fall of 2003, the Committee accepted an invitation to present an informal report on the Committee's activities at the annual meeting of the Lay Canonists Caucus, which is held in conjunction with the October CLSA Convention. The members' presence at the meeting proved to be an invaluable opportunity to gain visibility for the newly established Committee, to maintain an open line of communication with lay canonists, and to receive feedback from those present on several of the proposals currently under consideration by the Committee for implementing its approved mandate. The Committee received a high level of support and encouragement for the direction the Committee has undertaken to-date, and the members were appreciatively energized by the enthusiasm of those gathered for the conversation.

In the Spring of 2004, with the Board of Governors' approval, the Committee undertook an informal study of lay persons who received diocesan *sponsorship to study canon law*. The Committee is hopeful that the evaluation of this experience will provide helpful insights for those who may wish to consider such arrangements in the future. An Executive Summary of the findings from the Committee's Study may be found at the conclusion of this Report.

With the Board of Governors' approval, the Committee also solicited information from U.S. dioceses regarding their willingness to host lay students in canon law as temporary *canonical interns* during inter-semester breaks. This can be an especially valuable service to prospective lay canonists who do not have the benefit of diocesan sponsorship, but who have the desire to obtain practical experience prior to graduation. A list of the dioceses who responded favorably to the Committee's request has been forwarded to the CLSA Executive Coordinator's Office. Details concerning the arrangements are to be worked out individually with each host diocese.

The Committee has determined to devote the remainder of 2004 to an exploration of the ways that it might better utilize the expertise and experience of the Society's *international lay canonists*. This is in keeping with the CLSA's general purpose "To establish a dialogue and share ideas, proposals and insights, with other canon law societies in the world" (*Constitution*, II.7).

Finally, the Committee wishes to acknowledge with gratitude and encouragement the ongoing *service of lay canonists in the work of the CLSA*. We note, for example, that lay canonists are currently serving on 24 of the CLSA's 28 Committees and Task Forces. Lay canonists are also represented on the Board of Governors and in other elected Offices.

EXECUTIVE SUMMARY

INFORMAL STUDY OF DIOCESAN SPONSORSHIP ARRANGEMENTS FOR THE STUDY OF CANON LAW

Introduction

One of the most common questions canonists receive from lay persons who express an interest in studying canon law is, "How can I obtain diocesan sponsorship to acquire the licentiate?" Diocesan sponsorship provides an aspiring lay canonist with not only the financial assistance to obtain the requisite degree, but also the added benefit of securing job placement once the degree has been completed.

In an effort to assist both lay persons who find themselves asking this question, and canonists who find themselves responding to it, the CLSA Lay Canonists Committee conducted an informal Study of diocesan sponsorship arrangements. The Study consisted of a brief survey of lay canonists who received financial assistance to obtain the licentiate in canon law on behalf of dioceses within the United States. It was the Committee's hope that an exploration of the various models that have existed nationally could assist interested diocesan leaders by providing welcome insights and recommendations for "best practices."

In order to achieve the broadest possible sample, the Committee sent its survey to each of the 183 non-ordained canonists who retain membership within the CLSA. As a result of this mailing, 31 usable surveys were completed and returned. The Committee is grateful for the generous commitment of time and attention expended by those who responded to the request. The following Report summarizes the Study's major findings. The results are presented in a manner that respects the confidentiality of the respondents.

Who are the Lay Persons Who Have Been Sponsored By Diocesan Bishops to Pursue Canonical Studies?

While the survey instrument did not request detailed personal information about the respondents (e.g., concerning age or marital status), the overwhelming majority of respondents to the Committee's survey are women. Among the women who responded, moreover, the majority are non-ordained religious women. When considered in conjunction with the survey findings pertaining to the sponsorees' current level of appointment (see below), the Committee believes that this finding is illustrative of the long-standing commitment of diocesan bishops to support women in positions of diocesan leadership. The Committee is also hopeful that the experiences of religious women in obtaining a degree in canon law through diocesan sponsorship will help to inform other lay persons who will be invited to follow in their footsteps in future years.

From a geographical perspective, the Committee's study revealed that diocesan sponsorship has existed in at least one diocese in thirteen of the fourteen USCCB ecclesiastical regions. It has been most prevalent, however, in dioceses in the Midwestern and Western regions of the United States.

Finally, the Study showed that the overwhelming majority of recipients of diocesan assistance were already working in some capacity within the diocese that sponsored them prior to their selection to study canon law. The Committee notes that this finding mirrors other national studies of lay ministers which have found that persons selected for ministerial positions are generally already known by diocesan or parochial representatives prior to being sent for ministerial formation or study (cf., Philip J. Murnion and David DeLambo, *Parishes and Parish Ministers*

[1999], and USCCB Subcommittee on Lay Ministry, "Financial Assistance for Lay Persons Preparing for Lay Ecclesial Ministry" [2002]).

Characteristics of Sponsorship Arrangements

The Committee's survey asked several questions that were intended to elicit detailed information about sponsorship arrangements that have been created by U.S. dioceses for sending non-ordained persons to study canon law. The Study's major findings are as follows:

1. *Demonstrated financial need:* In only one instance was it reported that demonstrated financial need was a pre-condition for obtaining diocesan sponsorship. In all other cases, the sponsorship arrangement was not provided on a "need-only" basis.
2. *Academic achievement:* According to the survey respondents, academic achievement was also not a pre-condition for continued sponsorship by the diocese. It was expressed by many respondents, however, that it was "expected" that they would pass the courses leading up to the degree.
3. *Tuition and textbooks:* In almost every case, the diocese agreed to pay 100% of the tuition costs, as well as the complete cost for textbooks. In some instances, lay persons received an academic scholarship from the institution in which they were enrolled, thus freeing the diocese from having to assume the costs associated with this aspect of the sponsorship arrangement.
4. *Room and board:* In some instances, dioceses paid 100% of the student's room and board. In most cases, however, this responsibility was left to the student or to the student's religious congregation to provide. In a few instances, respondents indicated a pre-condition for living in diocesan-designated housing, e.g., on campus or in a particular religious house.
5. *Travel:* Travel costs to and from the university during inter-semester periods were generally equally split between the diocese and the student.
6. *Supplementary income:* One area where diocesan sponsorship models exhibit a great degree of variance is in regard to supplemental income. In the majority of cases, lay persons were offered a stipend to cover the cost of their living expenses. In some cases, they were offered their current salary or a slightly reduced salary. In an equal number of cases, the lay person was not provided with any supplemental income at all.
7. *Time of recruitment:* The overwhelming majority of respondents were recruited prior to beginning formal canonical studies. This was not always the

case, however. In some instances, lay persons were recruited between the first and second year of study.

8. *Term of service:* The overwhelming majority of lay persons who received diocesan sponsorship to study canon law agreed to a 5-year term of service in exchange for diocesan sponsorship. The fewest number of years identified by respondents for an agreed upon term of service was 3 years. The greatest number of years agreed upon for a term of service was 8-10 years. In some instances, a mathematical formula was applied by the diocese to determine the total number of years that would be required in service to the diocese following the student's graduation (e.g., 2 years for every year of study).
9. *Forgiveness of student loans:* In all but one case the generosity of the diocese's sponsorship arrangement precluded the need for the recipient to obtain additional student loans. In the one exception, the diocese assisted the student in paying off the loan on a monthly basis.
10. *Escape clause:* A few respondents indicated that a provision was incorporated into their sponsorship agreement to accommodate unforeseen changes in personal circumstances that would preclude the recipient from being able to abide by the agreed upon term of service. In this regard it was noted that the recipient was obligated to pay the diocese back a percentage of what was expended, in view of each year of service owed. In one instance, a clause was added to the agreement indicating that, for a just cause, the recipient would not be expected to reimburse the diocese for the money expended to earn the degree.
11. *Attendance at a designated institution:* In most cases recipients were permitted to choose which academic institution to matriculate in. In some instances, the diocese indicated a preference for a particular university, or for a particular program within a designated university (e.g., The Catholic University of America's Summer Program).
12. *Internship opportunities:* In nearly every case, respondents returned to the diocese during their summer break to participate in internship opportunities within the diocesan tribunal (mostly) or the chancery. In a few instances, the recipient returned to the job within the diocese which had been left to attend school.
13. *Contract:* Respondents were nearly evenly split in reporting whether they signed a written contract as a part of their sponsorship arrangement.
14. *Provision of benefits:* In a few instances, respondents reported that the diocese agreed to continue paying health insurance premiums while enrolled at the

university.

Recommendations for Lay Persons Who Seek Diocesan Sponsorship To Study Canon Law

The Committee's survey included an open-ended question asking respondents to consider any advice that they would give to lay persons who express an interest in obtaining diocesan sponsorship to study canon law. The following points are representative of the advice given by the respondents:

1. *Know your qualities and strengths:* Respondents to the Committee's survey underscored the importance of undergoing an honest and personal assessment of one's unique qualities and strengths. This is essential, it was noted, for determining whether an individual is well-suited for the canonical ministry in general, and work in a matrimonial Tribunal in particular.
2. *Complete your theological and philosophical education, and ancient and foreign language requirements, before beginning formal canonical studies:* In view of the Congregation for Catholic Education's increased requirements for obtaining the licentiate in canon law, survey respondents recommended that candidates consider completing all of the requirements that are necessary for satisfying the First Cycle locally, before applying to a canonical faculty for completion of the Second Cycle. Respondents also recommended that candidates complete all language requirements that are necessary for obtaining a degree in canon law prior to beginning formal canonical studies.
3. *Develop personal contacts within the diocese:* Several respondents underscored the importance of establishing and maintaining professional contacts with diocesan personnel. Such contacts may begin at the parish level and extend to tribunal and chancery staff. It was observed that establishing diocesan contacts can provide a prospective candidate with a clearer indication of the needs of the diocese, as well as its openness to considering applications for sponsorship.
4. *Be willing to intern with a diocese before beginning formal canonical studies:* The Committee's study confirmed that prior internship experience within a diocese benefitted both diocesan personnel and prospective lay canonists in determining whether a particular individual is "the right fit" for professional service within the local church. Prospective lay canonists are encouraged to inquire whether a diocese has, or is willing to establish, a "paralegal apprentice" or "paralegal" program for this purpose. Respondents who had benefitted from similar arrangements reported that the experience gained proved to be an invaluable complement to the exploration of canonical processes and constructs within the academic setting.

5. *Be prepared to sign a contract:* While not every diocese requires its sponsorees to sign a contract prior to the reception of diocesan sponsorship, prospective canonists should educate themselves on the terms that may be incorporated in such agreements, as well as on the rights and obligations that they may be asked to commit to. If necessary, the contracting party should seek the appropriate counsel prior to signing an agreement.
6. *Be clear on what position you will be returning to after earning the licentiate:* Several respondents noted the importance of seeking clarity with respect to the position and the salary that will be assumed following completion of the academic program.

Recommendations for Diocesan Leaders Who Wish to Sponsor a Lay Person To Study Canon Law

The Committee's survey likewise included an open-ended question asking respondents to consider any advice that they would give to arch/diocesan leaders who may be considering instituting a sponsorship program for the study of canon law by the laity. The following points are representative of the advice given by the respondents:

1. *Look at the gifts that are already available within the diocese to identify persons to sponsor:* Many of the respondents to the Committee's survey were already working within the diocese in some capacity prior to their selection for further study. In some instances, they exercised responsibilities related to canonical work (e.g., parish advocates). In other instances, they were employees in diocesan schools, parishes, or the diocesan curia. Church leaders interested in sponsoring persons to study canon law are encouraged to make their interest known broadly within the diocese through the appropriate avenues of communication.
2. *Consider a wide range of backgrounds:* Several survey respondents reflected upon the qualities that make a person a "good canonist." These qualities included a desire to serve the Church, strong written and oral communication skills, a pastoral attitude, solid theological grounding, a proven work ethic, and a passion for justice. In making the selection of who to sponsor for further study, diocesan leaders are encouraged to look beyond an individual's interest in law as a profession, to those qualities that will make an individual a proven asset to the diocese and its commitment to ministry.
3. *Never underestimate the importance of personal invitation:* Several survey respondents identified one person who was particularly instrumental in leading them to pursue canonical studies. The power and the potential of a personal invitation are often evident in other areas of ministerial pursuit. Canonists

should be attentive to recognize individuals who possess the requisite qualities for becoming future canonists, and not hesitate to offer their encouragement in this regard.

4. *Allow the process of discernment to unfold:* Respondents to the Committee's survey repeatedly underscored the importance of providing a sufficient amount of time to discern whether there is "a proper fit" between current diocesan personnel and a prospective sponsoree. In an effort to assist with this process, respondents recommended that prospective canonists be offered internship opportunities within the diocese as a first step toward determining whether sponsorship for study will be provided. It was noted that these programs also have the added benefit of providing the candidate with experience that can augment the person's formal canonical training.
5. *Work with the candidate to form a contract that is agreeable to all parties:* While not every diocese requires its sponsees to sign a written contract in exchange for diocesan sponsorship, several respondents to the Committee's survey encouraged the development of some form of written agreement. Diocesan leaders are encouraged to consult with other dioceses that have a proven record of developing agreements of this nature, and to work closely with an individual sponsoree to provide for particular personal exigencies that may exist.
6. *Maintain contact with the sponsoree throughout the course of studies:* Many respondents reported particular gratitude for the ongoing communication and support that they received from diocese personnel while away at school. Diocesan leaders are encouraged to recognize the ongoing relationship that has been established by the decision to sponsor, and to be mindful of their sponsees over the course of the academic year.

An Observation

The Committee's survey asked lay canonists to identify (by name) the diocesan bishop who sponsored them to study canon law on behalf of the diocese. Inclusion of this question on the survey was intended to link prospective lay canonists with diocesan ordinaries who have an established record of entering into such arrangements. The results revealed, however, that over half of the bishops who sponsored lay persons in the past are now either retired or deceased. The Committee has taken note of this finding and its potential implications for the need to educate more recently appointed members of the episcopate to the benefits of sponsorship arrangements.

What Are They Doing Now?

The Committee's survey concluded with a question asking the lay person to identify his or her current position and place of employment. The Committee wishes to underscore the fact that recipients of diocesan financial assistance continue to serve in positions of considerable responsibility both nationally and at the level of the local church. Positions held by diocesan sponsorees include Chancellor, Judge, Director of the Tribunal, Director of the Department of Canonical Affairs, and Professor of Canon Law.

In most cases, lay persons who received diocesan sponsorship have been serving in diocesan leadership for over a decade, thus well beyond the initial contracted expectation. Roughly 1/3 of the respondents are no longer working for the diocese which originally sponsored them (respondents were not asked to indicate a reason why this is the case). In nearly every case, however, the lay canonists continue to exercise a judicial ministry on behalf of the Church in the United States. In this sense, sponsorship continues to be a gift to the U.S. Church and an expression of stewardship of the Church's many vital and talented human resources.

Conclusion

The Committee's Survey included an open-ended question that asked the respondents to reflect upon their experience from the perspective of hindsight: "If there is something that you would have done differently with respect to your sponsorship arrangement, what would that be?" This question was included on the survey in order to provide recipients with an opportunity to suggest changes that would benefit future sponsorees. The Committee was struck by the number of respondents who indicated that they "would not have done *anything* differently." Respondents were unanimous in expressing gratitude for the generosity of the dioceses in the sharing of often limited financial resources and for the generally supportive attitude which they experienced from diocesan personnel throughout the process.

Committee Recommendations

In view of the above findings, the Lay Canonists Committee offers the following recommendations to the CLSA Board of Governors (BOG) for its consideration:

- #1: That the BOG will consider preparing a small resource addressing the issue of diocesan sponsorship for the study of canon law which could be made available to diocesan bishops, and to attendees at the workshops, conventions and conferences sponsored by the CLSA;
- #2: That the BOG will be mindful of the "signs of the times," especially

in regard to the changing demographics of Church personnel within the United States, when promoting the canonical profession generally, and in planning strategically for the CLSA particularly;

#3: That in responding to requests for information about diocesan sponsorship programs, CLSA representatives will be mindful of the depth and breadth of the Church's canonical needs;

#4: That the CLSA will continue its practices of supporting the Scholarship Fund and of providing a vital clearinghouse for the exchange of information regarding dioceses that are in need of the services of degreed canonists;

#5: That the CLSA, through its membership, will continue to dialogue with members of the episcopate regarding the monetary demands associated with preparing persons to exercise the canonical ministry, as well as the attendant rewards of entering into such commitments; and

#6: That the BOG will continue to explore creative ways by which the CLSA, through its membership, can collaborate with the Deans of the canon law faculties to provide canonical formational training in fulfillment of the new requirements for obtaining the licentiate in canon law.

Committee: Marriage Research

Constituted: 1978

Charge: From 1984 Convention:

1. To identify specific areas of marriage research and propose to the Executive Coordinator a marriage topic for a pre-convention workshop;
2. To identify scholars who have done or will do research in those particular areas and who will produce manuscripts for publication;
3. To facilitate the publication of this research either in the CLSA-sponsored publication *Marriage Studies* or in other scholarly or professional journals.

Membership: Rev. John P. Doerfler, Chairperson
Sr. Maureen McPartland, O.P.
Rev. Timothy Gadziala

Annual Report

The Marriage Research Committee has been discussing the contents of the next volume of *Marriage Studies*. We are considering that the next volume focus on the theme of the Good of the Spouses. It is our hope to collect in one single volume the significant articles already published on the subject representing various viewpoints since the promulgation of the new code. Many of these articles may not be accessible to English speakers since they have been published in other languages.

We have been examining various journals and bibliographies to determine the suggested contents. Then we plan to submit to the Board of Governors a definitive proposal for the next volume of *Marriage Studies*.

Committee: **Publications**

Constituted: Board of Governors, 2000

Charge:

1. To assist editors and authors of publications and other materials being developed on behalf of the Society;
2. To have immediate oversight of the works during the course of the preparation, seeing to it that they conform to language use, editorial and other publications guidelines established by the Society;
3. To make appropriate recommendations to the Board of Governors concerning the projects under its supervision.

Membership: Very Rev. Lawrence DiNardo, Chairperson
Rev. Msgr. Joseph W. Pokusa
Rev. Randolph Calvo
Sr. Joyce Hoben, S.N.D.
Rev. Arthur Espelage, O.F.M., *ex officio*

Annual Report

Since the Publications Committee was re-constituted in 2003, the Committee has contacted individuals who are responsible for various projects, both those on a yearly basis and those involved in special projects. Specifically, the Committee has received proposed publication regarding the Marriage Procedural Handbook. The Committee has reviewed the proposed Procedural Handbook and has forwarded its comments to the editors.

Committee: **Roman Replies**

Constituted: Board of Governors, October 1980

Charge: To collect and publish recent responses from various Roman dicasteries which would be of wide interest to CLSA members.

Membership: Rev. Msgr. F. Stephen Pedone, Editor
Sr. Rose McDermott, S.S.J., Associate Editor

Annual Report

While the actual report to the membership is the volume itself, the preliminary report is presented for the Board of Governors and Proceedings.

The Committee is most grateful to all who responded, especially those who provided material for publication. Several letters were again received from diocesan officials indicating they had nothing to present for publication.

Some noted how important this publication is in their ministry and they look forward to its publication every year. The Committee encourages the membership to continue to provide these replies from the Holy See because of the benefit and assistance they provide.

There are eleven entries slated for publication this year. As before, the entries will be arranged according to the canons of the *Code of Canon Law*: Civil adoption prohibited for clerics obligated by the law of celibacy prohibited (c. 285, §§1-2); merger of an institute of diocesan rite with an institute of pontifical rite (c. 582); procedure for institute of diocesan rite to obtain pontifical rite status (c. 589); living religious life without temporary vows (cc. 657, §1; 656; 658); concerning the missionary activity of diocesan priests (c. 784); valid administration of sacraments (c. 841); kneeling when receiving Holy Communion (c. 841); Chaldean Catholic permanent deacon seeking dispensation to remarry (c. 1087); complementary legislation revising maximum and minimum amounts for alienation (c. 1292, §1); cases involving censure and recourse to higher authority in matters pertaining to the Sacrament of Penance (c. 1357); norms on the preparation of the process for the dissolution of the marriage bond in favor of the faith issued by the Congregation for the Doctrine of the Faith (c. 1698).

The Committee extends its gratitude to the United States Conference of Catholic Bishops, the Congregation for the Doctrine of the Faith, the Congregation for Bishops, the Congregation for the Evangelization of Peoples, the Congregation for the Clergy, the Congregation for Divine Worship and Discipline of the Sacraments, the Congregation for Institutes of Consecrated Life and Societies of

Apostolic Life, and the Apostolic Penitentiary for their support and assistance.

Committee: Scholarship Fund

Constituted: Board of Governors, 1987

- Charge:
1. To conserve, invest, and disburse the monies of the Scholarship Fund according to the criteria established by the CLSA;
 2. To establish for approval by the Board of Governors the process for selecting recipients of the scholarship.

Membership: Rev. Langes Silva, Chairperson
Rev. Louis Sirianni
Ms. Lori Brower
Rev. William J. King, *ex officio*

Annual Report

The annual Scholarship Appeal was conducted by a letter to the membership of the CLSA in Advent of 2003. From that appeal, \$6,575.00 was raised.

On April 29, 2004, Rev. Arthur Espelage, Executive Coordinator of the CLSA, mailed a packet of information to all the Committee members on the scholarship applicants for this year's award. This year, there were two applicants.

On May 10, 2004, the Scholarship Committee convened via a conference call that was previously arranged and agreed upon. Fr. William King (*ex officio*) from Harrisburg, PA, Fr. Louis Siriani from Rochester, NY, Miss Lori Brower from East Brunswick, NJ, and Fr. Langes J. Silva (*chair*) from Salt Lake City, UT, were all present on the call.

Both the applicants were given serious consideration. Fr. Langes J. Silva (*chair*) reiterated to the members of the Committee the criteria established to select the recipient. Following discussion by the Committee members, and later with Msgr. Mark Bartchak, CLSA President, it was determined that the applicants did not meet the eligibility criteria. Therefore the \$12,000.00 allocated for the scholarship grants would remain in the Scholarship Fund.

According to policy, the Chair notified the President of the CLSA, Rev. Msgr. Mark Bartchak, of the Committee's recommendations, with copies of that letter being sent to the Executive Coordinator, Rev. Arthur Espelage, and to the CLSA Vice-President, Sharon Euart, RSM. The applicants were informed of the committee's decisions.

There are several areas in which the scholarship Committee is committed to work in the next months:

1. Fr. King is exploring the possibility of hiring a fund raising consultant who will assist the CLSA Scholarship Fund to collect funds on a contingency-fee basis. Also to look into the possibility of offering ways for CLSA members to donate funds through automatic debit.

2. Fr. Silva following the recommendation of Fr. Siriani is putting together a pamphlet with the past recipients of the Scholarship award, their pictures and statements, encouraging the members to contribute to the Scholarship Fund.

3. Finally, the Committee agrees with the plan to have a meeting at the National Convention in Pittsburgh, on October 13, 2004, and request a few minutes during our National Convention (business meeting or banquet) to speak briefly on behalf of the Scholarship Fund Committee.

4. Other concerns from the Committee have been shared with the BOG on previous report this year.

This report is offered to the Office of the Executive Coordinator in preparation for the 2004 CLSA Fall Convention in Pittsburgh, PA.

In behalf of the Scholarship Committee Fund I want to express my gratitude to the members of the BOG for their continued support and work for the good of the Canon Law Society of America.

Committee: Translation of Legislative Texts

Constituted: 2000

Charge: To translate the new norms of the Roman Rota and to undertake the translation of other legislative texts at the direction of the Board of Governors, with appropriate authorization and permission of the Apostolic See.

Membership: Rev. Msgr. John A. Renken

Annual Report

No report at the time of printing.

PROJECTS/TASK FORCES

Committee: **BOG Handbook Review & Revision**

Constituted: 2002

Charge: The committee shall review the current BOG Handbook in terms of its content and organization, noting gaps and/or inconsistencies in its provisions; it shall research the gaps and/or inconsistencies to provide an explanation to the Board on why they exist; it shall make recommendations to the Board for such revisions it deems necessary or desirable to make the work consistent and comprehensive; finally, it shall provide dates for each entry (where they are not currently provided) and compose an index for the Handbook.

Membership: Bro. Patrick Shea, O.F.M.
Rev. Larry Jurcak
Ms. Linda Weigel
Rev. Patrick Cogan, S.A. (Consultant)

Annual Report

See CLSA Strategic Planning Committee below.

Committee: **CLSA Strategic Planning Committee** New Title: **CLSA Planning Task Force**

Constituted: 2002

Charge: The Committee shall develop and recommend to the Board of Governors a process of consultation by which all of the members of the Society might have the opportunity to be effectively engaged in a process of strategic planning and goal-setting for the future development of the Society.

Membership: Chairperson
Rev. Randolph Calvo
Rev. Paul Counce

Annual Report

The Board of Governors determined at their April 2004 meeting to reconstitute this group with a change in name to CLSA Planning Task Force to consider both

strategic and operational planning. A past president will *ex officio* serve as chair to coordinate the activities of the task force. The BOG authorized a study of the staffing needs of the society and the Executive Coordinator's Office. The committee will target the Spring of 2005 for a meeting of a planning focus group and facilitator. The work previously assigned to the BOG Handbook Review and Revision Committee has also been assigned to the CLSA Planning Task Force. For a more detailed report on the new task force, see the CLSA President's report.

Committee: *Ex Corde Ecclesiae* Application

Constituted: Board of Governors, 1999

Charge: To formulate and suggest to the appropriate office or committee of the NCCB, now USCCB, measures toward the resolution of remaining issues and the completion of remaining portions of the Application *Norms*. [The committee will report to the membership of the Society at an appropriate time.]

Membership: Rev. James Conn, S.J., Chairperson
Very Rev. David M. O'Connell, C.M.
Rev. Msgr. Robert P. Deeley

Annual Report

At its April 2002 meeting in Chicago, the BOG acknowledged that the 1999 mandate of this Committee had been accomplished, namely, to offer assistance to the USCCB in implementing the *Ex corde Ecclesiae* application and drafting guidelines for the academic *mandatum* of canon 812. At the same time the BOG asked the Committee to continue its service in the foreseeable future as a monitoring vehicle on the actual implementation of the Application and Guidelines.

The Committee accepted this extended mandate and agreed to report to the BOG from time to time on any major situations or problems with the implementation of the Application and Guidelines as they may arise.

At this time there is no such activity to report.

Committee: Lay Ministry Handbook

Constituted: 2001

Charge: Mandate is to produce for publication a lay ministry handbook.

Membership: Ms. Linda L. Weigel, Chairperson
Ms. Zabrina Decker
Mr. Mark Raper
Sr. Therese Guerin Sullivan, S.P.

Annual Report

We were happy to welcome a new member appointed by CLSA President Msgr. Mark Bartchak. Msgr. Bartchak appointed Mark Raper, Director of the Tribunal of the Diocese of Boise to the committee in June. Mark brings writing and editing experience, as well as enthusiasm to the project.

I have been in touch with the committee members by phone and through email this summer. The canonical and other challenges in the Archdiocese of Portland precluded a summer meeting of the committee.

Our committee will be meeting in Portland on October 28 and 29, upcoming this fall.

I sent a letter and updates to all authors on August 3, apprizing them of the progress of the handbook, and giving them a due date for their chapter drafts of October 20, 2004. Our committee will be reviewing and working on the drafts at our October 28 – 29 meeting. The letter also gave a reminder of format for the chapters.

Reminder letters will be sent to all authors twice more in the next two months.

Zabrina Decker and I have both been in contact with Sr. Amy Hoey, RSM, staff to the Lay Ministry Subcommittee of the USCCB. Sr. Amy will be meeting with our committee in Pittsburgh.

Future action:

The next task for the committee will be to reassign committee members to author contacts. Since losing two of the three original committee members, we need to realign the contacts. The authors will be informed who their contact member is on the committee.

We will also be planning our October meeting here in Portland.

We will have a revised timeline for the process after our October meeting.

Conclusion:

We remain excited and committed to see this important project forward to its completion as a helpful resource.

Committee: **Marriage Procedure Handbook**

Constituted: 2001

Charge: Mandate is to prepare a practical marriage procedures handbook.

Membership: Rev. Daniel Smilanic, Chairperson
Sr. Victoria Vondenberger, R.S.M.
Mr. Larry Price

Annual Report

The work of the *Marriage Procedures Handbook* Committee is moving along very well. The editors conduct their business principally by means of conference calls coupled with preparatory and follow-up emails. The occasional meetings of such groups as the MidWest Canon Law Association and those on the MidWest Canonical Advocates list have afforded opportunities for face-to-face consultations. On February 2 & 3, 2004 the committee met in Chicago. Most of the cost of the meeting was born by the Archdiocese of Chicago, the Archdiocese of Cincinnati, the Diocese of Winona and the Religious Sisters of Mercy. The committee conducted a two-hour meeting to review the state of the efforts during the annual convention of the MidWest Canon Law Society in April of 2004 in Evansville, Indiana. The relative geographic proximity of the three committee members has been a distinct advantage.

At the February meeting the committee worked with the draft that had been assembled and reviewed. Following that meeting, on March 24, 2004, Sr. Victoria emailed to all committee members, authors and reviewers a copy of the developed draft together with the most current draft of the Table of Contents. The text runs to about 120 pages in the present layout. All are now asked to read and review the material with an eye to providing a finished draft. Sr. Victoria was able to reduce, but not eliminate, the formatting problems. The resources of the Chicago Metropolitan Tribunal will be employed to address the remaining serious formatting problems. It appears as though some textual questions may surface which will have to be dealt with. One of these may be technical points in the adjudication of a case which require a nuanced, precise phrasing; e.g., balancing publication of the acts with dealing with a dangerous Respondent. Given the overall definition of the

work, another point may be some questions about citation: e.g., what requires a footnoted reference and how scholarly should the reference be.

The work hesitated briefly due to intimations of an imminent appearance of the new, long-awaited *Provida Mater*. However, because there has not been any data about this document, the committee is proceeding to the final preparation of the text.

Normally, the publication of a CLSA handbook is coordinated with a pre-Convention workshop. The committee has been advised by the BOG that they should proceed with the design of such a workshop. However, the committee has been advised that the workshop may be implemented in a different form (e.g., a ‘free standing’ workshop, or regional workshops, etc.).

The Committee requests that the yearly budget remain \$500.00.

Committee: **Special Task Force on Executive Coordinator’s Office**

Constituted: 2003

Charge: Mandate is:

1. To thoroughly study all aspects of the relocation of the Office of Executive Coordinator, and to make recommendations to the CLSA Board of Governors regarding the future site of that office;
2. To study the present staffing arrangements of the Office of Executive Coordinator, and to make recommendations to the CLSA Board of Governors regarding the adequacy of such arrangements for the future of the society;
3. The Task Force shall prepare initial *status quastionis* report to be distributed to the membership at the 2003 Portland Convention in October, and a final report with recommendations to the Board of Governors no later than mid-January 2004.

Membership: Very Rev. Lawrence DiNardo, Chairperson
Rev. Msgr. Robert Deeley
Rev. Kevin McKenna
Rev. Lawrence O’Keefe
Sr. Margaret Stallmeyer, C.D.P.

Annual Report

The committee completed its work for the re-location of the Executive Coordinator's Office. Unfinished portions of the committee's charger were transferred to the CLSA Planning Task Force.

Committee: Task Force on Issues Related to Marriage and Undocumented Persons

Constituted: 2001

Charge: Mandate is:

1. Identify and examine basic human rights, such as the right to marry;
2. Identify and examine legal and pastoral issues;
3. Prepare a legal and canonical analysis;
4. Prepare a legal and pastoral guide;
5. Propose actions to be taken by the CLSA.

Membership: Rev. William King
Rev. Michael A. Vigil
Rev. Vicente DeLa Cruz
Rev. Ricardo Garcia

Annual Report

At the request of the Chair, the Society President added an additional member to the Task Force to advance its work; there was an additional change in membership as a member of the Task Force assumed the Presidency of the Society. Despite repeated attempts, the Task Force did not meet during the year, but the Chair communicated via e-mail with the members. During this year much work was accomplished as background to the final report of the Task Force.

Through the services of a local Law School (and at the expense of the Law School) significant research was completed into the statutory and case law of the 50 states and federal jurisdiction regarding requirements for entering into marriage. At the same time, a survey was made of dioceses to determine the frequency of questions related to the marriage of undocumented residents, the existence of written policies, and the prevailing practices. These studies revealed results which will determine the remaining course of this committee's work.

It is of note that no state currently requires proof of citizenship for the granting of a marriage license. In many states, the failure to obtain a marriage license is not

invalidating to the marriage, although a penalty may be attached. Nonetheless, it seems to be a widespread practice for clerks of the Court to ask the applicants for a Social Security Number or other proof of citizenship (Resident Alien ID or “green card,” for instance).

The outline below was submitted to the Board of Governors and approved as the manner of drawing the work of this Task Force to a close. It is the goal of the Task Force to assemble the elements of the report for peer review by the summer of 2005, for final submission to the Society’s convention in October 2005. Because of repeated change in membership, the timeline attached to the Task Force mandate will not be met.

At this time, the Task Force envisions a completed report of approximately 100 pages, with a scope and depth beyond that originally envisioned for the project, as an aid in informing the public discussion on this and related topics. Authorship of two of the chapters or papers as noted below is anticipated from secular Law School Professors, with stipends approved by the Board of Governors; the remainder will be authored by members of our Society.

OUTLINE OF CHAPTERS IN THE REPORT:

- Introduction

1. The notion of migration and the treatment of immigrants as treated in Catholic social teaching and canon law.
2. The notion of migration and the treatment of immigrants as treated in international declarations of rights and in United States law.
3. The pastoral care of immigrants: canon law and pastoral practice.
4. Requirements for marriage in the laws of the United States.
5. The notion of marriage in United States law, and its evolving values and practices.
6. The underlying values of marriage in Catholic thought and practices: a comparative analysis with secular law and practice.
7. The celebration of marriage involving undocumented residents in the United States: framework, current practices, and options.

- Bibliography

- Index

BUDGETARY REQUIREMENTS FOR FISCAL YEAR 2004-2005:

Conference calls: none (assumed by local diocese)

Printing and mailing costs associated with preparing and reviewing drafts of texts: \$200

Stipends for outside authors: \$1,000.

TOTAL: \$1,200.00

CONVENTION

Committee: **Convention Chairperson**

Membership: Mrs. Rita F. Joyce

Annual Report

At this year's Convention, I can say with real sincerity "Welcome to Pittsburgh," on behalf of the Diocesan Staff and Tribunal. We are excited to host all who will venture to our lovely and hospitable city. For the fourth consecutive year the Nix & Associates team will be on site in the hotel. They will work "hand in glove" with the Hilton Hotel staff and the Pittsburgh Diocesan staff to make this convention a delightful experience.

At least twelve exhibitors will be with us in Pittsburgh. This is the third year that we have had exhibitors who will exhibit from Monday afternoon until Wednesday at noon. Please take time to visit their tables and displays. Their presence allows the CLSA the opportunity to see what the exhibitors offer first hand, and it gives support to our convention. The Pittsburgh Hilton is nicely situated overlooking Point State Park where the Monongahela and the Allegheny Rivers form the Ohio. There are restaurants within walking distance and the "T" Pittsburgh's underground trolley system is across the street from the Hilton making Station Square and the business sections of the downtown area nicely accessible.

At the present time reservations are coming in nicely and the hotel and Nix informs me that we are at 62% of our room block with still six weeks to convention time.

For long range planning, future sites for our conventions are as follows: Tampa Marriott Waterside Hotel & Marina, Tampa, Florida, October 3-6, 2005. On October 9-12, 2006, we will be at the Renaissance Worthington Hotel in Fort Worth, TX. The 2007 convention is being planned for the West, with the location likely to be announced at this convention. Preliminary plans previously approved by the BOG for 2008 are Philadelphia and 2009 Indianapolis.

Committee: Convention Liturgies

Constituted: Board of Governors, 1990

Charge: Plan the convention liturgies and prayer services

Membership: Rev. James R. Bonke, Chairperson
Ms. Barbara Bettwy
Rev. Ron Krisman

Annual Report

Father Bonke made an on-site visit to Pittsburgh in May to examine facilities at the Hilton Pittsburgh Hotel, the location for this year's convention. Father Bonke was hosted on this visit by the Very Rev. Larry DiNardo and Mrs. Rita Joyce, both members of the Pittsburgh Diocesan Tribunal and active also on the Board of Governors on the Canon Law Society of America. He also met with the Reverend Edward Yuhas, director of the Diocese of Pittsburgh Office of Worship. Father Yuhas was most helpful, as were Father DiNardo and Rita Joyce. Several decisions were made regarding the room in the hotel to be used for daily liturgies set-up of both this room and the main convention meeting room, as well as the location for the principal convention liturgy. St. Paul Cathedral in Pittsburgh was selected as the site for the main convention Mass, and the presider and homilist will be the Most Reverend Donald Wuerl, bishop of Pittsburgh. He is confident that liturgical matters are being handled in a professional way and he is also grateful to the various folks in Pittsburgh who have been most hopeful with arrangements and coordination of the liturgies for the 2004 CLSA annual convention.

TRIBUNAL STATISTICS FOR THE 2003 CALENDER YEAR

In January of each year, the Executive Coordinator's Office requests first and second instance statistics from tribunals throughout the United States of America. This material first appearing in *CLSA Proceedings* 1969 offers readers a variety of data for consideration. Participation in the compilation of statistics is purely voluntary. Likewise, tribunals submitting information may not offer data on all categories.

How one uses this material. The data is arranged in two parts: first instance statistics and second instance statistics. First instance statistics are divided into sections "a" through "h" which provide information on cases, finances, and personnel. The sections follow in alphabetical order the archdioceses, dioceses and eparchies of the United States. For example, all information offered by the Diocese of Wheeling, W.V. will be found in section "h" while the Archdiocese of Cincinnati, OH appears in section "a." Second instance statistics repeats the same format for the appeal courts in the United States.

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section A	Cases		Cases		Cases		Cases		Cases		Petitioner	
	Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated				
Arch/Diocese												
Albany	18	211	183	159	-0-	-0-	9	18				
Alexandria	146	63	63	0	52	10	11	2				
Allentown	63	263	257	230	57	47	2	76				
Altoona-Johnstown	125	130	122	101	31	17	2	6				
Amarillo	34	47	46	55	13	24	-0-	-0-				
Anchorage	32	27	27	39	16	11	-0-	1				
Arlington	nr											
Atlanta	567	377	278	364	120	120	14	35				
Austin	138	205	172	191	56	76	3	11				
Baker	np											
Baltimore	np											
Baton Rouge	178	151	143	129	27	20	2	3				
Beaumont	84	104	99	75	26	44	2	3				
Belleville	31	80	80	91	28	22	2	-0-				
Biloxi	156	78	71	23	12	11	1	17				
Birmingham	112	99	94	88	22	40	4	4				
Bismarck	72	89	81	65	16	18	1	-0-				
Boise	94	148	148	142	-0-	-0-	8	3				
Boston	641	349	349	320	-0-	-0-	45	63				
Bridgeport	44	129	96	102	25	5	-0-	5				
Brooklyn	80	218	218	218	-0-	-0-	1	-0-				
Brownsville	166	122	122	-0-	102	-0-	-0-	24				

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section A	<i>Ligamen</i>	Other Decision	Lack of Form	<i>Ratum non-con.</i>	Priv. Of Faith	Pauline Priv.	2nd Inst. Rec.	2nd Inst. Dec.
Arch/Diocese								
Albany	2	-0-	154	-0-	1	-0-	-0-	-0-
Alexandria	29	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Allentown	2	-0-	102	-0-	1	1	-0-	-0-
Altoona-Johnstown	3	1	1	-0-	-0-	1	-0-	-0-
Amarillo	3	-0-	33	-0-	-0-	-0-	-0-	-0-
Anchorage	-0-	1	26	-0-	-0-	-0-	-0-	-0-
Arlington	nr							
Atlanta	24	2	239	-0-	-0-	2	-0-	-0-
Austin	10	-0-	181	-0-	-0-	3	-0-	-0-
Baker	np							
Baltimore	np							
Baton Rouge	10	-0-	153	-0-	1	4	-0-	-0-
Beaumont	9	-0-	77	-0-	-0-	4	-0-	-0-
Belleville	10	1	54	-0-	-0-	5	-0-	-0-
Biloxi	17	-0-	80	-0-	-0-	2	-0-	-0-
Birmingham	19	-0-	54	-0-	-0-	2	-0-	-0-
Bismarck	5	-0-	33	-0-	1	1	-0-	-0-
Boise	22	0	92	-0-	-0-	14	221	255
Boston	2	-0-	342	-0-	12	-0-	401	433
Bridgeport	1	-0-	82	-0-	-0-	1	-0-	-0-
Brooklyn	-0-	-0-	310	-0-	-0-	1	-0-	-0-
Brownsville	-0-	-0-	57	-0-	-0-	-0-	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section A	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Arch/Diocese								
Albany		x		\$ 350.00	\$ 75.00	\$ 50.00	\$ -	\$ -
Alexandria		x		x	x	-	\$ -	\$ 7,285.00
Allentown		x		\$ 400.00	\$ 50.00	\$ 50.00	\$ -	\$ 98,510.00
Altoona-Johnstown	x			\$ -	-	-	\$ -	\$ 61,675.00
Amarillo			x	\$ 375.00	\$ 100.00	\$ 25.00	\$ -	\$ 49,680.00
Anchorage		x	x	\$ 50.00	\$ 25.00	\$ 10.00	\$ -	\$ 2,155.00
Arlington	nr							
Atlanta		x	x	\$ 850.00	\$ 100.00	\$ 40.00	\$ -	\$ 150,533.00
Austin		x	x	\$ 310.00	\$ 100.00	-	\$ -	\$ 27,826.00
Baker	np							
Baltimore	np							
Baton Rouge		x		\$ 500.00	\$ 100.00	\$ 50.00	\$ 100.00	\$ 49,817.50
Beaumont		x	x	\$ 350.00	\$ 100.00	\$ 25.00	\$ -	\$ 41,691.00
Belleville		x	x	\$ 250.00	\$ 25.00	-	\$ 475.00	\$ 25,740.00
Biloxi	x			\$ 250.00	\$ 50.00	\$ 15.00	\$ -	\$ 3,655.00
Birmingham		x	x	\$ 300.00	\$ 150.00	\$ 25.00	\$ 500.00	\$ 159,073.00
Bismarck		x	x	\$ 250.00	\$ 25.00	\$ 25.00	\$ 50.00	\$ 11,360.00
Boise		x	x	\$ 225.00	\$ 70.00	\$ 35.00	\$ -	\$ -
Boston		x	x	\$ 750.00	\$ 300.00	\$ 50.00	\$ -	\$ -
Bridgeport		x	x	\$ 500.00	\$ 250.00	-	\$ -	\$ 156,376.00
Brooklyn		x	x	\$ 1,100.00	\$ 600.00	\$ 50.00	\$ -	\$ 750,000.00
Brownsville				\$ 300.00	\$ 50.00	\$ 25.00	\$ -	\$ 32,347.50

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section A Arch/Diocese	Total Expenditures	Amount of		Canonists		Indulted		Advocates		Staff	
		Deficit/Subsidy		Full	Part	Full	Part	Full	Part	Full	Part
Albany	\$ -	\$ -	4	-0-	-0-	-0-	-0-	-0-	10	2	-0-
Alexandria	\$ 117,986.00	\$ 110,701.00	-0-	2	-0-	-0-	-0-	1	2	1	-0-
Allentown	\$ 430,832.00	\$ 332,322.00	3	4	-0-	-0-	1	1	1	4	-0-
Altoona-Johnstown	\$ 61,675.00	\$ -	-0-	2	-0-	-0-	6	-0-	-0-	1	-0-
Amarillo	\$ 69,400.00	\$ -	-0-	1	-0-	-0-	1	-0-	1	1	-0-
Anchorage	\$ 124,966.00	\$ 122,811.00	-0-	1	1	-0-	-0-	-0-	-0-	2	-0-
Arlington	nr										
Atlanta	\$ 662,827.00	\$ 512,294.00	4	2	1	1	1	7	8	2	1
Austin	\$ 84,041.34	\$ 56,215.34	-0-	5	-0-	-0-	2	-0-	2	1	-0-
Baker	np										
Baltimore	np										
Baton Rouge	\$ 233,417.42	\$ 183,599.92	1	1	-0-	8	-0-	-0-	4	2	1
Beaumont	\$ 152,508.00	\$ 110,817.00	-0-	8	-0-	2	-0-	-0-	1	2	-0-
Belleville	\$ 143,682.00	\$ 117,942.00	3	-0-	-0-	2	-0-	1	-0-	2	-0-
Biloxi	\$ 144,516.00	\$ (140,861.00)	2	-0-	-0-	3	-0-	-0-	2	2	-0-
Birmingham	\$ 27,504.00	\$ 131,569.00	2	1	-0-	8	-0-	-0-	33	1	1
Bismarck	\$ 111,305.09	\$ 99,945.09	-0-	3	-0-	6	-0-	2	7	1	-0-
Boise	\$ -	\$ -	1	8	-0-	2	-0-	1	68	2	-0-
Boston	\$ -	\$ -	7	11	-0-	-0-	-0-	5	17	6	-0-
Bridgeport	\$ 144,825.00	\$ -	4	4	1	3	-0-	-0-	-0-	3	1
Brooklyn	\$ 795,500.00	\$ 45,500.00	6	3	-0-	-0-	-0-	1	5	4	-0-
Brownsville	\$ 176,280.20	\$ (143,932.70)	2	3	-0-	-0-	-0-	-0-	12	3	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section B	Cases Previous Year	Cases New Year	Cases Accepted	Cases Decided	Mixed	Non-Cath.	Petitioner Renun.	Abated
Arch/Diocese								
Buffalo	nr							
Burlington	42	71	65	57	10	12	-0-	11
Camden	230	110	105	138	36	15	-0-	21
Charleston	118	101	98	91	19	46	3	13
Charlotte	130	149	132	146	35	55	8	9
Cheyenne	59	93	71	50	17	17	9	9
Chicago	259	589	589	706	120	70	7	28
Cincinnati	287	454	454	410	118	142	21	24
Cleveland	489	470	436	545	-0-	-0-	11	23
Colorado Springs	120	78	78	77	19	13	5	-0-
Columbus	156	243	243	259	81	101	5	12
Corpus Christi	np							
Covington	np							
Crookston	22	34	34	29	10	6	-0-	1
Dallas	342	309	303	265	81	86	12	68
Davenport	148	152	147	122	43	36	10	13
Denver	np							
Des Moines	72	106	105	116	39	33	1	1
Detroit	204	700	-0-	626	-0-	-0-	-0-	75
Dodge City	17	43	31	23	3	9	1	-0-
Dubuque	151	278	254	203	46	71	3	21
Duluth	102	42	42	41	15	8	9	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section B	Ligamen	Other	Lack of	Ratum	Priv. Of	Pauline	2nd Inst.	2nd Inst.
Arch/Diocese	Decision	Form	non-con.	Faith	Priv.	Rec.	Dec.	
Buffalo	nr							
Burlington	5	-0-	1	-0-	1	5	-0-	-0-
Camden	2	4	-0-	7	1	1	-0-	-0-
Charleston	19	2	94	1	2	-0-	-0-	-0-
Charlotte	6	-0-	87	-0-	3	1	-0-	-0-
Cheyenne	21	1	33	-0-	-0-	5	-0-	-0-
Chicago	39	-0-	564	3	16	-0-	-0-	-0-
Cincinnati	27	-0-	230	-0-	6	12	290	273
Cleveland	21	3	342	-0-	33	8	-0-	-0-
Colorado Springs	3	1	80	-0-	-0-	2	-0-	-0-
Columbus	17	-0-	149	-0-	1	15	201	190
Corpus Christi	np							
Covington	np							
Crookston	2	-0-	16	-0-	-0-	-0-	-0-	-0-
Dallas	25	6	55	-0-	1	4	-0-	-0-
Davenport	11	-0-	55	-0-	1	3	-0-	-0-
Denver	np							
Des Moines	9	-0-	63	-0-	-0-	1	75	75
Detroit	14	2	455	-0-	3	13	-0-	-0-
Dodge City	1	-0-	30	-0-	-0-	-0-	-0-	-0-
Dubuque	17	2	75	-0-	-0-	1	-0-	-0-
Duluth	1	1	37	-0-	-0-	1	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section B Arch/Diocese	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Buffalo	nr							
Burlington		x		\$ 450.00	\$ 75.00	\$ -	\$ -	\$ 21,185.00
Camden		x	x	\$ 800.00	\$ 100.00	\$ -	\$ 500.00	\$ 69,900.00
Charleston		x	x	\$ -	\$ -	\$ 60.00	\$ -	\$ 91,169.00
Charlotte			x	\$ 375.00	\$ 50.00	\$ 50.00	\$ -	\$ 41,228.00
Cheyenne		x	x	\$ 600.00	\$ -	\$ -	\$ -	\$ 31,538.05
Chicago		x		\$ 900.00	\$ 500.00	\$ -	\$ -	\$ 392,000.00
Cincinnati		x		\$ 300.00	\$ 150.00	\$ 35.00	\$ 475.00	\$ 540,288.99
Cleveland		x		\$ 450.00	\$ 100.00	\$ 50.00	\$ 450.00	\$ 184,357.00
Colorado Springs				\$ -	\$ -	\$ -	\$ -	\$ 7,783.00
Columbus	x			\$ -	\$ -	\$ -	\$ -	\$ -
Corpus Christi	np							
Covington	np							
Crookston		x	x	\$ 350.00	\$ 50.00	\$ 50.00	\$ -	\$ 61,681.98
Dallas	x			\$ -	\$ -	\$ -	\$ -	\$ 345,564.00
Davenport		x		\$ 350.00	\$ 100.00	\$ 50.00	\$ 725.00	\$ 51,965.00
Denver	np							
Des Moines		x	x	\$ 400.00	\$ 75.00	\$ 50.00	\$ -	\$ 30,180.00
Detroit				\$ -	\$ -	\$ -	\$ -	\$ -
Dodge City			x	\$ 250.00	\$ 50.00	\$ 25.00	\$ -	\$ 2,595.00
Dubuque		x	x	\$ 400.00	\$ 125.00	\$ 25.00	\$ -	\$ 83,044.00
Duluth		x	x	\$ 200.00	\$ -	\$ -	\$ -	\$ 5,080.00

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section B Arch/Diocese	Total Expenditures	Amount of Deficit/Subsidy	Canonists		Indulted		Advocates		Staff	
			Full	Part	Full	Part	Full	Part	Full	Part
Buffalo	nr									
Burlington	\$	75,424.00	\$	54,239.00	1	1	-0-	2	1	-0-
Camden	\$	448,355.00	\$	378,455.00	2	7	-0-	5	4	-0-
Charleston	\$	145,360.00	\$	54,191.00	1	2	-0-	2	2	-0-
Charlotte	\$	173,553.00	\$	132,306.00	-0-	3	-0-	-0-	1	-0-
Cheyenne	\$	172,431.75	\$	140,893.70	-0-	5	1	5	-0-	1
Chicago	\$	1,018,000.00	\$	626,000.00	10	3	2	1	8	-0-
Cincinnati	\$	541,682.85	\$	1,393.86	2	1	-0-	1	1	-0-
Cleveland	\$	613,377.00	\$	429,020.00	4	12	-0-	18	3	1
Colorado Springs	\$	136,789.09	\$	129,006.09	-0-	-0-	-0-	-0-	-0-	-0-
Columbus	\$	-	\$	-	2	6	1	27	-0-	2
Corpus Christi	np									
Covington	np									
Crookston	\$	61,681.98	\$	-	-0-	2	-0-	1	-0-	1
Dallas	\$	323,136.00	\$	22,428.00	-0-	11	-0-	2	5	-0-
Davenport	\$	146,619.00	\$	94,654.00	1	-0-	-0-	1	1	-0-
Denver	np									
Des Moines	\$	102,464.00	\$	72,284.00	1	7	-0-	4	1	1
Detroit	\$	-	\$	-	8	11	1	3	12	-0-
Dodge City	\$	40,177.00	\$	39,582.00	-0-	2	-0-	-0-	1	-0-
Dubuque	\$	242,319.00	\$	159,275.00	1	4	-0-	-0-	1	1
Duluth	\$	51,378.00	\$	-	1	1	-0-	-0-	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section C Arch/Diocese	Cases		Cases		Cases		Cases		Petitioner		
	Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated	Non-Cath.	Renun.	Abated
El Paso	71	69	69	77	11	15	3	2			
Erie	17	182	170	170	20	11	1	7			
Evansville	7	73	73	60	19	14	9	-0-			
Fairbanks	8	9	5	7	3	1	-0-	-0-			
Fall River	42	95	95	84	12	4	2	12			
Fargo	75	65	65	-0-	22	10	1	3			
Fort Wayne-South Bend	np										
Fort Worth	438	275	275	258	64	91	3	16			
Fresno	-0-	210	210	208	13	4	4	12			
Gallup	29	26	26	25	8	6	4	2			
Galveston-Houston	nr										
Gary	209	184	77	133	27	15	4	8			
Gaylord	92	82	75	82	22	27	7	-0-			
Grand Island	53	82	80	40	12	14	9	3			
Grand Rapids	161	168	168	220	-0-	-0-	1	3			
Great Falls-Billings	14	32	32	19	5	7	1	2			
Green Bay	123	203	203	145	-0-	-0-	-0-	-0-			
Greensburg	52	133	133	141	33	19	-0-	-0-			
Harrisburg	208	270	270	262	75	80	9	4			
Hartford	201	181	181	171	-0-	-0-	35	39			
Helena	92	68	65	106	33	36	5	25			
Honolulu	nr										

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section C	Ligamen	Other	Lack of	Ratum	Priv. Of	Pauline	2nd Inst.	2nd Inst.
Arch/Diocese		Decision	Form	non-con.	Faith	Priv.	Rec.	Dec.
El Paso	1	-0-	143	-0-	-0-	-0-	-0-	-0-
Erie	3	-0-	104	-0-	1	2	-0-	-0-
Evansville	5	1	61	-0-	6	1	-0-	-0-
Fairbanks	-0-	-0-	7	-0-	-0-	-0-	-0-	-0-
Fall River	-0-	-0-	94	-0-	2	-0-	-0-	-0-
Fargo	2	-0-	42	-0-	-0-	1	91	79
Fort Wayne-South Bend	np							
Fort Worth	39	2	216	-0-	-0-	6	-0-	-0-
Fresno	14	-0-	263	-0-	-0-	18	172	172
Gallup	4	-0-	40	-0-	4	2	-0-	-0-
Galveston-Houston	nr							
Gary	6	-0-	79	-0-	1	3	-0-	-0-
Gaylord	-0-	2	56	-0-	-0-	-0-	-0-	-0-
Grand Island	1	2	42	-0-	-0-	1	-0-	-0-
Grand Rapids	11	1	128	-0-	-0-	2	-0-	-0-
Great Falls-Billings	8	42	-0-	-0-	1	-0-	-0-	-0-
Green Bay	8	-0-	131	-0-	3	1	364	364
Greensburg	6	-0-	85	-0-	-0-	2	-0-	-0-
Harrisburg	18	122	-0-	-0-	-0-	1	-0-	-0-
Hartford	-0-	-0-	199	-0-	2	-0-	-0-	-0-
Helena	7	-0-	49	-0-	-0-	2	-0-	-0-
Honolulu	nr							

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section C Arch/Diocese	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
El Paso		x	x	\$ 325.00	\$ 100.00	\$ 25.00	\$ 100.00	\$ 30,000.00
Erie		x	x	\$ 400.00	\$ 50.00	\$ 25.00	\$ 50.00	\$ 51,766.00
Evansville		x	x	\$ 350.00	\$ 50.00	\$ 25.00	\$ 100.00	\$ 31,815.00
Fairbanks		x	x	\$ 250.00	\$ 50.00	\$ 25.00	\$ 325.00	\$ 1,100.00
Fall River				\$ 275.00	\$ 100.00	\$ 25.00	-	-
Fargo		x		\$ 650.00	-	\$ 25.00	-	\$ 32,155.00
Fort Wayne-South Bend	np							
Fort Worth	x			\$ -	-	\$ -	-	-
Fresno				\$ 400.00	\$ 100.00	\$ 30.00	-	-
Gallup			x	\$ 300.00	-	-	\$ 25.00	\$ 4,745.00
Galveston-Houston	nr							
Gary		x	x	\$ 500.00	\$ 75.00	\$ 10.00	\$ 500.00	\$ 46,583.00
Gaylord	x			\$ -	-	\$ -	-	-
Grand Island		x	x	\$ 150.00	-	\$ 25.00	-	\$ 3,365.00
Grand Rapids	x			\$ -	-	\$ -	-	\$ 161,796.00
Great Falls-Billings		x		\$ 200.00	\$ 50.00	\$ 50.00	-	\$ (4,580.00)
Green Bay		x	x	\$ 350.00	\$ 50.00	\$ 50.00	-	\$ 80,123.00
Greensburg		x	x	\$ 275.00	\$ 50.00	\$ 25.00	-	\$ 34,538.00
Harrisburg		x		\$ 550.00	-	\$ 80.00	-	\$ 114,000.00
Hartford		x		\$ 350.00	-	-	-	-
Helena	x		x	\$ -	-	\$ -	-	\$ 66,875.00
Honolulu	nr							

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section D Arch/Diocese	Cases		Cases		Cases		Petitioner	
	Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated
Houma-Thibodaux	77	38	38	39	3	3	4	-0-
Indianapolis	158	147	147	115	-0-	-0-	9	10
Jackson	66	98	89	90	26	39	1	10
Jefferson City	255	139	132	157	38	60	2	46
Joliet	-0-	463	264	331	-0-	-0-	-0-	-0-
Juneau	np							
Kalamazoo	96	125	125	101	24	42	1	13
Kansas City, KS	74	309	291	291	200	42	1	48
Kansas City-St. Joseph	149	186	186	203	76	60	5	8
La Crosse	168	269	240	227	53	48	14	16
Las Cruces	183	63	63	85	14	18	1	5
Las Vegas	89	147	138	129	32	22	-0-	-0-
Lafayette	335	130	98	160	-0-	-0-	7	11
Lafayette - in -IN	78	174	125	115	-0-	-0-	9	-0-
Lake Charles	np							
Lansing	130	232	226	215	55	105	6	5
Laredo	24	83	83	62	-0-	1	-0-	-0-
Lexington	131	60	59	59	16	19	1	9
Lincoln	63	52	38	33	-0-	-0-	2	5
Little Rock	191	140	124	127	39	60	17	40
Los Angeles	np							
Louisville	64	196	196	223	55	57	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section D	<i>Ligamen</i>	Other	Lack of	<i>Ratum</i>	Priv. Of	Pauline	2nd Inst.	2nd Inst.
Arch/Diocese		Decision	Form	<i>non-con.</i>	Faith	Priv.	Rec.	Dec.
Houma-Thibodaux	5	-0-	62	-0-	-0-	-0-	-0-	-0-
Indianapolis	11	-0-	-0-	1	22	7	-0-	-0-
Jackson	14	1	32	-0-	-0-	-0-	-0-	-0-
Jefferson City	18	-0-	74	-0-	1	4	-0-	-0-
Joliet	12	5	183	-0-	-0-	8	-0-	-0-
Juneau	np							
Kalamazoo	11	-0-	61	-0-	-0-	3	-0-	-0-
Kansas City, KS	15	-0-	124	-0-	-0-	3	-0-	-0-
Kansas City-St. Joseph	15	-0-	104	-0-	-0-	10	-0-	-0-
La Crosse	7	-0-	95	-0-	-0-	-0-	-0-	-0-
Las Cruces	-0-	-0-	67	-0-	-0-	-0-	-0-	-0-
Las Vegas	5	-0-	154	-0-	-0-	6	-0-	-0-
Lafayette	1	1	168	-0-	-0-	-0-	55	60
Lafayette - in - IN	14	-0-	92	-0-	17	1	109	87
Lake Charles	np							
Lansing	15	1	158	-0-	-0-	8	-0-	-0-
Laredo	1	-0-	25	-0-	-0-	1	-0-	-0-
Lexington	11	-0-	36	-0-	-0-	3	78	84
Lincoln	7	-0-	33	1	5	-0-	-0-	-0-
Little Rock	30	-0-	98	-0-	10	9	-0-	-0-
Los Angeles	np							
Louisville	7	2	4	-0-	17	4	146	145

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section D	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Archb/Diocese								
Houma-Thibodaux	x			\$ 400.00	\$ 50.00	\$ -	\$ -	\$ 8,175.00
Indianapolis		x		\$ 675.00	\$ 150.00	\$ -	\$ 150.00	\$ 66,720.00
Jackson	x			\$ -	\$ -	\$ -	\$ -	\$ -
Jefferson City	x			\$ -	\$ -	\$ -	\$ -	\$ 116,400.00
Joliet		x	x	\$ 325.00	\$ 30.00	\$ -	\$ -	\$ 528,000.00
Juneau	np							
Kalamazoo		x	x	\$ 200.00	\$ 50.00	\$ 25.00	\$ -	\$ 20,950.00
Kansas City, KS		x	x	\$ -	\$ -	\$ -	\$ -	\$ 90,000.00
Kansas City-St. Joseph		x	x	\$ 400.00	\$ 75.00	\$ 75.00	\$ 75.00	\$ -
La Crosse		x	x	\$ 400.00	\$ 50.00	\$ -	\$ -	\$ 77,000.00
Las Cruces		x	x	\$ 350.00	\$ 50.00	\$ -	\$ -	\$ 21,925.00
Las Vegas	x			\$ -	\$ -	\$ -	\$ -	\$ -
Lafayette			x	\$ 350.00	\$ -	\$ -	\$ -	\$ 46,015.00
Lafayette - in -IN	x			\$ -	\$ -	\$ -	\$ -	\$ -
Lake Charles	np							
Lansing		x	x	\$ 200.00	\$ 50.00	\$ 25.00	\$ 85.00	\$ 360,029.00
Laredo		x	x	\$ 350.00	\$ 20.00	\$ 20.00	\$ -	\$ 116,356.00
Lexington	x			\$ -	\$ -	\$ -	\$ -	\$ -
Lincoln		x	x	\$ 200.00	\$ 50.00	\$ 25.00	\$ -	\$ -
Little Rock		x		\$ 150.00	\$ 25.00	\$ 25.00	\$ 375.00	\$ -
Los Angeles	np							
Louisville		x		\$ 400.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 43,357.39

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section D Arch/Diocese	Total Expenditures	Amount of Deficit/Subsidy		Canonists		Indulted		Advocates		Staff	
				Full	Part	Full	Part	Full	Part	Full	Part
Houma-Thibodaux	\$ 73,458.68	\$	(65,283.68)	1	2	-0-	4	-0-	-0-	1	-0-
Indianapolis	\$ 506,355.00	\$	439,135.00	2	4	1	14	2	-0-	3	1
Jackson	\$ 108,841.00	\$	-	1	2	-0-	6	-0-	6	1	-0-
Jefferson City	\$ 91,312.39	\$	-	-0-	1	1	7	-0-	3	-0-	1
Joliet	\$ 498,000.00	\$	30,000.00	2	2	-0-	-0-	2	-0-	2	3
Juneau	np										
Kalamazoo	\$ 10,751.00	\$	-	-0-	7	-0-	-0-	-0-	3	1	1
Kansas City, KS	\$ 151,000.00	\$	61,000.00	1	2	-0-	3	3	30	1	2
Kansas City-St. Joseph	\$ -	\$	-	2	4	-0-	-0-	-0-	-0-	-0-	1
La Crosse	\$ 195,014.00	\$	118,000.00	1	4	-0-	-0-	1	1	2	2
Las Cruces	\$ 97,767.00	\$	(75,842.00)	-0-	3	-0-	6	1	2	1	-0-
Las Vegas	\$ -	\$	-	1	3	-0-	-0-	-0-	4	1	1
Lafayette	\$ 169,279.11	\$	123,264.11	1	2	-0-	1	-0-	-0-	1	-0-
Lafayette - in -IN	\$ -	\$	-	1	1	1	1	2	-0-	1	-0-
Lake Charles	np										
Lansing	\$ 360,029.00	\$	202,052.00	4	3	-0-	1	-0-	7	1	1
Laredo	\$ 38,577.00	\$	77,778.45	-0-	1	-0-	1	1	5	1	1
Lexington	\$ -	\$	-	2	1	-0-	-0-	-0-	-0-	2	-0-
Lincoln	\$ -	\$	-	1	5	-0-	-0-	-0-	26	1	-0-
Little Rock	\$ -	\$	-	-0-	2	-0-	2	-0-	10	1	2
Los Angeles	np										
Louisville	\$ 288,119.49	\$	244,762.06	1	1	-0-	10	2	63	3	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section E	Cases		Cases		Cases		Cases		Cases		Petitioner	
	Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated	Accepted	Decided	Non-Cath.	Renun.
Arch/Diocese												
Lubbock	nr											
Madison	107	119	147	98	25	17	1	9				
Manchester	302	194	194	202	-0-	-0-	1	2				
Marquette	55	65	61	60	25	5	1	5				
Memphis	np											
Metuchen	203	155	155	125	30	11	3	8				
Miami	np											
Military Services	142	227	200	184	60	57	3	45				
Milwaukee	373	417	411	375	126	96	32	25				
Mobile	4	141	139	70	76	44	1	-0-				
Monterey	79	48	46	47	15	4	1	3				
Nashville & Knoxville	193	223	195	150	41	77	10	38				
Newark	325	270	307	307	-0-	-0-	5	90				
Newton	np											
New Orleans	404	242	242	287	67	14	1	5				
New Ulm	49	39	39	49	18	10	1	2				
New York	452	376	376	414	58	19	-0-	1				
Norwich	34	112	84	73	11	7	-0-	-0-				
Oakland	258	153	153	148	26	29	3	3				
Ogdensburg	146	86	86	80	25	5	25	6				
Oklahoma City	296	-0-	244	216	26	136	5	28				
Omaha	162	182	182	160	46	29	3	13				

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section E	<i>Ligamen</i>	Other	Lack of	<i>Ratum</i>	Priv. Of	Pauline	2nd Inst.	2nd Inst.
Arch/Diocese		Decision	Form	<i>non-con.</i>	Faith	Priv.	Rec.	Dec.
Lubbock	nr							
Madison	-0-	1	95	-0-	-0-	-0-	-0-	-0-
Manchester	1	1	143	-0-	-0-	1	-0-	-0-
Marquette	3	-0-	33	-0-	1	-0-	-0-	-0-
Memphis	np							
Metuchen	-0-	-0-	106	-0-	-0-	-0-	106	106
Miami	np							
Military Services	9	1	200	-0-	1	6	-0-	-0-
Milwaukee	2	1	233	-0-	-0-	-0-	577	559
Mobile	2	-0-	48	-0-	-0-	2	214	26
Monterey	3	-0-	60	-0-	-0-	-0-	-0-	-0-
Nashville & Knoxville	33	2	24	-0-	4	3	-0-	-0-
Newark	-0-	1	382	-0-	3	1	-0-	-0-
Newton	np							
New Orleans	6	-0-	254	-0-	4	3	-0-	-0-
New Ulm	3	-0-	28	-0-	-0-	-0-	-0-	-0-
New York	8	3	422	-0-	9	13	-0-	-0-
Norwich	-0-	-0-	56	-0-	1	1	64	64
Oakland	6	-0-	198	-0-	-0-	9	-0-	-0-
Ogdensburg	1	-0-	57	-0-	7	-0-	-0-	-0-
Oklahoma City	1	-0-	122	-0-	-0-	-0-	-0-	-0-
Omaha	9	-0-	149	-0-	14	1	64	64

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section E	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Arch/Diocese								
Lubbock	nr							
Madison		x	x	\$ 350.00	\$ 250.00	\$ 50.00	\$ 250.00	\$ 34,600.00
Manchester			x	\$ 400.00	\$ -	\$ -	\$ -	\$ -
Marquette				\$ 200.00	\$ -	\$ -	\$ -	\$ 61,445.00
Memphis	np							
Metuchen		x	x	\$ 475.00	\$ 125.00	\$ 50.00	\$ -	\$ 68,440.00
Miami	np							
Military Services		x	x	\$ 450.00	\$ 150.00	\$ 50.00	\$ 100.00	\$ 63,695.00
Milwaukee		x	x	\$ 475.00	\$ 175.00	\$ -	\$ 475.00	\$ 182,251.34
Mobile		x		\$ 300.00	\$ 50.00	\$ 25.00	\$ 50.00	\$ 195,757.00
Monterey		x	x	\$ 500.00	\$ 150.00	\$ 25.00	\$ 550.00	\$ 35,000.00
Nashville & Knoxville	x			\$ -	\$ -	\$ -	\$ -	\$ -
Newark		x		\$ 500.00	\$ 100.00	\$ 50.00	\$ -	\$ 424,460.00
Newton	np							
New Orleans		x		\$ 475.00	\$ 100.00	\$ 20.00	\$ -	\$ 84,818.00
New Ulm		x		\$ -	\$ -	\$ -	\$ -	\$ 4,700.00
New York		x	x	\$ 1,000.00	\$ 300.00	\$ 50.00	\$ -	\$ 375,000.00
Norwich		x	x	\$ 350.00	\$ 125.00	\$ 50.00	\$ -	\$ 22,325.00
Oakland		x	x	\$ 500.00	\$ 250.00	\$ 60.00	\$ -	\$ 101,639.50
Ogdensburg		x		\$ 325.00	\$ 200.00	\$ 50.00	\$ -	\$ 33,989.07
Oklahoma City	x			\$ -	\$ -	\$ -	\$ -	\$ -
Omaha		x		\$ 250.00	\$ -	\$ 25.00	\$ -	\$ 50,516.00

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section E Arch/Diocese	Total		Amount of		Canonists		Indulted		Advocates		Staff	
	Expenditures	Deficit/Subsidy	Full	Part	Full	Part	Full	Part	Full	Part	Full	Part
Lubbock	nr											
Madison	\$	\$ 160,169.00	\$	125,569.00	1	3	-0-	-0-	-0-	-0-	1	-0-
Manchester	\$	-	\$	-	1	5	-0-	-0-	2	6	2	2
Marquette	\$	-	\$	-	-0-	3	-0-	1	-0-	2	1	-0-
Memphis	np											
Metuchen	\$	\$ 347,946.00	\$	279,506.00	3	4	-0-	-0-	3	1	2	-0-
Miami	np											
Military Services	\$	\$ 196,701.00	\$	16,357.00	1	9	-0-	-0-	-0-	2	1	1
Milwaukee	\$	\$ 704,860.44	\$	483,360.44	4	1	-0-	1	3	2	4	-0-
Mobile	\$	\$ 181,398.94	\$	-	2	-0-	1	-0-	1	1	3	-0-
Monterey	\$	\$ 105,000.00	\$	70,000.00	-0-	3	-0-	3	1	-0-	-0-	1
Nashville & Knoxville	\$	\$ 297,646.97	\$	297,646.97	1	3	-0-	2	3	-0-	1	-0-
Newark	\$	\$ 404,866.00	\$	-	1	13	2	6	-0-	12	4	-0-
Newton	np											
New Orleans	\$	\$ 382,797.00	\$	297,979.00	2	5	1	6	-0-	3	4	1
New Ulm	\$	\$ 128,723.00	\$	124,023.00	1	3	-0-	2	-0-	14	1	-0-
New York	\$	\$ 1,125,000.00	\$	750,000.00	6	8	1	2	4	13	17	4
Norwich	\$	-	\$	-	1	4	-0-	-0-	2	6	1	-0-
Oakland	\$	\$ 452,433.00	\$	350,794.00	3	2	-0-	1	-0-	5	3	1
Ogdensburg	\$	\$ 104,570.74	\$	-	1	3	1	1	-0-	10	2	1
Oklahoma City	\$	-	\$	-	1	3	-0-	2	-0-	3	1	-0-
Omaha	\$	\$ 184,841.00	\$	134,325.00	2	3	-0-	-0-	-0-	-0-	3	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section F Arch/Diocese	Cases		Cases		Cases		Cases		Cases		Petitioner	
	Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated				
Orange	578	191	171	184	41	18	8	42				
Orlando	1168	364	364	313	90	89	40	28				
Our Lady of Lebanon	12	32	32	20	10	7	-0-	1				
Owensboro	111	123	121	88	26	21	3	4				
Palm Beach	93	167	156	150	48	23	2	3				
Parma	nr											
Passaic	np											
Paterson	171	122	122	79	15	3	4	15				
Pensacola-Tallahassee	89	54	52	80	36	38	8	-0-				
Peoria	167	82	82	79	-0-	-0-	4	8				
Philadelphia	np											
Philadelphia for Ukrainians	1	6	6	5	2	2	-0-	1				
Phoenix	215	437	417	289	-0-	-0-	3	5				
Pittsburgh	316	293	293	248	-0-	-0-	-0-	6				
Pittsburgh, Byzantine	3	17	17	10	3	2	-0-	-0-				
Portland, ME	322	247	204	240	67	50	60	5				
Portland in Oregon	447	221	211	220	-0-	-0-	1	6				
Providence	557	195	142	128	-0-	-0-	-0-	1				
Pueblo	59	38	35	26	4	3	2	9				
Raleigh	179	136	138	157	35	67	3	5				
Rapid City	31	58	57	31	11	9	2	4				
Reno	38	42	42	39	17	8	-0-	2				

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section F	<i>Ligamen</i>	Other Decision	Lack of Form	<i>Ratum</i> <i>non-con.</i>	Priv. Of Faith	Pauline Priv.	2nd Inst. Rec.	2nd Inst. Dec.
Arch/Diocese								
Orange	22	-0-	287	-0-	21	10	-0-	-0-
Orlando	39	-0-	365	-0-	-0-	1	-0-	-0-
Our Lady of Lebanon	3	2	-0-	-0-	-0-	-0-	-0-	-0-
Owensboro	17	2	-0-	-0-	7	-0-	-0-	-0-
Palm Beach	10	14	147	-0-	2	12	-0-	-0-
Parma	nr							
Passaic	np							
Paterson	1	115	3	-0-	-0-	1	-0-	-0-
Pensacola-Tallahassee	9	-0-	68	-0-	-0-	-0-	-0-	-0-
Peoria	5	-0-	101	2	23	7	-0-	-0-
Philadelphia	np							
Philadelphia for Ukrainians	1	1	5	-0-	-0-	-0-	-0-	-0-
Phoenix	25	3	298	-0-	-0-	20	-0-	-0-
Pittsburgh	3	2	242	-0-	-0-	-0-	-0-	-0-
Pittsburgh, Byzantine	-0-	2	-0-	-0-	-0-	-0-	14	14
Portland, ME	11	-0-	150	-0-	1	2	389	365
Portland in Oregon	19	6	166	-0-	-0-	18	402	395
Providence	2	-0-	154	-0-	5	-0-	-0-	-0-
Pueblo	1	-0-	50	-0-	2	3	-0-	-0-
Raleigh	17	1	145	-0-	-0-	7	-0-	-0-
Rapid City	1	-0-	30	-0-	-0-	-0-	-0-	-0-
Reno	9	-0-	45	-0-	-0-	1	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section F	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Arch/Diocese								
Orange			x	\$ 250.00	\$ 50.00	\$ 15.00	\$ -	\$ 296,773.21
Orlando		x	x	\$ 450.00	\$ -	\$ -	\$ -	\$ 11,800.00
Our Lady of Lebanon			x	\$ 200.00	\$ 25.00	\$ -	\$ 25.00	\$ 14,562.00
Owensboro		x	x	\$ -	\$ -	\$ -	\$ -	\$ -
Palm Beach			x	\$ -	\$ -	\$ -	\$ -	\$ -
Parma	nr							
Passaic	np							
Paterson		x		\$ 600.00	\$ 200.00	\$ 100.00	\$ -	\$ 72,825.00
Pensacola-Tallahassee		x	x	\$ 450.00	\$ 125.00	\$ 50.00	\$ 200.00	\$ 6,784.25
Peoria				\$ -	\$ -	\$ -	\$ -	\$ -
Philadelphia	np							
Philadelphia for Ukrainians		x	x	\$ 250.00	\$ 50.00	\$ 25.00	\$ 100.00	\$ -
Phoenix		x	x	\$ 500.00	\$ 200.00	\$ 50.00	\$ 200.00	\$ 506,978.82
Pittsburgh		x	x	\$ 600.00	\$ 100.00	\$ 50.00	\$ -	\$ 226,044.00
Pittsburgh, Byzantine				\$ 325.00	\$ -	\$ -	\$ -	\$ 5,495.00
Portland, ME		x	x	\$ 350.00	\$ 100.00	\$ 25.00	\$ 450.00	\$ 276,994.00
Portland in Oregon		x	x	\$ 275.00	\$ 35.00	\$ 25.00	\$ -	\$ 54,926.25
Providence		x		\$ 750.00	\$ 50.00	\$ 50.00	\$ -	\$ 95,670.00
Pueblo		x	x	\$ 75.00	\$ 10.00	\$ 10.00	\$ 25.00	\$ 4,970.00
Raleigh		x	x	\$ 450.00	\$ 50.00	\$ 25.00	\$ -	\$ 227,826.00
Rapid City		x	x	\$ 305.00	\$ 20.00	\$ 20.00	\$ -	\$ 11,880.00
Reno		x	x	\$ 100.00	\$ -	\$ -	\$ -	\$ 20,060.00

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section F Arch/Diocese	Total Expenditures	Amount of Deficit/Subsidy	Canonists		Indulted		Advocates		Staff	
			Full	Part	Full	Part	Full	Part	Full	Part
Orange	\$ -	\$ -	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Orlando	\$ 296,773.21	\$ 229,971.41	2	4	1	-0-	1	-0-	4	-0-
Our Lady of Lebanon	\$ 11,600.00	\$ -	-0-	2	-0-	-0-	-0-	2	-0-	1
Owensboro	\$ 177,692.00	\$ 163,130.00	2	3	-0-	2	2	20	2	-0-
Palm Beach	\$ -	\$ -	2	-0-	-0-	-0-	-0-	42	3	1
Parma	nr									
Passaic	np									
Paterson	\$ 185,726.81	\$ 16,512.19	3	3	-0-	2	-0-	5	2	-0-
Pensacola-Tallahassee	\$ 84,245.24	\$ 57,460.99	2	2	-0-	1	-0-	1	1	-0-
Peoria	\$ -	\$ -	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Philadelphia	np									
Philadelphia for Ukrainians	\$ -	\$ -	-0-	1	-0-	1	-0-	2	-0-	1
Phoenix	\$ 579,012.97	\$ 72,034.15	3	2	-0-	4	3	13	4	-0-
Pittsburgh	\$ 533,682.00	\$ 307,638.00	5	6	2	15	2	6	4	-0-
Pittsburgh, Byzantine	\$ 3,595.25	\$ -	1	1	-0-	5	-0-	-0-	-0-	-0-
Portland, ME	\$ 276,994.00	\$ 213,494.00	1	7	-0-	-0-	1	120	-0-	2
Portland in Oregon	\$ 262,052.00	\$ 207,125.75	1	1	-0-	1	-0-	1	1	2
Providence	\$ 387,088.00	\$ 29,328.00	2	3	-0-	-0-	-0-	4	4	-0-
Pueblo	\$ 106,480.00	\$ 101,510.00	-0-	3	-0-	1	-0-	9	-0-	1
Raleigh	\$ 270,894.05	\$ 43,068.05	1	3	-0-	2	-0-	76	2	-0-
Rapid City	\$ 46,383.73	\$ (34,503.73)	-0-	1	-0-	1	-0-	8	1	-0-
Reno	\$ 92,765.00	\$ 72,705.00	1	2	-0-	1	-0-	1	1	1

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section G	Arch/Diocese	Cases		Cases		Cases		Petitioner	
		Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated
	Richmond	180	247	235	224	57	96	4	6
	Rochester	179	230	222	239	62	44	6	5
	Rockford	213	320	358	356	58	98	1	1
	Rockville Centre	482	498	498	411	-0-	-0-	13	123
	Sacramento	226	158	156	152	58	30	2	21
	Saginaw	121	158	173	186	41	31	-0-	17
	St. Augustine	28	213	213	153	34	64	24	-0-
	St. Cloud	75	108	108	141	32	14	3	7
	St. Josaphat	5	8	6	5	3	-0-	-0-	-0-
	St. Louis	240	484	478	416	-0-	-0-	10	48
	St. Maron	22	8	8	19	-0-	-0-	-0-	2
	St. Paul and Minneapolis	42	445	425	378	-0-	-0-	4	16
	St. Petersburg	28	331	329	302	-0-	-0-	3	18
	Salina	78	73	71	93	17	43	2	1
	Salt Lake City	26	99	99	76	31	11	1	24
	San Angelo	53	84	82	44	10	8	2	3
	San Antonio	90	420	330	245	55	62	3	2
	San Bernardino	202	132	132	123	26	23	5	53
	San Diego	190	256	256	376	92	83	7	7
	San Francisco	184	180	159	145	31	17	5	6
	San Jose	13	161	146	116	20	23	-0-	-0-
	Santa Fe	235	254	489	219	-0-	-0-	-0-	11

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section G	Arch/Diocese	Ligamen	Other		Lack of Form	Ratum non-con.	Priv. Of Faith		Pauline Priv.	2nd Inst.	
			Decision							Rec.	Dec.
	Richmond	21	-0-		195	-0-	-0-		4	-0-	-0-
	Rochester	2	3		152	-0-	4		-0-	-0-	-0-
	Rockford	4	4		210	-0-	-0-		1	-0-	-0-
	Rockville Centre	2	2		2	-0-	3		1	-0-	-0-
	Sacramento	12	1		185	-0-	6		8	-0-	-0-
	Saginaw	8	4		72	-0-	-0-		5	-0-	-0-
	St. Augustine	53	-0-		146	-0-	-0-		-0-	-0-	-0-
	St. Cloud	2	-0-		49	-0-	-0-		-0-	82	80
	St. Josaphat	-0-	-0-		1	-0-	-0-		-0-	-0-	-0-
	St. Louis	22	-0-		308	-0-	-0-		7	-0-	-0-
	St. Maron	-0-	4		-0-	-0-	-0-		-0-	21	21
	St. Paul/Minneapolis	12	2		31	-0-	-0-		2	-0-	-0-
	St. Petersburg	44	-0-		288	-0-	-0-		7	-0-	-0-
	Salina	-0-	-0-		45	-0-	-0-		-0-	-0-	-0-
	Salt Lake City	9	4		80	-0-	-0-		43	-0-	-0-
	San Angelo	5	-0-		109	-0-	-0-		4	-0-	-0-
	San Antonio	17	-0-		9	-0-	-0-		1	-0-	-0-
	San Bernardino	7	-0-		229	-0-	-0-		2	-0-	-0-
	San Diego	19	2		327	-0-	1		11	302	285
	San Francisco	7	4		155	-0-	10		2	-0-	-0-
	San Jose	5	1		160	-0-	-0-		12	233	214
	Santa Fe	5	1		224	-0-	-0-		-0-	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section G	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Arch/Diocese								
Richmond	x			\$ -	\$ -	\$ -	\$ -	\$ 469,474.79
Rochester		x	x	\$ 450.00	\$ 200.00	\$ -	\$ 200.00	\$ 85,820.88
Rockford		x	x	\$ 400.00	\$ 150.00	\$ 50.00	\$ 450.00	\$ 518,171.00
Rockville Centre		x	x	\$ 1,000.00	\$ 500.00	\$ 50.00	\$ -	\$ -
Sacramento		x	x	\$ 450.00	\$ 150.00	\$ 40.00	\$ 500.00	\$ 79,996.00
Saginaw	x			\$ -	\$ -	\$ -	\$ -	\$ 129,658.00
St. Augustine		x	x	\$ 500.00	\$ 50.00	\$ 25.00	\$ -	\$ 147,598.00
St. Cloud		x		\$ 500.00	\$ 100.00	\$ 100.00	\$ -	\$ 172,568.00
St. Josaphat			x	\$ 250.00	\$ 100.00	\$ 50.00	\$ -	\$ 1,550.00
St. Louis		x		\$ 500.00	\$ 100.00	\$ 50.00	\$ 500.00	\$ 200,847.00
St. Maron		x	x	\$ 500.00	\$ 100.00	\$ -	\$ -	\$ 29,210.00
St. Paul and Minneapolis			x	\$ 450.00	\$ -	\$ -	\$ 450.00	\$ 141,939.33
St. Petersburg		x	x	\$ 300.00	\$ 50.00	\$ 40.00	\$ -	\$ -
Salina		x	x	\$ 250.00	\$ -	\$ 15.00	\$ -	\$ 13,505.00
Salt Lake City		x	x	\$ 225.00	\$ 50.00	\$ 25.00	\$ -	\$ 92,787.00
San Angelo		x	x	\$ 160.00	\$ -	\$ -	\$ -	\$ 74,532.97
San Antonio		x	x	\$ 375.00	\$ 60.00	\$ -	\$ 5.00	\$ 285,520.15
San Bernardino		x	x	\$ 400.00	\$ 50.00	\$ 50.00	\$ 100.00	\$ 39,000.00
San Diego		x	x	\$ 300.00	\$ 100.00	\$ 25.00	\$ -	\$ 97,246.00
San Francisco		x	x	\$ 500.00	\$ 150.00	\$ 50.00	\$ 625.00	\$ -
San Jose			x	\$ 500.00	\$ -	\$ -	\$ -	\$ 63,563.00
Santa Fe		x	x	\$ 450.00	\$ 450.00	\$ -	\$ -	\$ 25,000.00

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section G Arch/Diocese	Total Expenditures	Amount of Deficit/Subsidy		Canonists		Indulted		Advocates		Staff	
		\$		Full	Part	Full	Part	Full	Part	Full	Part
Richmond	\$ 469,474.79	\$	-	2	6	-0-	1	-0-	1	4	-0-
Rochester	\$ 324,817.44	\$	238,996.56	2	5	-0-	4	1	1	1	-0-
Rockford	\$ 471,822.00	\$	-	4	-0-	1	-0-	2	-0-	3	-0-
Rockville Centre	\$ -	\$	-	6	1	-0-	-0-	73	5	1	-0-
Sacramento	\$ 429,626.00	\$	349,630.00	1	4	-0-	2	4	2	1	-0-
Saginaw	\$ 121,036.46	\$	8,621.54	1	4	-0-	1	-0-	-0-	1	-0-
St. Augustine	\$ 72,618.00	\$	147,598.00	1	2	-0-	2	-0-	3	3	-0-
St. Cloud	\$ 172,568.00	\$	-	1	5	-0-	6	-0-	5	2	-0-
St. Josaphat	\$ 3,925.00	\$	(2,375.00)	-0-	3	-0-	-0-	-0-	-0-	-0-	-0-
St. Louis	\$ 389,496.00	\$	188,649.00	3	3	-0-	-0-	-0-	1	2	-0-
St. Maron	\$ 25,182.72	\$	-	-0-	9	-0-	-0-	-0-	2	-0-	3
St. Paul and Minneapolis	\$ -	\$	-	2	1	4	5	1	-0-	2	2
St. Petersburg	\$ -	\$	-	2	5	-0-	-0-	1	-0-	3	-0-
Salina	\$ 78,071.00	\$	64,566.00	-0-	3	-0-	-0-	-0-	1	1	-0-
Salt Lake City	\$ 93,823.69	\$	(1,036.69)	1	1	-0-	3	-0-	3	1	-0-
San Angelo	\$ 74,532.97	\$	-	-0-	4	-0-	4	-0-	56	1	-0-
San Antonio	\$ 291,124.63	\$	(5,604.48)	1	1	-0-	7	3	1	5	-0-
San Bernardino	\$ -	\$	-	2	3	-0-	4	1	7	3	-0-
San Diego	\$ 267,063.49	\$	169,817.49	4	-0-	1	-0-	2	-0-	2	-0-
San Francisco	\$ -	\$	-	4	5	-0-	-0-	2	3	2	1
San Jose	\$ 472,003.86	\$	408,440.86	4	3	-0-	1	3	-0-	1	-0-
Santa Fe	\$ 211,381.00	\$	186,381.00	2	2	11	1	2	6	3	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section H Arch/Diocese	<i>Ligamen</i>	Other Decision	Lack of Form	<i>Ratum non-con.</i>	Priv. Of Faith	Pauline Priv.	2nd Inst. Rec.	2nd Inst. Dec.
Santa Rosa	3	-0-	68	-0-	-0-	1	-0-	-0-
Savannah	14	1	64	-0-	-0-	1	-0-	-0-
Scranton	-0-	-0-	135	-0-	-0-	-0-	-0-	-0-
Seattle	38	3	287	-0-	-0-	14	-0-	-0-
Shreveport	13	3	44	-0-	-0-	-0-	-0-	-0-
Sioux City	4	-0-	65	-0-	-0-	-0-	-0-	-0-
Sioux Falls	11	-0-	58	-0-	-0-	2	-0-	-0-
Spokane	6	4	37	-0-	-0-	2	-0-	-0-
Springfield-Cape Girardeau	17	2	61	-0-	-0-	-0-	-0-	-0-
Springfield, IL	13	-0-	116	-0-	14	3	-0-	-0-
Springfield, MA	3	88	1	-0-	-0-	-0-	389	391
Stamford								
Steubenville	1	-0-	1	-0-	-0-	3	-0-	-0-
Stockton	nr							
Superior	4	-0-	49	-0-	-0-	1	-0-	-0-
Syracuse	-0-	-0-	90	-0-	-0-	2	-0-	-0-
Toledo	np							
Trenton	1	4	192	-0-	1	4	105	105
Tucson	2	-0-	116	-0-	-0-	1	-0-	-0-
Tulsa	39	-0-	55	-0-	3	6	-0-	-0-
Tyler	12	-0-	31	-0-	-0-	4	-0-	-0-
Van Nuys	-0-	-0-	10	-0-	-0-	6	-0-	-0-

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section H	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Arch/Diocese								
Santa Rosa	x		x	\$ 550.00	\$ 100.00	\$ 50.00	\$ -	\$ 20,665.00
Savannah	x		x	\$ 300.00	\$ 50.00	\$ 25.00	\$ 50.00	\$ 212,312.00
Scranton	x		x	\$ 400.00	\$ 100.00	\$ 30.00	\$ -	\$ 121,218.00
Seattle	x		x	\$ 400.00	\$ 50.00	\$ 50.00	\$ 100.00	\$ 533,690.00
Shreveport	x			\$ -	\$ -	\$ -	\$ -	\$ 135,014.00
Sioux City		x	x	\$ 250.00	\$ 50.00	\$ 25.00	\$ 425.00	\$ 58,416.00
Sioux Falls		x	x	\$ 650.00	\$ 25.00	\$ 25.00	\$ -	\$ 134,000.00
Spokane				\$ -	\$ -	\$ -	\$ -	\$ 6,880.00
Springfield-Cape Girardeau	x		x	\$ 225.00	\$ 50.00	\$ -	\$ -	\$ 20,459.00
Springfield, IL	x		x	\$ 450.00	\$ 50.00	\$ 10.00	\$ 50.00	\$ 66,016.67
Springfield, MA	x		x	\$ 300.00	\$ 50.00	\$ 10.00	\$ -	\$ 41,272.00
Stamford								
Staubenville				\$ 250.00	\$ 50.00	\$ -	\$ -	\$ 14,185.00
Stockton	nr							
Superior	x		x	\$ 200.00	\$ -	\$ -	\$ -	\$ 12,575.00
Syracuse	x		x	\$ 450.00	\$ 150.00	\$ 50.00	\$ -	\$ 128,449.00
Toledo	np							
Trenton	x			\$ 500.00	\$ 250.00	\$ 50.00	\$ 600.00	\$ 150,000.00
Tucson	x		x	\$ 450.00	\$ 100.00	\$ 50.00	\$ -	\$ 52,168.00
Tulsa	x			\$ -	\$ -	\$ -	\$ -	\$ -
Tyler	x		x	\$ 375.00	\$ 60.00	\$ -	\$ -	\$ 12,971.00
Van Nuys	x		x	x	\$ -	x	\$ -	\$ 3,000.00

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section H Arch/Diocese	Total Expenditures	Amount of Deficit/Subsidy		Canonists		Indulted		Advocates		Staff	
				Full	Part	Full	Part	Full	Part	Full	Part
Santa Rosa	\$ 129,850.00	\$	109,185.00	2	1	-0-	4	1	4	1	-0-
Savannah	\$ 212,312.00	\$	183,152.00	1	3	-0-	1	1	-0-	1	1
Scranton	\$ 272,181.00	\$	150,963.00	2	6	-0-	-0-	1	4	3	1
Seattle	\$ 533,690.00	\$	-	3	4	2	7	-0-	4	2	-0-
Shreveport	\$ 107,867.00	\$	-	1	2	4	-0-	5	-0-	1	-0-
Sioux City	\$ 71,012.00	\$	12,596.00	4	1	-0-	5	-0-	18	1	-0-
Sioux Falls	\$ 116,000.00	\$	-	1	2	-0-	6	-0-	4	1	-0-
Spokane	\$ 25,053.00	\$	18,173.00	1	-0-	-0-	3	-0-	-0-	1	-0-
Springfield-Cape Girardeau	\$ 142,849.00	\$	122,390.00	2	1	1	3	1	2	1	1
Springfield, IL	\$ 183,073.74	\$	117,057.07	2	-0-	1	-0-	1	8	2	-0-
Springfield, MA	\$ 227,474.00	\$	186,202.00	3	1	1	-0-	-0-	-0-	2	1
Stamford											
Steubenville	\$ 64,202.00	\$	50,017.00	1	-0-	-0-	5	-0-	4	1	-0-
Stockton	nr										
Superior	\$ 127,220.00	\$	114,645.00	-0-	3	-0-	1	1	-0-	1	-0-
Syracuse	\$ 148,469.00	\$	20,020.00	1	4	-0-	-0-	-0-	2	1	-0-
Toledo	np										
Trenton	\$ 325,000.00	\$	175,000.00	2	2	1	-0-	-0-	-0-	4	-0-
Tucson	\$ 77,162.00	\$	(24,994.00)	1	-0-	-0-	4	-0-	12	2	-0-
Tulsa	\$ -	\$	-	-0-	4	-0-	1	-0-	3	1	-0-
Tyler	\$ 73,821.00	\$	60,850.00	-0-	3	-0-	1	-0-	2	1	-0-
Van Nuys	\$ 4,000.00	\$	-	1	3	-0-	-0-	3	-0-	-0-	1

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section I Arch/Diocese	Cases		Cases		Cases		Petitioner	
	Previous Year	New Year	Accepted	Decided	Mixed	Non-Cath.	Renun.	Abated
Venice	111	167	163	114	31	27	4	6
Victoria	18	78	78	61	18	21	-0-	-0-
Washington	np							
Wheeling-Charleston	112	164	164	116	36	50	-0-	10
Wichita	186	266	264	245	89	71	3	4
Wilmington	302	95	95	123	31	24	5	2
Winona	131	93	93	117	-0-	-0-	1	2
Worcester	14	122	105	74	-0-	-0-	-0-	-0-
Yakima	11	125	125	92	-0-	-0-	1	43
Youngstown	60	168	156	175	42	39	2	11

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section I			Other	Lack of	<i>Ratum</i>	Priv. Of	Pauline	2nd Inst.	2nd Inst.
Arch/Diocese	<i>Ligamen</i>	Decision	Form	<i>non-con.</i>	Faith	Priv.	Rec.	Dec.	
Venice	10	-0-	128	-0-	1	1	-0-	-0-	
Victoria	2	-0-	67	-0-	-0-	1	-0-	-0-	
Washington	np								
Wheeling-Charleston	14	-0-	88	-0-	-0-	4	-0-	-0-	
Wichita	27	-0-	96	-0-	-0-	3	408	408	
Wilmington	12	-0-	83	-0-	-0-	4	-0-	-0-	
Winona	4	-0-	54	-0-	-0-	1	79	92	
Worcester	4	1	78	-0-	-0-	1	-0-	-0-	
Yakima	15	5	54	-0-	-0-	5	-0-	-0-	
Youngstown	8	3	122	-0-	5	7	-0-	-0-	

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section I	Totally Subsidized	Partially Subsidized	Fee Schedule	Formal Case	Documentary Case	Lack of Form Case	Other	Amount of Fees
Arch/Diocese								
Venice		x	x	\$ 650.00	\$ 50.00	\$ 25.00	\$ -	\$ 60,000.00
Victoria		x	x	\$ 300.00	\$ -	\$ -	\$ -	\$ 76,122.00
Washington	np							
Wheeling-Charleston	x			\$ -	\$ -	\$ -	\$ -	\$ -
Wichita		x		\$ 275.00	\$ 100.00	\$ 40.00	\$ -	\$ 86,500.00
Wilmington		x	x	\$ 550.00	\$ 125.00	\$ 25.00	\$ 375.00	\$ 67,854.00
Winona	x			\$ -	\$ -	\$ -	\$ -	\$ -
Worcester		x	x	\$ 350.00	\$ 125.00	\$ 40.00	\$ -	\$ 38,363.00
Yakima				\$ -	\$ -	\$ -	\$ -	\$ -
Youngstown		x	x	\$ 250.00	\$ 100.00	\$ 25.00	\$ -	\$ 240,598.00

FIRST INSTANCE TRIBUNAL STATISTICS 2003

Section I Arch/Diocese	Total Expenditures	Amount of Deficit/Subsidy		Canonists		Indulted		Advocates		Staff	
		\$		Full	Part	Full	Part	Full	Part	Full	Part
Venice	\$ 277,000.00	\$	217,000.00	3	1	-0-	-0-	2	1	3	-0-
Victoria	\$ 71,126.18	\$	-	-0-	2	-0-	10	-0-	4	-0-	1
Washington	np										
Wheeling-Charleston	\$ -	\$	-	2	3	-0-	-0-	5	-0-	1	-0-
Wichita	\$ 90,000.00	\$	3,500.00	-0-	6	-0-	-0-	1	-0-	-0-	1
Wilmington	\$ 307,807.00	\$	239,953.00	3	-0-	1	-0-	39	-0-	2	1
Winona	\$ -	\$	-	1	7	-0-	2	-0-	3	3	-0-
Worcester	\$ 281,739.00	\$	243,377.00	2	1	-0-	1	-0-	8	3	1
Yakima	\$ -	\$	-	2	-0-	4	-0-	23	-0-	2	-0-
Youngstown	\$ 242,340.00	\$	(1,742.00)	-0-	6	-0-	2	1	3	2	2

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section A	Cases Pending Previous Year	Cases Received Review	Cases Ratified by Decree	Admitted Full Hearing	Decided Full Hearing	Decision Concordant 1st Instance
Appeal Court						
Atlanta	37	861	836	14	10	10
Bridgeport	1	69	67	-0-	1	1
Camden	22	76	62	29	19	10
Chicago	8	1550	1519	29	10	5
Cleveland	33	603	599	3	2	1
Davenport	-0-	93	92	1	-0-	-0-
Des Moines	-0-	75	75	-0-	-0-	-0-
Detroit	1	475	475	-0-	-0-	-0-
Detroit	111	836	875	1	-0-	-0-
Dubuque	21	323	320	8	6	6
Evansville	28	167	190	2	2	2
Gary	-0-	60	60	-0-	-0-	-0-
Hartford	19	179	167	4	4	2
Indianapolis	19	163	71	8	7	5
Kansas City, KS	-0-	297	296	1	-0-	-0-
Lexington	11	78	84	-0-	-0-	-0-
Lincoln	14	141	143	2	2	1
Louisville	13	146	145	-0-	2	2
Milwaukee	32	577	559	1	4	4
Mobile	2	214	115	89	26	1
Nashville	-0-	49	42	-0-	-0-	-0-

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section A	Appeal Court	Decisions		Cases		Petitioners Renunciation	Closed by Abatement	Cases appealed 3rd Instance	Appealed Roman Rota
		Reversing 1st Instance	1st Instance Reversed						
	Atlanta	-0-	-0-	-0-	-0-			-0-	-0-
	Bridgeport	-0-	-0-	-0-	-0-			-0-	-0-
	Camden	9	-0-	-0-	-0-			-0-	-0-
	Chicago	5	-0-	3	-0-			3	3
	Cleveland	1	-0-	2	-0-			-0-	-0-
	Davenport	-0-	-0-	-0-	-0-			-0-	-0-
	Des Moines	-0-	-0-	-0-	-0-			-0-	-0-
	Detroit	-0-	-0-	-0-	-0-			-0-	-0-
	Detroit	1	-0-	-0-	-0-			-0-	-0-
	Dubuque	1	-0-	-0-	1			-0-	-0-
	Evansville	-0-	-0-	-0-	-0-			-0-	-0-
	Gary	-0-	-0-	-0-	-0-			-0-	-0-
	Hartford	2	-0-	-0-	-0-			-0-	-0-
	Indianapolis	1	1	2	5			-0-	-0-
	Kansas City, KS	-0-	-0-	-0-	-0-			-0-	-0-
	Lexington	-0-	-0-	-0-	-0-			-0-	-0-
	Lincoln	1	-0-	-0-	-0-			-0-	-0-
	Louisville	-0-	-0-	-0-	-0-			-0-	-0-
	Milwaukee	-0-	-0-	-0-	1			-0-	-0-
	Mobile	25	-0-	-0-	15			-0-	-0-
	Nashville	-0-	-0-	-0-	-0-			-0-	-0-

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section A	Appeal Court	Court of Third Instance				Totally Subsidized	Partially Subsidized	Fee Schedule
		Appealed Special 3rd Instance	Cases Received	Cases Decided				
	Atlanta	-0-	-0-	-0-	x			
	Bridgeport	-0-	-0-	-0-				
	Camden	-0-	-0-	-0-				
	Chicago	-0-	-0-	-0-	x			
	Cleveland	-0-	-0-	-0-				
	Davenport	-0-	-0-	-0-				
	Des Moines	-0-	-0-	-0-				
	Detroit	-0-	-0-	-0-				x
	Detroit	-0-	-0-	-0-				
	Dubuque	-0-	-0-	-0-		x		x
	Evansville	-0-	-0-	-0-				x
	Gary	-0-	-0-	-0-				
	Hartford	-0-	-0-	-0-	x			
	Indianapolis	-0-	-0-	-0-				
	Kansas City, KS	-0-	-0-	-0-				x
	Lexington	-0-	-0-	-0-	x			
	Lincoln	-0-	-0-	-0-		x		
	Louisville	-0-	-0-	-0-	x			
	Milwaukee	-0-	-0-	-0-				\$ 25.00
	Mobile	-0-	-0-	-0-		x		
	Nashville	-0-	-0-	-0-	x			

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section A	Fees Schedule for Petitioner/Respondent					Total Income	Total Expenditures	Total Deficit/Subsidy
	Mandatory 1st Affirmative	2nd Instance Formal Trial						
Appeal Court	\$	-	\$	-	-	\$	-	\$
Atlanta	\$	-	\$	-	-	\$	-	\$
Bridgeport	\$	-	\$	-	-	\$	-	\$
Camden	\$	-	\$	-	-	7,600.00	7,600.00	7,600.00
Chicago	\$	-	\$	-	-	147,000.00	147,000.00	-
Cleveland	\$	-	\$	-	-	\$	-	\$
Davenport	\$	-	\$	-	-	\$	-	\$
Des Moines	\$	-	\$	-	-	\$	-	\$
Detroit	\$	25.00	\$	25.00	-	11,925.00	2,025.00	\$
Detroit	\$	-	\$	-	-	\$	-	\$
Dubuque	\$	-	\$	200.00	-	\$	-	\$
Evansville	\$	30.00	\$	-	-	\$	-	\$
Gary	\$	-	\$	-	-	\$	-	\$
Hartford	\$	-	\$	-	-	\$	-	\$
Indianapolis	\$	-	\$	-	-	\$	-	\$
Kansas City, KS	\$	25.00	\$	-	-	8,000.00	8,000.00	-
Lexington	\$	-	\$	-	-	\$	-	\$
Lincoln	\$	-	\$	-	-	\$	-	\$
Louisville	\$	-	\$	-	-	\$	-	\$
Milwaukee	\$	-	\$	-	-	13,125.00	11,050.00	2,075.00
Mobile	\$	-	\$	-	-	\$	-	\$
Nashville	\$	-	\$	-	-	\$	-	\$

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section A	Degreed Canonists		Indulted Officials		Auditors/Advocates		Secretarial Staff	
	Full Time	Part Time	Full Time	Part Time	Full Time	Part Time	Full Time	Part Time
Appeal Court								
Atlanta	1	2	-0-	11	-0-	5	1	-0-
Bridgeport	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Camden	1	-0-	-0-	-0-	-0-	-0-	-0-	1
Chicago	27	3	-0-	5	-0-	-0-	1	-0-
Cleveland	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Davenport	-0-	6	-0-	6	-0-	-0-	-0-	-0-
Des Moines	-0-	4	-0-	2	-0-	-0-	-0-	1
Detroit	1	3	-0-	15	-0-	2	2	-0-
Detroit	7	4	1	2	-0-	-0-	1	-0-
Dubuque	-0-	9	-0-	1	-0-	-0-	-0-	1
Evansville	1	-0-	-0-	3	-0-	-0-	1	-0-
Gary	-0-	2	-0-	2	-0-	2	-0-	1
Hartford	3	5	-0-	-0-	-0-	-0-	3	-0-
Indianapolis	2	4	1	14	2	-0-	3	1
Kansas City, KS	2	6	-0-	3	2	30	2	4
Lexington	2	1	-0-	-0-	-0-	-0-	2	-0-
Lincoln	1	7	-0-	-0-	-0-	3	-0-	1
Louisville	1	1	-0-	10	-0-	-0-	3	-0-
Milwaukee	-0-	11	-0-	-0-	-0-	2	-0-	1
Mobile	-0-	4	-0-	1	-0-	1	1	-0-
Nashville	-0-	1	-0-	3	-0-	-0-	-0-	-0-

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section B	Cases Pending Previous Year	Cases Received Review	Cases Ratified by Decree	Admitted Full Hearing	Decided Full Hearing	Decision Concordant 1st Instance
Appeal Court						
Newark	23	320	343	2	2	2
New Orleans	80	442	475	14	2	2
New York	246	2265	2415	3	3	3
Orange	90	519	539	5	6	6
Owensboro	10	46	51	-0-	-0-	-0-
Paterson	35	120	113	100	20	9
Phoenix	37	352	352	-0-	-0-	-0-
Providence	5	166	169	2	1	1
Providence	1	64	59	5	-0-	4
Saginaw	-0-	165	165	-0-	-0-	-0-
St. Paul/Minneapolis	91	635	553	29	29	11
San Bernardino	3	135	126	-0-	-0-	-0-
San Diego	6	302	282	3	2	2
Santa Fe	29	277	287	-0-	-0-	-0-
Sioux City	-0-	43	36	-0-	-0-	-0-
Steubenville	12	110	108	-0-	-0-	-0-
Texas	181	1918	1904	8	3	3
Youngstown	40	212	220	-0-	-0-	-0-

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section B	Decisions		Cases		Petitioners Renunciation	Closed by Abatement	Cases		Appealed Roman Rota
	Reversing 1st Instance	1st Instance Reversed	1st Instance Reversed	appealed 3rd Instance					
Appeal Court									
Newark	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
New Orleans	-0-	-0-	-0-	2	-0-	-0-	3	3	3
New York	-0-	-0-	-0-	-0-	-0-	-0-	1	-0-	-0-
Orange	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Owensboro	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Paterson	11	-0-	-0-	1	-0-	-0-	-0-	-0-	-0-
Phoenix	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Providence	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Providence	1	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Saginaw	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
St. Paul/Minneapolis	18	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
San Bernardino	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
San Diego	-0-	-0-	-0-	1	-0-	-0-	-0-	-0-	-0-
Santa Fe	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Sioux City	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Steubenville	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Texas	-0-	-0-	-0-	-0-	-0-	1	-0-	-0-	-0-
Youngstown	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section B	Appeal Court	Appealed Special 3rd Instance	Court of Third Instance			Totally Subsidized	Partially Subsidized	Fee Schedule
			Cases Received	Cases Decided				
	Newark	-0-	-0-	-0-	x			x
	New Orleans	-0-	-0-	-0-				x
	New York	1	-0-	-0-			x	x
	Orange	-0-	-0-	-0-	x			
	Owensboro	-0-	-0-	-0-	x			
	Paterson	-0-	-0-	-0-				
	Phoenix	-0-	-0-	-0-				
	Providence	-0-	-0-	-0-	x			
	Providence	-0-	-0-	-0-				
	Saginaw	-0-	-0-	-0-	x			
	St. Paul/Minneapolis	-0-	-0-	-0-				
	San Bernardino	-0-	-0-	-0-			x	
	San Diego	-0-	-0-	-0-				
	Santa Fe	-0-	-0-	-0-	x			
	Sioux City	-0-	-0-	-0-				
	Steubenville	-0-	-0-	-0-	x			
	Texas	-0-	-0-	-0-				
	Youngstown	-0-	-0-	-0-	x			

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section B	Fees Schedule for Petitioner/Respondent						
	Mandatory		2nd Instance Formal Trial	Total		Total Expenditures	Total Deficit/Subsidy
	1st Affirmative			Income			
Appeal Court							
Newark	\$	-	\$	-	\$	-	\$
New Orleans	\$	60.00	\$	60.00	\$	17,480.00	\$
New York	\$	-	\$	200.00	\$	112,720.00	\$
Orange	\$	-	\$	-	\$	-	\$
Owensboro	\$	-	\$	-	\$	-	\$
Paterson	\$	-	\$	-	\$	-	\$
Phoenix	\$	-	\$	-	\$	-	\$
Providence	\$	-	\$	-	\$	-	\$
Providence	\$	-	\$	-	\$	-	\$
Saginaw	\$	-	\$	-	\$	-	\$
St. Paul/Minneapolis	\$	-	\$	-	\$	4,125.00	\$
San Bernardino	\$	-	\$	-	\$	-	\$
San Diego	\$	-	\$	-	\$	-	\$
Santa Fe	\$	-	\$	-	\$	-	\$
Sioux City	\$	-	\$	-	\$	-	\$
Steubenville	\$	-	\$	-	\$	-	\$
Texas	\$	60.00	\$	60.00	\$	107,640.00	\$
Youngstown	\$	-	\$	-	\$	-	\$

SECOND INSTANCE TRIBUNAL STATISTICS 2003

Section B	Appeal Court	Degreed Canonists		Indulted Officials		Auditors/Advocates		Secretarial Staff	
		Full Time	Part Time	Full Time	Part Time	Full Time	Part Time	Full Time	Part Time
	Newark	1	13	2	6	-0-	12	4	-0-
	New Orleans	1	-0-	1	3	-0-	-0-	-0-	1
	New York	-0-	40	-0-	22	-0-	-0-	2	8
	Orange	7	-0-	-0-	-0-	-0-	-0-	1	-0-
	Owensboro	-0-	2	-0-	2	-0-	-0-	-0-	1
	Paterson	3	3	-0-	2	-0-	-0-	2	-0-
	Phoenix	4	-0-	-0-	2	-0-	-0-	1	-0-
	Providence	2	3	-0-	-0-	-0-	4	1	-0-
	Providence	1	4	-0-	-0-	2	6	1	-0-
	Saginaw	1	4	-0-	1	-0-	-0-	1	-0-
	St. Paul/Minneapolis	-0-	3	-0-	9	-0-	1	-0-	2
	San Bernardino	2	3	-0-	4	1	7	3	-0-
	San Diego	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
	Santa Fe	2	-0-	7	1	-0-	-0-	1	2
	Sioux City	4	1	-0-	5	-0-	-0-	1	-0-
	Steubenville	1	-0-	-0-	4	-0-	3	1	-0-
	Texas	1	13	-0-	3	-0-	3	2	-0-
	Youngstown	-0-	3	-0-	9	-0-	-0-	-0-	1

**MINUTES
CANON LAW SOCIETY OF AMERICA
SIXTY-SIXTH ANNUAL CONVENTION**

Hilton Pittsburgh Hotel
Gateway Center
Pittsburgh, Pennsylvania
11 – 14 October 2004

THEME: VITA SACRAMENTORUM – WORSHIP AND SANCTIFICATION

Monday: 11 October 2004

CALL TO ORDER AND OPENING PRAYER:

President Mark L. Bartchak called the Sixty – Sixth Annual Convention of the Canon Law Society of America to order at 4:00 PM on Monday, 11 October 2004 at the Hilton Pittsburgh Hotel, Gateway Center, Pittsburgh, Pennsylvania. With Gerald Jorgensen presiding, all participants prayed Evening Prayer.

OPENING OF THE GENERAL SESSION:

President Bartchak welcomed all participants to the annual convention and acknowledged a number of esteemed guests present with the Society for this convention: the Deans of the Canon Law Faculties at St. Paul University, Ottawa, Ontario, Canada and The Catholic University of America, Washington, D.C., United States of America; a representative of the canon law faculty from Louvain University, Louvain, Belgium; and the Presidents of the canon law societies of Australia and New Zealand, Canada, and Mexico. Then President Bartchak introduced the Most Reverend Donald W. Wuerl, Bishop of Pittsburgh, who extended his greetings, blessings, and welcome to the Diocese and city of Pittsburgh.

Next, President Bartchak introduced Paul D. Counce, Chairperson of the Nominations Committee, who submitted the nominees of the Nominations Committee for the Board of Governors of the CLSA. For the office of Vice President/President Elect, the nominees were Daniel F. Hoye and Joseph J. Koury. For the office of Secretary, the nominees were Marilyn R. Vassallo, C.S.J. and Victoria Vondenberger, R.S.M. For the office of Consultor, the nominees were David V. Berberian, Jay Conzemius, Tam N. Nguyen, M. Kathleen Kuenstler, P.H.J.C., Kelly M. Vendehey, and Siobhan M. Verbeek.

Then President Bartchak introduced Arthur J. Espelage, O.S.F., the Executive Coordinator of the Canon Law Society of America who introduced Steve

Merriweather, as press officer for the convention, directing any and all representatives of the press present at the convention to contact him. The Executive Coordinator made additional orienting announcements, including inviting all new members present to stand and be recognized, and then invited the General Convention Chairperson, Rita Ferko Joyce, to address the assembly. Convention Chairperson Joyce offered points of practical assistance for convention participants, including explaining and announcing room assignments for convention seminars.

Initial announcements, acknowledgments and presentations completed, President Barchak formally presented the theme of the convention and introduced the keynote speaker, Most Reverend Thomas G. Doran, who presented his address entitled, "The Sacraments: Actions of Christ and Actions of the Church." Bishop Doran spoke to the role of canonical law in assuring that in the celebration of the sacraments the faithful are truly sanctified by the action of Christ the Redeemer.

A reception followed.

Tuesday, 12 October 2004

7:30 AM – 8:00 AM MASS

8:00 AM – 8:45 AM SPECIAL EVENTS:
New Members' Breakfast
Black and Hispanic Concerns Caucus

9:00 AM – 10:30 AM SEMINARS I:

A. Sacramental Life in Parishes without a Resident Pastor
Sister Therese Guerin Sullivan, S.P.
Reverend Gary Yanus

The session explored the collaborative roles of the priest supervisor and the parish coordinator in the *munus sanctificandi* in preparation of catechumens, celebration of baptism, first penance, first communion, confirmation and marriage. Presenters examined the role of the laity in the celebration of the Liturgy of the Hours and administering sacramentals.

B. "Decent Support" and Clerics Removed from Ministry
Reverend James Donlon

This presentation explored the support given to clerics removed from ministry in the Church due to sexual abuse of minors. Issues treated included financial support, housing, and medical coverage.

C. The Role of the Expert in Tribunal Proceedings

Reverend Mr. Gerald T. Jorgensen

Canon 1574 of the 1983 *Code of Canon Law* defines the role of experts in canonical judgments, which is distinct from the role of the judge in a trial whether it is a marriage nullity trial or a penal trial. Although this seminar specified the canonical doctrine and approved jurisprudence concerning the role of the expert in canonical trials, the seminar focused upon specific practical problems that may create obstacles and confusion between judges and experts in ecclesiastical courts.

D. The Charter and Essential Norms: Two Years Later

Reverend Msgr. Ronny Jenkins

This seminar provided a retrospective and prospective canonical evaluation of the USCCB *Charter for the Protection of Children and Young People* and *Essential Norms*. Issues of both substantive and procedural law were addressed, including those of the definition of sexual abuse, the question of the presumption of innocence, procedural rights of the accused and accuser, the right to a good reputation, fair and impartial trials, and the just exercise of the power of governance in light of the individual and common good.

11:00 AM – 12:30 PM

SEMINARS II:

A. The Disruptive Religious

Reverend Arthur J. Espelage, O.F.M.

Sister Elissa Rinere, C.P.

The workshop looked at conflicts that arise between individual religious and their communities, when both parties have obligations and rights to pursue or vindicate. At what point does an institute need protection from an individual; at what point must an individual put his or her benefit above that of the institute?

B. RCIA: Canonical Issues

Reverend Ronald Krisman

There is a sizable body of canonical legislation dealing with Christian initiation, found to some extent in the 1983 *Code of Canon Law*, but principally in the Church's liturgical books. This presentation explored that legislation, with particular emphasis on questions that for more than thirty years have been, and continue to be, asked concerning the proper ministers of the sacraments, sponsors and godparents, unbaptized children who have reached catechetical age, reception into the full communion of the Catholic Church, and the like. The USCCB's joint – Secretariat study, *Journey to the Fullness of Life: A Report on the Implementation*

of the RCIA in the United State, provided useful data about current pastoral practices and trends.

C. Calling God's Special Children to Holiness: The Canonical Right of the Mentally and Cognitively Challenged to the Sacraments

Mr. Peter Vere

Mentally and cognitively challenged Catholics face many challenges when seeking the sacraments. Often there is nobody to vindicate their rights when the sacraments are unjustly denied to them. This talk outlined the many challenges faced by our brothers and sisters in Christ when it comes to sacramental rights, and suggested some practical canonical and pastoral solutions.

D. Finding Method in the Madness: Writing Sentences in LDD Cases

Reverend John P. Beal

This presentation focused on the writing of an effective decision in cases joined on canon 1095 2°, using three recent sentences issued by the Roman Rota as a model. The talk emphasized succinct and cogent argumentation using the proofs presented in the acts as opposed to the narrative, story approach so frequently encountered in the sentences issued by many North American tribunals.

1:30 PM – 3:00 PM SEMINARS III:

A. The Sacrament of Reconciliation: Issues, Praxis and the Future

Reverend Patrick Cogan, S.A.

Selected themes in current discussions regarding the sacrament of Penance, including confidentiality and the seal of confessions; John Paul II's Apostolic letter, *Misericordia Dei* (2002), the *motu proprio Sacramentorum Sanctitatis Tutela* and the CDF, and other selected themes, as time permitted, were the focus of this presentation.

B. The Charter and Essential Norms: Two Years Later (Repeat)

Reverend Msgr. Ronny Jenkins

C. Sacramental Life in Parishes without a Resident Pastor (Repeat)

Sister Therese Guerin Sullivan, S.P.

Reverend Gary Yanus

D. The Role of the Expert in Tribunal Proceedings (Repeat)

Reverend Mr. Gerald T. Jorgensen

3:30 PM – 4:30 PM MEET THE CANDIDATES' FORUM

An Open Forum in which candidates for each office up for election were introduced and presented their vision for the CLSA as well as why they agreed to stand for election. After all candidates addressed those present, members present directed questions to various candidates.

4:30 PM – 6:00 PM BUDGET REPORT AND OPEN HEARING ON RESOLUTIONS:

Very Reverend William King, Treasurer, presented the budget report, providing graphic displays comparing current and past budget items. He also presented the financial goals for the current fiscal year. There were no questions from the members present.

Rev. Kelly M. Vandehey, Chairperson of the Resolutions Committee, along with committee members, moderated the presentation and debate on the proposed resolutions. No new resolutions were proposed.

6:30 PM – 7:30 PM SPECIAL EVENTS: ALUMNI RECEPTIONS

The Catholic University of America
Saint Paul University
Louvain University
Rome, Italy Universities

Wednesday, 13 October 2003

7:30 AM – 8:30 AM SPECIAL EVENTS:
Past Presidents' Breakfast

9:15 AM – 10:45 AM MAJOR ADDRESS:

Lex Orandi, Lex Credendi: The Sacraments of Initiation
Rev. Msgr. Kevin Irwin

The traditional adage *lex orandi, lex credendi* has been revived in recent years as a maxim in contemporary liturgical studies. This presentation offered an overview of the theology of the present rites for Christian initiation and indicated points of comparison and contrast with the 1983 *Code of Canon Law*.

11:00 AM – 12:15 PM SIXTY-SIXTH ANNUAL BUSINESS MEETING:

1. *Call to Order and Prayer*

President Mark L. Bartchak called the meeting to order at 11:12 a.m. Asking the members to remember especially Charlene Cram, Director of the Tribunal,

Archdiocese of Seattle, who was critically ill, President Bartchak led the opening prayer. Then President Bartchak called upon James Bonke and Rita Ferko Joyce to address arrangements for the convention liturgy later in the day as well as the banquet that followed the liturgy. Next, President Bartchak noted for the record that all officers of the Board of Governors were present and that the required quorum to conduct the official business of the Society was present.

2. Appointments, Rules, and Minutes

President Bartchak appointed Patrick Shea, O.F.M., parliamentarian and then reviewed the operative rules for participation in the business meeting as well as the rules governing all debating and voting. In particular, President Bartchak highlighted Article 5 §3 of the CLSA Constitution that only allows Associate Members to address the assembly if a simple majority of Active Members present and voting so approve at each business meeting. It was so moved and approved. Next, President Bartchak called upon Gerald Jorgensen to read the minutes of the Sixty – Fifth annual meeting, unless a motion was made and carried to accept the minutes as published in the *CLSA Proceedings 2003*. M. Kathleen Kuenstler, P.H.J.C. moved, with a second by Craig Cox, to dispense with the reading of the minutes of the 65th Annual Business Meeting of the Society and to accept the minutes as published in the *CLSA Proceedings 2003*. The motion carried unanimously.

3. Election of New Officers

Paul D. Counce, Chairperson of the Nominations Committee, came forward to place the names into nomination for the offices of the Canon Law Society of America open for election this year.

The nominees presented were:

OFFICE OF VICE PRESIDENT/PRESIDENT ELECT

Daniel F. Hoyer
Joseph J. Koury

The floor was opened for additional nominations, and, with no other nominations forthcoming, the nominations were closed by voice vote.

OFFICE OF SECRETARY

Marilyn R. Vassallo, C.S.J.
Victoria Vondenberger, R.S.M.

The floor was opened for additional nominations, and, with no other nominations forthcoming, the nominations were closed by voice vote.

OFFICE OF CONSULTOR

David V. Berberian
Jay Conzemius
Tam N. Nguyen
M. Kathleen Kuenstler, P.H.J.C.
Kelly M. Vendehey
Siobhan M. Verbeek

The floor was opened for additional nominations, and, with no other nominations forthcoming, the nominations were closed by voice vote.

The Chair reviewed the rules for voting and asked the voting members of the Society to mark their ballots. The scrutinizers collected the ballots and retired to attend to their task of tallying the votes.

4. *Reports*

President Bartchak noted that his President's Report was available in the 2004 *Reports* booklet that all attendees received as part of their convention packet. He entertained any questions members had concerning his report, however, hearing no questions he directed members to the reports of the Society's committees, task forces, and project groups found in the same *Reports* booklet. Again, upon hearing no questions surfacing from the floor, President O'Keefe called upon William King for the Treasure's Report.

5. *Treasurer's Report*

William King directed members' attention to the report found in the 2004 *Reports* booklet. Next, Treasurer King launched into a "Power Point" presentation addressing the major sources of revenue and expenses for the Society for the fiscal year just completed. He compared the fiscal year just completed with the immediately preceding years and ten years ago. Then he presented a graphic concerning the current fiscal year and the financial objectives for the current fiscal year. Finally, King entertained questions from the floor concerning his report and presentation.

6. *Resolutions*

President Bartchak reviewed the rules for entertaining resolutions from the floor at this time. No resolutions from the floor were proposed. Bartchak called upon Kelly Vendehey, Chairperson of the Resolutions Committee to present the proposed resolutions and to lead the debate on the resolutions.

Resolution Proposal #1

Title: Cumulative Index of *Canon Law Digest*

Proposed by: Thomas E. Cronkleton, Jr.

Be it resolved that a cumulative general and document index of all the *Canon Law Digest* volumes be published.

Implementation by means of: The Board of Governors shall direct the office of the Executive Coordinator to undertake the preparation of a cumulative index of *Canon Law Digest* by combining the most recent cumulative index of volumes 1 – 6 published to date, and provide for updating the cumulative index at regular intervals as future volumes are published.

Anticipated cost: To be appropriated by the Board of Governors in the Annual Budget for the Executive Coordinator's Office. (It is anticipated that the cost of preparing the cumulative index will be recovered through the publication of future volumes.)

Discussion: The Resolutions Committee moved the adoption of this resolution, thus no second was required. Thomas Cronkleton, Jr., spoke to the adoption of the resolution stating that the time had come for such an index. No discussion occurred on the proposed resolution. The question was called. President Bartchak called for the vote.

The resolution was adopted by a unanimous voice vote.

Resolution Proposal #2

Title: A Task Force on Diocesan and Eparchial Pastoral Councils.

Proposed by: James A. Coriden

Be it resolved that the Board of Governors appoint a task force to

- 1) examine and recommend ways to foster the establishment and effective function of pastoral councils;
- 2) investigate the reasons why pastoral councils in some dioceses and eparchies, have succeeded and in others they have not been established, have been abandoned, or have been found ineffective; and
- 3) if necessary, suggest a) ways to revise the institute (*CIC* cc. 511 – 514; *CCEO* cc. 272 – 275) or b) alternative means for effective consultation of the faithful.

Said task force shall be charged to report to the membership of CLSA and to forward its report to the appropriate committee of the USCCB within two years.

Implementation by means of a small task force to study existing research and resources, verify the reasons of non-establishment, termination, or ineffectiveness of the councils, search for best practices and successful outcomes, write a brief report, and present a convention seminar.

Anticipated cost: \$5,000.00

Cost supplied by the CLSA treasury.

Discussion: The Resolutions Committee moved the adoption of this resolution, thus no second was required. James Coriden, as the initial presenter of the resolution, spoke in favor of adopting the resolution, emphasizing the need of such a study given current experience with an apparent decline in diocesan and eparchial councils. William Varvaro offered a friendly amendment to the resolution proposal, which was accepted by the author, Coriden (the friendly amendment is incorporated in the resolution presented above). Several rose to speak in support of the resolution. No one rose to speak against the adoption of the resolution.

The question was called. No one spoke against concluding debate. President Bartchak called for a vote on the motion. A voice vote was taken and President Bartchak ruled that **the resolution was adopted**.

Upon the return of the scrutinizers to the assembly floor, President Bartchak deferred discussion of the remaining business items until after announcing the results of the election.

The results of the election were as follows:

OFFICE OF VICE PRESIDENT/PRESIDENT ELECT – Total votes cast, 262; no abstentions, 132 required for absolute majority

Daniel F. Hoyer 138

Joseph J. Koury 126

President Bartchak declared that Daniel Hoyer was elected.

OFFICE OF SECRETARY – Total votes cast, 264; two abstentions, 133 required for absolute majority

Marilyn R. Vassallo, C.S.J. 79

Victoria Vondenberger, R.S.M. 183

President Bartchak declared that Victoria Vondenberger was elected.

OFFICE OF CONSULTOR – Total votes cast, 263; two abstentions, 132 required for absolute majority

David V. Berberian 101

Jay Conzemius 141

<i>Tam N. Nguyen</i>	108
<i>M. Kathleen Kuenstler, P.H.J.C.</i>	103
<i>Kelly M. Vendehey</i>	137
<i>Siobhan M. Verbeek</i>	153

President Bartchak declared that Jay Conzemius, Kelly Vendehey, and Siobhan Verbeek were elected.

President Bartchak then returned to the remaining business before the house.

7. *Old Business*

There was no old business to come before the body.

8. *New Business*

There was no new business introduced from the floor.

President Bartchak opened the floor to guests address who had requested to address the membership. Then President Bartchak along with James Bonke and Rita Ferko Joyce made several announcements concerning the remainder of the convention, the convention liturgy and banquet, and the presence of the exhibitors. Vice President/President Elect Sharon Euart asked to meet with the newly elected officers and consultants immediately following the adjournment of the business meeting.

9. *Closing*

There was a motion to adjourn, which was heartily seconded and resoundingly adopted by the membership. Prior to declaring the meeting adjourned, President Bartchak lead the assembly in a closing prayer. Upon the conclusion of prayer, the business meeting was declared adjourned at 12:07 PM.

There were no convention seminars scheduled for Wednesday afternoon. The time was left open for leisure or for committees or caucuses to meet if desired.

2:30 PM – 4:00 PM	COMMITTEE AND CAUCUS MEETINGS AS PREVIOUSLY SCHEDULED.
5:15 PM – 6:30 PM	CONVENTION MASS
6:45 PM – 7:30 PM	CONVENTION RECEPTION
7:30 PM – 9:00 PM	CONVENTION BANQUET AND PRESENTATION OF THE “ROLE OF LAW” AWARD

Following dinner, President Mark L. Bartchak presented the Role of Law Award

to Rev. William H. Woestman, to the great approval of all present. Rev. Woestman spoke of the role of law in current issues in the Church and respect for the rights of all members of the Church.

Thursday, 16 October 2003

7:30 AM – 8:00 AM MASS

8:30 AM – 9:00 AM CONVENTION CLOSING PRAYER SERVICE AND INSTALLATION OF NEW OFFICERS

9:00 AM – 10:30 AM MAJOR ADDRESS:

Theology of Marriage: Complementarity of the Latin and Eastern Codes
Mr. Robert Flummerfelt

The Eastern and Latin codes reflect two different but complementary theological approaches to the Sacramental Mystery of Marriage. Mr. Flummerfelt addressed the differences in the approaches and opined as to how each approach complemented or broadened the other. Then Mr. Flummerfelt addressed the canonical distinctions that flowed from the different theological approaches and focused on the practical import for ministering to couples seeking to receive this Sacrament of Commitment/Vocation.

At the end of Robert Flummerfelt's address, newly installed President Sharon Euart thanked all presenters and participants at this year's convention. Next, President Euart invited representatives from the Convention Committee to address next year's convention, which will be in Tampa, Florida, October 1 – 5, 2004 at the Tampa Marriott Waterside Hotel. All present, as well as all canonists and those interested in canon law, were invited to attend next year's convention, the Sixty-Seventh Annual Convention of the CLSA. President Euart then entertained a motion for adjournment of the Sixty-Sixth Annual Convention of the CLSA. It was moved, seconded, and carried by unanimous voice vote. President Euart declared the convention adjourned.

Respectfully submitted 1 December 2004.

Gerald T. Jorgensen
Secretary

HOMILY

October 13, 2004

MOST REVEREND DONALD W. WUERL, STD

In sharing these reflections on our liturgy today commemorating the election of Pope John Paul II as Supreme Shepherd of the Universal Church I want to recognize my brother bishops, Bishop David Fellhauer, Bishop Daniel Conlon, Bishop Thomas Paprocki, my brother priests, particularly Monsignor Mark Bartchak, President of the Canon Law Society of America, deacons, women and men in consecrated life and particularly Sister Sharon Euart, RSM, the incoming President of the Canon Law Society, distinguished guests, members of the Canon Law Society of America and brothers and sisters in Christ.

Just a number of weeks ago I had the privilege of being in Rome for the *ad limina* visit of the bishops of Region III comprising the States of New Jersey and Pennsylvania. At the conclusion of our week-long visit our Holy Father, Pope John Paul II, graciously received all of the bishops for a concluding audience. It was clear that even in his diminished health and advanced years the Holy Father was intent on being present to all of the bishops. We were in Rome precisely to present an account of our stewardship and to renew bonds of affection and solidarity with the Successor of Peter and Vicar of Christ.

I could not help but think as the Pope was brought into the room in the marvelous contrivance that is his mobile chair that it is who he is and the uniqueness of his role that is truly important. Of far less significance is his ability to walk without assistance or to give long discourses in multiple languages. The very fact that he was the only one who could represent Peter as the rock on which the Church rests and make visible the continued presence of Peter in the Church was enough. The uniqueness of who he is and his role in our lives urges us to reflect on the nature of the Church.

It is a matter of faith first of all to believe that Jesus is God who came among us and that by his death he redeemed us and through the outpouring of the Holy Spirit raised us to be adopted children of God.

But it is equally pressing to recognize the fourth major article of the Creed, our belief that Jesus also established a Church to be his new body made up of himself as head and all of us as members who would continue his very mission and ministry of salvation.

Here we come face to face with the incarnational nature of the Church. Just as the Eternal Word took on flesh and became one with us so that the infinite, transcendent, ineffable, spiritual reality of God could become visible, tangible,

physical in our world so Jesus chose to continue his mediatorship between the Father and us through us. His divine, saving action is continuing in our world through the great sacrament that is the Church. As Christ was divine and human so his Church has both divine and human elements.

Nowhere is this more clear than in the sacramental life of the Church. The sacraments of new life – baptism, confirmation and Eucharist – are all visible, tangible manifestations of the power of God breaking into our world, changing this world and manifesting a kingdom whose fullness is yet to come. In these three sacraments we receive new life that transforms us and already begins the great transformation that will be completed when we go through the doors of death into a life that will never end.

The two are co-relative: new life and membership in the Church. It was Jesus' will that just as he came that we might have life and have it to the full so that life would be communicated to us in an institutional reality every bit as visible, tangible and structured as was his human body.

In baptism each of us has original sin washed away, receives an outpouring of the Holy Spirit and becomes a member of the Church – of the Body of Christ. Out of this body some are called by a second sacrament, holy orders, to identify with Christ as head of the Church.

All of these visible structured means respond to a deep seeded human need to be able to see, to touch, to taste, to somehow lay hold tangibly and physically of that which is invisible, intangible and utterly transcendent.

The task of making visible this great spiritual reality that is God's redemptive grace at work in our world falls to each of us and in a particular way to those who are gathered at the Canon Law Society of America Convention. Canonists, those who are engaged in the application and exercise of Church law, play an important role in the good ordering of the Body of Christ as it is manifest among us. Just as the sacramental structure of the Church is a part of her radical identity so also is the good ordering of the Church in a reasoned manner which is the work of law an integral part of the life of the Church.

Early in the first pages of the Acts of the Apostles as we learn of the coming to be of the primitive, apostolic Church, we see a need for ordering the community, a need for regulations, a need for ecclesial law.

The Acts of the Apostles in the early chapters show us both the structure of the early Christian community and how in fact it is readily identifiable with parish life today. In the second chapter of Acts we find a definition of what for all intents and purposes is a Catholic parish today. They came together to pray, to form a community, to listen to the teaching of the apostles and to celebrate the Eucharist.

The same book tells us of the obligations placed upon the members by the leadership of the Church – the bishops. From there we can jump to our day – 20 centuries later – and recognize in the development of experience over these centuries a corpus of direction and a *Code of Canon Law*.

In this local Church, this diocesan Church, we have realized on many occasions the importance of Canon Law in providing a framework within which all of the

members of the Church, laity, religious and clergy, can work together to achieve necessary goals and to do so in a way that respects the rights of everyone involved.

From 1988 through 1994 we engaged in a diocesan-wide parish revitalization/reorganization project. Guided by the tenets of the law, respectful of the rights of all involved and aware of the need to engage as many people as possible, we undertook a process at one point involving some 10,000 people on committees that resulted in a reordering of this diocese and moving from 335 parishes and missions to 215.

In all of us this the *Code of Canon Law* was not an abstract academic arbiter of conflicting rights but rather the frame of reference within which the rights and goals and aspirations of all involved were articulated.

In more recent years the law has provided us that same frame of reference when we have had to deal, as the entire country has, with the scandal of clergy abuse of minors.

Canonical ministry is a quiet, effective ministry that provides a frame of reference for those wider pastoral actions that are the working out of our spiritual ministry. It is a quiet ministry because it is usually done with little fanfare. Even now with all of the public awareness of how the Church addresses issues in a crisis, there is still little public recognition of that quiet ministry that is canonical service.

At the same time this quiet ministry is profoundly effective. It is necessary to help the Church achieve its spiritual goals and thus help the Body of Christ carry out its mission and ministry.

Not only is this a quiet and effective service it is a ministry that participates in the sanctifying mission of the Church by participating in the very ordering of that body – the Body of Christ.

Today as we anticipate in this Eucharistic liturgy the celebration of the anniversary of the election of John Paul II as Supreme Shepherd of the Universal Church we are reminded that this Body of Christ that makes present the saving work of Jesus is a visible, tangible, structured reality and that those of you involved in the canonical service of the Church do so as an integral part of the very mission of the body to be visible and effective.

In his encyclical letter *Ecclesia de Eucharistia* our Holy Father reminds us: “When the Church celebrates the Eucharist, the memorial of her Lord’s death and resurrection, this central event of salvation becomes really present and ‘the work of our redemption is carried out’” (11). This happens in a visible, tangible manner. The divine and supernatural intersects with the human and the tangible. All of this takes place in the Church – the Body of Christ, visible, tangible, structured, ordered.

May God bless and prosper you and your work at the service of Christ, his Church, his law.

May God continue to bless the Canon Law Society of America and your efforts to make the mystery of salvation visible in and through the Church.

CITATION ROLE OF LAW AWARD

REV. MSGR. MARK L. BARTCHAK

One of the most pleasant moments of the Annual Convention of the Canon Law Society of America is the announcement and conferral of the Role of Law Award.

According to number 15 of The By-Laws of the Canon Law Society of America, the specific duty of determining the recipient of the Role of Law Award is assigned to the Board of Governors. The By-Laws do not specify the process, but the criteria to be observed in selecting the recipient are clearly established: (1) Embodiment of pastoral attitude, (2) Commitment to research and study, (3) Participation in development of law, (4) Response to needs of practical assistance, (5) Facilitation of dialogue and the interchange of ideas within the Society and with other groups, (6) The recipient shall not be anyone currently serving on the Board of Governors.

The process by which the Board of Governors makes this selection is done thoughtfully and prayerfully. It is a time for the Board of Governors to take stock in the good work that is done by so many of you, the members of the Canon Law Society of America. This moment in which the Role of Law Award is conferred is a time for all of us to reflect on our dedication to the purpose of this society as expressed in the very first sentence of our Constitution:

We, the members of the Canon Law Society of America, ever eager to fulfill our role in the Church through the proper use of canon law, hereby proclaim our desire to promote every method of serving God's people that comes under the concept of law.

While this purpose and dedication pertains to all of us, each year we have the privilege of recognizing one member of the Canon Law Society of America who has been and continues to be ever eager to fulfill that role in the Church. I thought of sharing the identity of this year's recipient at the very outset, but I was advised that the proper protocol is to save it to the end. However, I am sure that you will quickly know the name once you have heard a just few highlights of this person's life and ministry.

The recipient of the 2004 Role of Law Award is a cleric and a member of an institute of consecrated life. He was born in Fort Smith, Arkansas on November 29, 1929. He made his first vows as a Missionary Oblate of Mary Immaculate in 1950 and was ordained to the priesthood in 1956.

He has held a number of positions in his religious community, including professor of moral theology and canon law at the Oblate Scholasticate in Pass Christian, Mississippi from 1957 to 1965. He was associate pastor and then pastor

of St. Patrick Parish, McCook, Nebraska from 1965-1969. From 1969-1975 he was director of the National Shrine of Our Lady of the Snows in Belleville, Illinois. He was provincial superior of the Central United States Province of the Missionary Oblates of Mary Immaculate in St. Paul, Minnesota from 1975-1981 and director general of the Missionary Association of Mary Immaculate and secretary of the Oblate Sharing Fund at the O.M.I. Generalate in Rome from 1981-1986. The missionary dimension of his religious life is also reflected in his appointment to the Congregation for the Evangelization of Peoples by Pope John Paul II, where he served as a consultant from 1985-1993.

This breadth of experience in pastoral duties and religious life added a unique dimension to his role as professor of canon law at St. Paul University from 1986-2000. He was likewise well-prepared for the role of professor by his own studies. He received licentiate degrees in philosophy and canon law from the Pontifical Gregorian University in Rome and a doctorate in canon law from the Pontifical University of St. Thomas Aquinas, also in Rome. He later obtained the Diploma of Advocate for the Roman Rota after completing the course at the *Studia Rotale*.

Our recipient has always been ready to share his knowledge of the law not only in the classroom, but through his writings. He is the author of numerous articles published in *The Jurist*, *Monitor Ecclesiasticus*, *Newsletter of the Canadian Canon Law Society*, *Pastoral Sciences*, *The Priest*, and *Studia Canonica*. He has authored or edited several books including his doctoral dissertation, *The Missionary Oblates of Mary Immaculate: A Clerical Religious Congregation with Brothers*, first published in 1984, with a revised edition published in 1995. Many of these works have been translated into other languages and published simultaneously in various places around the world, especially for the benefit of the Church in developing nations. His writings touch on a variety of topics including marriage jurisprudence and procedures, sacraments, clergy issues, and penalties. His publications are always a treasure-trove of English translations of all sorts of Papal and curial documents. This individual has gone beyond the classroom and print media in order to educate others in the field of canon law. His first effort with electronic media was a CD-ROM version of the 1956-2000 volumes of *Canon Law Abstracts*.

It appears that when our recipient was named professor emeritus in the Faculty of Canon Law at St. Paul University in 2001, he ignored the fine print of the decree which indicated that he was retired. Instead, he accepted the invitation of the Cardinal Archbishop of Chicago to serve as associate episcopal vicar for canonical services and promoter of justice in the Archdiocese. If that wasn't enough, he has continued to research in new areas and to update some of his earlier works, always looking for additional information and jurisprudence to share. Since the promulgation of the USCCB, *Charter for the Protection of Children and Youth* and the corresponding *Essential Norms*, he has offered his assistance in educating and advising canonists, bishops, and religious superiors in the proper application of the penal law of the Church. He is often spoken of with grateful affection by his former students at St. Paul University and is certainly well-regarded by any who have sought his counsel.

I have had the pleasure of participating in meetings with him and I have always been impressed by the way he shares his wisdom and knowledge of the law with a sense of dignity and humility, and with deep respect for the good of the Church and the good of each and every person who is served by its law. It is obvious that he is inspired by the missionary spirit of the Oblates of Mary Immaculate and committed to the mission of promoting every method of serving God's people that comes under the concept of law.

With gratitude and sincere respect, it is my privilege on behalf of the Board of Governors and the entire membership of the Canon Law Society of America to present the 2004 Role of Law Award to Reverend William H. Woestman of the Missionary Oblates of Mary Immaculate.

RESPONSE

ROLE OF LAW AWARD

WILLIAM H. WOESTMAN, O.M.I.

When I received an unexpected telephone call last February from Msgr. Mark Barchak, I presumed that he wanted to ask me to do something about a canon 1395, §2 case. However, he started off by asking me if I intended to attend the CLSA convention in Pittsburgh in October. Without hesitation I answered no and added that I attended conventions only when I have to. He then said that the Board of Governors had agreed that they would bestow on me the annual Role of Law Award at the convention. As you have surmised I quickly changed my mind and you see me here.

I was most surprised and am most honored by this totally unexpected award. Just as Saint Paul was an apostle born "out of the normal" (*1 Cor 15:8*), I am a canonist born out of the normal course of events, out of the ordinary due time. I began my formal studies for the licentiate in canon law at the University of St. Thomas Aquinas in Rome some months after I had celebrated my twenty-fifth anniversary of ordination. I defended my doctoral dissertation a little over three years later in 1984 and sat in 1986 for the twelve hour written post doctoral exam for the diploma of advocate of the Tribunal of the Roman Rota on the thirtieth anniversary of my ordination. Although I had enjoyed canon law as a student for the priesthood and as a young priest, I had no thought – must less plans – on becoming a canonist in my mature age. This was changed in 1980 during the general chapter of the Missionary Oblates of Mary Immaculate. Father Francis George, who was then vicar general of my religious congregation and my predecessor as provincial of the Central U.S. Province, asked me to accept two very minor jobs in our general curia in Rome when I finished my term of office and to study canon law for an eventual position at our general house. This was a sudden change in my life. Once I had finished my studies at the age of almost fifty-six, the superior general suggested that I might like to teach canon law at St. Paul University in Ottawa starting in the fall of 1986. The rest is history.

Not long before starting to study canon law, I visited the members of my province in Denmark. While there one evening I went for supper at the residence of the bishop of Copenhagen and during the meal the priest with me brought up the subject of my plan to study canon law. Even if the bishop did not laugh out loud when he heard this, his expression clearly indicated that he thought that this was rather ridiculous. Perhaps he can be excused since he is a theologian and as many theologians, at least at that time, did not have a proper esteem for canon law.

Before I proceed further, I wish to thank the Board of Governors for conferring on me this most unexpected highest award granted by the Society. I hope that my

publications have helped and will continue to help its members in serving justice in the Church.

His dictis, I now turn to the main subject of my remarks. Don't worry! Before preparing this talk I consulted a number of issues of the *Proceedings* of the annual CLSA convention, and learned that in the recent past the custom exists for the awardee to give a rather brief response. As a canonist, I will not break with this legitimate custom – especially keeping in mind that I am addressing a group that has just finished a good meal and is no doubt tired toward the end of the convention.

Since the pontificate of Pius XII, it has been the practice of the popes to receive in audience the auditors of the Roman Rota and their co-workers at which he addresses them on an important topic relating to the Apostolic Tribunal. Clearly the various popes do not intend to direct these allocutions to the Rota alone, but to all those called to administer justice in the Church as well as all involved the Church's governing *munus*. This was clearly stated by John Paul II in his first allocution to the Rota.² In recent years, it seems that some American religious pundits with great facility read in the pope's most recent allocution a reprimand or at least a criticism of the tribunals in this country. This, however, is not the subject of these remarks.

Of particular importance is John Paul II's first allocution to the Rota on February 17, 1979. In this address the Holy Father began by speaking of the Church's

committed effort to be the interpreter of that thirst for justice and dignity which the men and women of our age experience so strongly. In her function of proclaiming and upholding the basic rights of the human person at every stage of his or her existence. . . . As the Church's self-awareness has developed, the human-Christian person has found not only recognition but also, and above all, an explicit, active, and balanced defense of personal basic rights in harmony with those of the ecclesial community. This, too, is a duty the Church cannot renounce. In the area of the relations between person and community, she provides a model for integrating the orderly development of society and the development of the Christian's personality

² "I am delighted with this opportunity to meet for the first time those who, beyond all others, embody the Church's judicial function in the service of truth and love for the building up of the Body of Christ. I am happy to recognize in them, as in all administrators of justice and specialists in canon law, professionals of a vital role in the Church, indefatigable witnesses to a higher justice in the midst of a world characterized by injustice and violence, and, consequently, most valuable collaborators in the pastoral activity of the Church herself" John Paul II, February 17, 1979, in AAS 71 (1979) 422–427; English trans. in *ORe* February 26, 1979, 6–7; *The Pope Speaks* 24 (1979) 217–222; Papal Allocutions to the Roman Rota, 1939–2002, William H. Woestman, OMI, (Ottawa, Saint Paul University, 2002) 153.

in a community of faith, hope, and love (see *LG*, no. 8³).⁴

Following in the footsteps of John Paul II, rather than discuss some aspect of the law, I want to talk about who we are as canonists, i.e., our identity and our role in the Church. First of all, we are men and women who are baptized Christians sharing in the common priesthood of the faithful. Some of us have been called by the Lord to the ordained priesthood to serve our brothers and sisters in the Church through our ordained ministry. Precisely as canonists or jurists in Church law, all of us share another priesthood, i.e., we have been called to serve the Lord and our fellow Christians as servants of the law. Just as Jesus is the high priest and the mediator of the new covenant (cf. *Heb* 8:6), we canonists are priests and mediators of the law. As farfetched and mere a stretch of imagination as this may sound, there is a strong foundation for stating that all of us canonists are priests of the law, precisely canon law with all that this implies.

On August 15, 1934, Pius XI issued the constitution *Ad incrementum* governing the privileges of certain prelates of the various dicasteries of the Roman Curia. In the second paragraph the Holy Father spoke of the auditor prelates of the Roman Rota with the words: "*Iuris dicendi munus . . . itidem nobilissimum est sacerdotium*" (whose office is in like manner a most noble priesthood).⁵ These words are based on the text of the Roman jurist Ulpian (+228), who wrote:

A law student at the outset of his studies ought to first to know the derivation of the word *ius*. Its derivation is from *iustitia*. For in terms of Celsus' elegant definition the law is the art of goodness and fairness (*ars boni et æqui*). 1. Of that we [jurists] are deservedly called priests. For we cultivate the virtue of justice and claim awareness of what is good and fair, discriminating between fair and unfair, distinguishing between lawful and unlawful . . .⁶

Pius XII told the Rota auditors that "as priests of the tribunal of justice and

³ "Christ, the one mediator, set up his Holy Church here on earth as a visible structure, a community of faith, hope and love; and he sustains it unceasingly' and through it he pours out grace and truth on everyone. This society, however, equipped with hierarchical structures, and the mystical body of Christ, a visible assembly and a spiritual community, an Earthly Church and a church enriched with heavenly gifts, must not be considered as two things, but as forming one complex reality comprising a human and a divine element. It is therefore by no mean analogy that it is likened to the mystery of the incarnate Word. For just as the assumed nature serves the divine Word as a living instrument of salvation inseparably joined with him, in a similar way the social structure of the church serves the Spirit of Christ who vivifies the Church towards the growth of the body (see Eph 4:16)."

⁴ *Papal Allocutions*, 153.

⁵ PIUS XI, constitution *Ad incrementum* August 15, 1934, AAS 26 (1934) 497.

⁶ Cited by Albert GAUTHIER, O.P., *Roman Law and the Contribution to the Development of Canon Law*, (Ottawa, Saint Paul University, 1996) 27.

priests of the altar of faith," they have "the office to serve justice and define it. . ."⁷ Paul VI in his second allocution to the Rota addressed the importance of their ministry:

Truly it is a worthy and eminent ministry upon which reflects the very light of God – primordial and absolute justice, most pure source of all earthly justice. Your ministry of justice (*ministerium iustitiæ*), which must be always faithful and irreproachable, must be considered in this divine light. Under this light one understands why it must flee from even the most minute blemish of injustice so as to protect for this ministry its crystal purity.⁸

A year later Paul VI taught:

Since it is proper to the authority in the Church to be of service, it exercises the most worthy ministry of justice. Therefore, when it proclaims the law and protects order, it is penetrated by a human sense, which is simultaneously humble and wise – that makes the judge a teacher, a guide, a father, and a friend.⁹

No doubt Paul VI was familiar with the post-conciliar misunderstanding and misrepresentation of the meaning of the word *pastoral*. He spoke about this in 1973.

Thus canon law is not simply a norm of life and a pastoral rule; it is also a school of justice, of discretion, and of charity in action. Where do We find this verified more clearly than among you, in your tribunal, where this law is applied in the service of souls? . . . It is through *canonical equity* that the pastoral character of your judicial office and function is asserted. . . This ministry of the Church is indeed *pastoral* in the fullest sense of the word. It is a ministry of the Christian priesthood (see *Lg*, no. 27), having its roots in the mission that the Lord entrusted to the "first Peter" (PIUS XII, October 3, 1941). Through his successors he continues to govern, teach, and judge (see VATICAN I, *Pastor æternus*, DS, no. 3056). It is an integral part of the apostolic mandate, shared by all those, priests and lay people, who are called upon to exercise justice in our name and in the name of our brothers in the episcopate. The Apostles, and their successors exercised this power in carrying on this mission. . . . Motivated by canonical equity, the judge

⁷ PIUS XII, October 2, 1939, in *Discorsi e Radiomessaggi di Sua Santità Pio XII* 1 (1939-1940) 331-337; *Papal Allocutions*, 3.

⁸ PAUL VI, January 11, 1965, in AAS 57 (1965) 233-236; *Papal Allocutions*, 80.

⁹ PAUL VI, January 25, 1966, in AAS 58 (1966) 152-153; *Papal Allocutions*, 83.

will take into account all the promptings of charity and seek to avoid the rigor of the law and the rigidity of its technical expression. He will avoid the letter of the law that kills by imbuing his interventions with the charity that is the gift of God's freeing and life giving Spirit. He will take account of the human person and of the demands of a given situation, which may compel the judge to apply the law more severely, but ordinarily they will lead him to exercise it in a more human and compassionate manner. He must take care not only to safeguard the juridical order but also to heal and educate, thus giving proof of authentic charity. The pastoral exercise of judicial power is medicinal rather than vindictive. There are penalties, but these should not be seen as some sort of vengeance. As Saint Augustine says, they should rather be viewed as a desirable form of expiation (see *De civitate Dei*, 21, 13).¹⁰

Paul VI's teaching on this subject can be summarized in this way. Canon law and its practitioners are eminently pastoral because their goal is both truth and justice for everyone.

Our pastoral service . . . [is] one of truth, wisdom, justice, and Christian prudence. It is under this aspect also, and indeed this aspect principally, that our service is reflected in your judicial activity, if what Saint Thomas teaches is true, namely, that every judgment implies right reason and that every judge is, in a sense, justice personified, *living justice (quædam iustitia animata*, II-II, q. 60, a. 1).¹¹

Following the example of his predecessors John Paul II insisted on the essential role of canon law in the Church:

Canon law plays a role that is in the highest degree educative, both of individuals and of society, with the intention of bringing about an ordered and fruitful environment in which the human-Christian person can come into being and mature in an integral way. In fact, this can be realized only insofar as a person surrenders any exclusive individualism, since the person's vocation is communal as well as personal. Canon law agrees with and fosters this characteristic fulfillment insofar as it helps to overcome individualism, by leading – from a rejection of the self as an exclusive and isolated individual – to the affirmation of the self as an authentically social being through acknowledgment of and respect for the other as a *person* endowed with universal, inviolable, and inalienable rights and invested with

¹⁰ PAUL VI, February 8, 1973, in AAS 65 (1973) 95–103; English trans. in *The Pope Speaks* 18 (1973–1974) 75–82; *Papal Allocutions*, 115–122.

¹¹ PAUL VI, January 27, 1969, in AAS 61 (1969) 174–178; partial English trans. in *CLD*, vol. 7, 901–905; *Papal Allocutions*, 96.

a transcendent dignity.

But the task of the Church and her historical merit, which is to proclaim and defend in every place and in every age the fundamental human rights, does not exempt her but, on the contrary, obliges her to be herself a *mirror of justice* (*speculum iustitiae*) for the world. In this regard, the Church has her own proper and specific responsibility.¹²

As priests of the law, the virtue that must guide and direct our canonical ministry as jurists is that of justice. Thomas Aquinas wrote.

It is proper to justice, as compared with the other virtues, to direct man in his relations with others: because it denotes a kind of equality, as its very name implies; indeed we are wont to say that things are adjusted when they are made equal, for equality is in reference of one thing to another person. . . . Because a man's work is said to be just when it is related to another by way of some kind of equality, for instance the payment of the wage due for a service rendered. . . . For this reason justice has its own special proper object over and above the other virtues, and this object is called the just, which is the same as "right" (*ius*). Hence it is evident that right (*ius*) is the object of justice.¹³

As priests of the law our pastoral ministry, i.e., all our juridical activity and goal, is necessarily the truth upon which all justice is founded. According to Paul VI we must attempt to exercise justice in a "human and compassionate manner;" we must "take care not only to safeguard the juridical order but also to educate, thus giving the proof of authentic charity."¹⁴

¹² February 17, 1979, *Papal Allocutions*, 153-154.

¹³ II-II, XVIII, art. 1. The *Catechism of the Catholic Church* echoes this when it states: "Justice is the moral virtue that consists in the constant and firm will to give their due to God and neighbor. Justice toward God is called the "virtue of religion." Justice toward men disposes one to respect the rights of each and to establish in human relationships the harmony that promotes equity with regard to persons and to the common good. The just man, often mentioned in the Sacred Scriptures, is distinguished by habitual right thinking and the uprightness of his conduct toward his neighbor. "You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor." "Masters, treat your slaves justly and fairly, knowing that you also have a Master in heaven." (No. 1807)

¹⁴ PAUL VI, February 8, 1973, in AAS 65 (1973) 95-103; English trans. in *The Pope Speaks* 18 (1973-1974), 75-82; *Papal Allocutions*, 115-122.

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October 11 – 14, 2004

(as of September 24, 2004)

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CLSA Convention
October 11 – 14, 2004

(as of September 24, 2004)

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CLSA Convention
October 11 – 14, 2004

(as of September 24, 2004)

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CLSA Convention
October 11 – 14, 2004

(as of September 24, 2004)

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October 2003 – 2004

(as of September 24, 2004)

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(as of September 24, 2004)

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INDEX

CLSA PROCEEDINGS

VOLS 57 (1995) – 65 (2003)

Note: Because person's titles have changed since some articles have been authored, and in order to maintain consistency, titles of persons have been omitted from this Index.

AUTHORS

Alesandro, John A. and Alan J. Placa

"Church Agents and Employees: Legal and Canonical Issues," 58 (1996) 35-82

Bartchak, Mark L.

"Procedures for Favor of the Faith Cases," 61 (1999) 93-121

Barton, Deborah A.

"Education and Catechesis of Children: Rights of Parents and Rights of Bishops," 62 (2000) 63-92

Bassett, William W.

"A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations," 59 (1997) 61-86

"The Supreme Court and Freedom of Religion: Present Trends," 58 (1996) 83-133

Beal, John P.

"Hierarchical Recourse: Procedures at the Local Level," 62 (2000) 93-106

"Where's the Body? Where's the Blood? The Teaching Authority of the Diocesan Bishop and the Rights of Catholic School Teachers," 57 (1995) 91-128

Bittner, Gregory T.

"Tensions in Achieving and Observing Subsidiarity," 65 (2003) 1-30

"Issues in the Relationship and Role of the Diocesan Attorney and the Diocese," 60 (1998) 44-67

Blyskal, CSJ, Lucy M.

"The First International Conference on Women Deacons," 59 (1997) 87-104

Brewer, Dexter S.

"A New Tribunal for a New Millennium," 61 (1999) 123-135

Brundage, Thomas T.

"Canonical Issues in Due Process," 63 (2001) 37-48

Budney, Linda

"The Parish as Employer," 64 (2002) 59-72

Carbonneau, CP, Robert E.

"The Chinese Catholic Church and the Quest for a Reconciliation Narrative," 59 (1997) 105-122

Caparros, Ernest

"La Présence du Droit Canonique dans le Droit Étatique," 57 (1995) 129-146

Catoir, John

"The Internal Forum," 59 (1997) 123-129

Christiansen, SJ, Drew

"One Church, Many Cultures," 63 (2001) 1-10

Committee on Experiment in Due Process

"The Final Report of the Committee on the Experiment in Due Process in the Church," 61 (1999) 137-159

Conlin, Daniel C.

"The McGrath Thesis and its Impact on a Canonical Understanding of the Ownership of Ecclesiastical Goods," 64 (2002) 73-96

Conn, SJ, James J.

"Bishops and the Apostolates of Religious," 63 (2001) 49-83

Coriden, James A.

"Freedom of Expression in the Church in the Light of Canon 212 (*CIC*)," 57 (1995) 147-165

"The Holy Spirit and Canon Law: An Exploration," 58 (1996) 134-147

Coriden, James A. and James H. Provost

"Canonical Implications Related to the Ordination of Married Men to the Priesthood in the United States of America," 59 (1997) 130-135

Courturier, FMA, Marie-Paule

"La Protection des Droits dans un Institut Religieux," 57 (1995) 166-180

Cox, Craig A.

"Is it the Same Truth? Conformity of Sentences in Marriage Nullity Cases,"
62 (2000) 107-128

Cox, Craig A. and Harmon D. Skillin

"Advocacy: The Western Region's Experience," 58 (1996) 148-175

Cusack, Barbara Ann

"Trends in Catholic Education: Issues of Episcopal Authority," 65 (2003) 93-106

Darcy, RSM, Catherine

"Models of Participation in Religious Community Chapters," 57 (1995) 181-200

Darcy, RSM, Catherine, and Ricardo Ramírez, CSB

"Canonical Ministry to Migrants," 63 (2001) 215-232

Desrochers, André

"L'avenir des Tribunaux Ecclésiastiques de Mariage au Canada: Évaluations, Souhaits et Prévisions," 57 (1995) 1-16

DiNardo, Lawrence A.

"Complementarity and the Clergy," 64 (2002) 1-13

"The Diocesan Synod Before and After the Vatican Instruction," 62 (2000) 129-134

Dulles, SJ, Avery

"The Universal and the Particular Church," 65 (2003) 31-41

Easton, Frederick C.

"Favor of the Faith Cases and the 2001 Norms of the Congregation for the Doctrine of the Faith," 64 (2002) 97-119

"The Defender of the Bond: Then and Now," 59 (1997) 136-164

Euart, RSM, Sharon A.

"Complementary Legislation of Episcopal Conferences: Reflections on the U.S. Experience," 65 (2003) 43-63

"The Restructured NCCB at the Turn of a New Millennium: Implications for the Future," 62 (2000) 135-151

Faris, John D.

"The Pastoral Care of Migrants and the Code of Canons of the Eastern Churches," 63 (2001) 85-99

Foster, Michael Smith

"The Promotion of the Canonical Rights of Children," 59 (1997) 163-203

Foster, John J. M.

"The Relationship of Public and Private Worship," 64 (2002) 121-143

Frugé, Donald

"Diocesan Taxation of Parishes in the United States: Sign of *Communio* or Source of Tension?" 60 (1998) 68-81

Gallagher, SC, Marjory

"The Future of Small Religious Institutes: Merging and Other Issues," 57 (1995) 201-215

Gori, OSA, Peter G.

"Hostility in the Tribunal Context," 64 (2002) 145-155

Gottemoeller, RSM, Doris

"*Vita consecrata*: The Post-Synodal Exhortation on Consecrated Life," 58 (1996) 176-186

Graham, OSB, Joanne

"The Relation between Religious Institutes and the Diocese," 60 (1998) 82-90

Graham, James

"Error," 63 (2001) 101-109

Grogan, John J.

"Complementarity in an Era of Heightened Accountability," 64 (2002) 15-25

Guindon, Jeannine

"Une Nouvelle Façon de Concevoir la Formation Initiale et Continue des Prêtres par la Formation Humaine Intégrale," 57 (1995) 216-230

Hack, Michael A.

"Selected Issues in the Administration of a Diocesan Tribunal," 58 (1996) 187-209

Hartmann, Paul

"Use of the Computer and Internet Resources for Canon Law," 63 (2001) 111-125

Holland, IHM, Sharon L.

"Visitation in Religious Institutes: A Service of Communion," 61 (1999) 161-178

Hotchkin, John F.

"Canon Law and Ecumenism: Giving Shape to the Future," 62 (2000) 3-18

Huels, OSM, John M.

"Back to the Future: The Role of Custom in a World Church," 59 (1997) 1-25

"Ministry to the Sick and Dying in View of the Shortage of Priests," 63 (2001) 127-146

"Principles of Liturgical Adaptation in Light of Justice and Forgiveness," 61 (1999) 1-25

Ingels, Gregory

"Advocacy: Emerging Issues," 58 (1996) 210-218

Jarrell, OSU, Lynn and Daniel J. Ward, OSB

"From Words to Deeds: Inclusivity in Ministry," 64 (2002) 157-175

Jenkins, Ronny E.

"Faithful in All Things Conjugal: Recent Developments in the *Bonum Fidei*," 61 (1999) 179-194

Johnson, John G.

"Elements of a Judicial Sentence," 63 (2001) 147-172

Jorgensen, Gerald T.

"Culture and Error *Non-Simplex* – Not So Rare," 62 (2000) 153-216

Kealy, Robert L.

"Canonical Aspects of Catholic Identity in the Institutional Setting," 61 (1999) 195-209

King, William J.

"The Corporation Sole and Subsidiarity," 65 (2003) 107-134

Kneal, Ellsworth

"The Mentally Impaired: Can They Marry? May They Marry?" 58 (1996) 219-236

Komonchak, Joseph A.

"People of God, Hierarchical Structure, and Communion: An Easy Fit?" 60 (1998) 91-102

Lagges, Patrick R.

“Conditional Consent to Marriage,” 58 (1996) 237-260

“Force or Fear,” 58 (1996) 261-282

Lipscomb, Oscar H.

“American, Roman and Catholic: Still Searching for Common Ground,” 61

(1999) 27-48

Lucas, John P.

“Levels of Church Authority: Conflict or Complementarity. Relations between First and Second Instance Tribunals,” 65 (2003) 135-150

Lynch, CSP, John E.

“The Office of Bishop in Mainline Protestant Churches,” 60 (1998) 103-123

Marini, Francis J.

“The Adjudication of Interritual Marriage Cases in the Tribunal,” 61 (1999) 211-249

Martos, Joseph

“Paradigm Shifts in the Theology of Marriage,” 60 (1998) 124-131

McAuliffe, Jane Dammen

“The Islamic Legal Tradition: An Overview,” 64 (2002) 177-190

McDermott, SSJ, Rose

“Associates and Associations Joined to Religious Institutes,” 60 (1998) 132-149

McDonough, OP, Elizabeth

“Jurisdiction Exercised by Non-Ordained Members in Religious Institutes,” 58 (1996) 292-307

McDonough, Kevin M.

“Beyond Bureaucracy: New Strategies for Diocesan Leadership,” 61 (1999) 251-265

McGrath, OFM, Aidan

“*Communicatio in sacris*: An Effort to Express the Unity of Christians or Simply an Exercise in Politeness?” 63 (2001) 173-214

Mendonça, Augustine

"The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special Reference to Countries of Southeast Asia," 57 (1995) 231-292

Morrissey, OMI, Francis G.

"'Chaplains': Canon 564, Canonical Theory and Current Practice," 61 (1999) 267-281
"The Latin and Eastern Codes and Possibilities for the Future," 57 (1995) 17-33

Motiuk, David

"Catholic and Orthodox Issues in Ukraine," 59 (1997) 204-222

O'Connell, CM, David M.

"The Norms Implementing *Ex corde ecclesiae* in the United States: Implications for Dioceses," 62 (2000) 217-232

O'Gara, Margaret

"*Apostolicae curae* after a Century: Anglican Orders in Light of Recent Ecumenical Dialogue on Ordained Ministry in the Church," 60 (1998) 1-18

Oliver, BH, Robert H.

"*Sacramentorum sanctitatis tutela*: Overview and Implementation of the Norms concerning the 'More Grave Delicts' reserved to the Congregation for the Doctrine of the Faith," 65 (2003) 151-172

O'Reilly, OMI, Michael A.

"The Catechism of the Catholic Church within the Framework of Book III of the 1983 Code," 57 (1995) 293-305

O'Rourke, OP, Kevin D.

"The Revised Ethical and Religious Directives," 65 (2003) 173-180

Orsy, SJ, Ladislav

"The Theological Task of Canon Law: A Canonist's Perspective," 58 (1996) 1-23

Pagé, Roch

"The Principle of Subsidiarity Revisited," 64 (2002) 191-208

Palmieri, Alexander J.

"Parishes Entrusted to the Care of Religious: Starting Afresh from Christ," 64 (2002) 209-239

Pelotte, SSS, Donald

"Many Peoples Living in One Church," 63 (2001) 11-16

Pilarczyk, Daniel E.

"Magisterium, Ministry, Membership," 64 (2002) 49-57

Placa, Alan J. and John A. Alesandro

"Church Agents and Employees: Legal and Canonical Issues," 58 (1996) 35-82

Provost, James H.

"Error as a Ground in Marriage Nullity Cases," 57 (1995) 306-324

"Rights in Canon Law: Real, Ideal, or Fluff?" 61 (1999) 317-342

Provost, James H. and James A. Coriden

"Canonical Implications Related to the Ordination of Married Men to the Priesthood in the United States of America," 59 (1997) 130-135

Punderson, Joseph R.

"Hierarchical Recourse to the Holy See: Theory and Practice," 62 (2000) 19-47

Quillin, PBVM, Francine

"To be [Evaluated] or Not To Be," 65 (2003) 181-189

Rachford, Nicholas RA

"Norms of Particular Law for the Byzantine Metropolitan Church *Sui Iuris* of Pittsburgh, USA, and Its Implications for Latin Dioceses," 62 (2000) 233-243

Ramírez, CSB, Ricardo and Catherine Darcy, RSM

"Canonical Ministry to Migrants," 63 (2001) 215-232

Reese, SJ, Thomas J.

"The Experience of Special Synods," 59 (1997) 26-46

Rehrauer, OSF, Ann F.

"An Introduction to Liturgical Law: Sources and Interpretation," 64 (2002) 241-252

"Current Issues in Liturgical and Sacramental Law," 62 (2000) 245-262

Reid, Jr., Charles J.

"Roots of a Democratic Church Polity in the History of Canon Law: The Case of Elections in the Church," 60 (1998) 150-178

Renken, John A.

"Law in the Service of Church in America," 63 (2001) 17-36

"The Parish: Community of the Christian Faithful within the Particular Church," 60 (1998) 179-223

Rinere, CP, Elissa A.

"Canonical Education of Official Church Ministers," 57 (1995) 325-336

Ritty, J. Michael and Rev. James A. Coriden

"The Selection of Bishops," 65 (2003) 65-91

Robitaille, Lynda A.

"An Examination of Various Forms of Preaching: Toward an Understanding of the Homily and Canons 766-767," 58 (1996) 308-325

"Proofs in Defect of the Will Cases: Jurisprudence Regarding Positive Acts of the Will Contrary to Marriage," 57 (1995) 337-354

Routhier, Gilles

"Les Implications, Pour L'église Universelle, de la Revivescence des Synodes Diocésains," 57 (1995) 355-376

Schmidt, Kenneth W.

"The 'Raising of Children' as an Essential Element of Marriage," 59 (1997) 223-266

Schreiter, CPPS, Robert J.

"The World Church and Its Mission: A Theological Perspective," 59 (1997) 47-60

Shea, OFM, Patrick T.

"Clergy Records, Part I: Civil Law Considerations," 58 (1996) 326-345

"Exclaustation," 59 (1997) 267-281

Sherba, Jerry M.

"Canon 1096: Ignorance as a Ground for Nullity," 59 (1997) 282-299

Skillin, Harmon D. and Craig A. Cox

"Advocacy: The Western Region's Experience," 58 (1996) 148-175

Skilba, Richard J.

"Law in the Service of the Gospel: Biblical Reflections on Critical Issues Facing the Church," 62 (2000) 49-61

Smilanic, Daniel A.

"Reverential Fear," 58 (1996) 283-291

"The Publication of the Acts: Canon 1598 §1," 57 (1995) 377-386

Smith, OSF, Patricia

"Religious Law: Present Reality/Future Possibilities," 65 (2003) 191-212

Smith, SC, Rosemary

"*Strengthening the Bonds of Peace* Revisited," 58 (1996) 354-367

"The Personal Patrimony of Individual Members of Religious Institutes: Current Issues," 62 (2000) 263-281

Souckar, Michael A.

"Subsidiarity and the *CCEO*," 65 (2003) 213-239

"The Return of a Cleric to Active Ministry: A Canonical Study and Procedural Model," 61 (1999) 283-303

Thériault, Michel

"La Procédure des Recours Administratifs: Survol et Évaluation," 57 (1995) 387-427

Tillard, OP, J. M. R.

"Ecclesiology of Communion and Canon Law: The Theological Task of Canon Law, A Theologian's Perspective," 58 (1996) 24-34

Torfs, Rik

"*Ecclesia Semper Reformanda*: A European Perspective on the Future of Law, The Journey Ahead," 61 (1999) 49-91

"Rights in Canon Law: Real, Ideal, or Fluff?" 61 (1999) 343-384

Vavaro, William A.

"Rotal Jurisprudence in the 1990s," 60 (1998) 224-242

Ward, OSB, Daniel J.

"Privacy/Confidentiality Issues in Religious Institutes," 61 (1999) 305-315

Ward, OSB, Daniel J. and Lynn Jarrell, OSU

"From Words to Deeds: Inclusivity in Ministry," 64 (2002) 157-175

Weakland, OSB, Rembert G.

“Structuring *Communio* in a Church Formed of Many Cultures,” 60 (1998) 19-30

Weisenbeck, FSPA, Marlene

“Emerging Expressions of Consecrated Life in the United States: Pastoral and Canonical Implications,” 58 (1996) 368-390

Wiatrowski, Ralph E.

“Clergy Records, Part II: Canon Law Considerations,” 58 (1996) 346-353

Wijlens, Myriam

“Ecclesial Lay Ministry, Clergy and Complementarity,” 64 (2002) 27-47

“Ethical Issues Confronting the Professional Canonist,” 59 (1997) 300-313

Woestman, OMI, William H

“Simulation Revisited,” 65 (2003) 241-256

Woods, SCL, Susan K.

“Anointing of the Sick: Theological Issues,” 63 (2001) 233-254

Wrenn, Lawrence G.

“When is an Invalid Marriage Null?” 60 (1998) 31-43

Žužek, SJ, Ivan

“Authentic Interpretations,” 57 (1995) 34-90

TITLES

- "A New Tribunal for a New Millennium," 61 (1999) 123-135, Dexter S. Brewer
- "A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations," 59 (1997) 61-86, William W. Bassett
- "Advocacy: Emerging Issues," 58 (1996) 210-218, Gregory Ingels
- "Advocacy: The Western Region's Experience," 58 (1996) 148-175, Craig A. Cox and Harmon D. Skillin
- "American, Roman and Catholic: Still Searching for Common Ground," 61 (1999) 27-48, Oscar H. Lipscomb
- "An Examination of Various Forms of Preaching: Toward an Understanding of the Homily and Canons 766-767," 58 (1996) 308-325, Lynda A. Robitaille
- "An Introduction to Liturgical Law: Sources and Interpretation," 64 (2002) 241-252, Ann F. Rehrauer, OSF
- "Anointing of the Sick: Theological Issues," 63 (2001) 233-254, Susan K. Woods, SCL
- "*Apostolicae curae* after a Century: Anglican Orders in Light of Recent Ecumenical Dialogue on Ordained Ministry in the Church," 60 (1998) 1-18, Margaret O'Gara
- "Associates and Associations Joined to Religious Institutes," 60 (1998) 132-149, Rose McDermott, SSJ
- "Authentic Interpretations," 57 (1995) 34-90, Ivan Žužek, SJ
- "Back to the Future: The Role of Custom in a World Church," 59 (1997) 1-25, John M. Huels, OSM
- "Beyond Bureaucracy: New Strategies for Diocesan Leadership," 61 (1999) 251-265, Kevin M. McDonough
- "Bishops and the Apostolates of Religious," 63 (2001) 49-83, James J. Conn, SJ
- "Canon 1096: Ignorance as a Ground for Nullity," 59 (1997) 282-299, Jerry M. Sherba

- "Canon Law and Ecumenism: Giving Shape to the Future," 62 (2000) 3-18, John F. Hotchkin
- "Canonical Aspects of Catholic Identity in the Institutional Setting," 61 (1999) 195-209, Robert L. Kealy
- "Canonical Education of Official Church Ministers," 57 (1995) 325-336, Elissa A. Rinere, CP
- "Canonical Implications Related to the Ordination of Married Men to the Priesthood in the United States of America," 59 (1997) 130-135, James A. Coriden and James H. Provost
- "Canonical Issues in Due Process," 63 (2001) 37-48, Thomas T. Brundage
- "Canonical Ministry to Migrants," 63 (2001) 215-232, Ricardo Ramírez, CSB, and Catherine Darcy, RSM
- "Catholic and Orthodox Issues in Ukraine," 59 (1997) 204-222, David Motiuk
- "'Chaplains': Canon 564, Canonical Theory and Current Practice," 61 (1999) 267-281, Francis G. Morrissey, OMI
- "Church Agents and Employees: Legal and Canonical Issues," 58 (1996) 35-82, John A. Alesandro and Alan J. Placa
- "Clergy Records, Part I: Civil Law Considerations," 58 (1996) 326-345, Patrick T. Shea, OFM
- "Clergy Records, Part II: Canon Law Considerations," 58 (1996) 346-353, Ralph E. Wiatrowski
- "*Communicatio in sacris*: An Effort to Express the Unity of Christians or Simply an Exercise in Politeness?" 63 (2001) 173-214, Aidan McGrath, OFM
- "Complementarity and the Clergy," 64 (2002) 1-13, Lawrence A. DiNardo
- "Complementarity in an Era of Heightened Accountability," 64 (2002) 15-25, John J. Grogan
- "Complementary Legislation of Episcopal Conferences: Reflections on the U.S. Experience," 65 (2003) 43-63, Sharon A. Euart, RSM
- "Conditional Consent to Marriage," 58 (1996) 237-260, Patrick R. Lagges

- "Culture and Error *Non-Simplex* – Not So Rare," 62 (2000) 153-216, Gerald T. Jorgensen
- "Current Issues in Liturgical and Sacramental Law," 62 (2000) 245-262, Ann Rehrauer, OSF
- "Diocesan Taxation of Parishes in the United States: Sign of *Communio* or Source of Tension?" 60 (1998) 68-81, Donald Frugé
- "*Ecclesia Semper Reformanda*: A European Perspective on the Future of Law, The Journey Ahead," 61 (1999) 49-91, Rik Torfs
- "Ecclesial Lay Ministry, Clergy and Complementarity," 64 (2002) 27-47, Myriam Wijlens
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TOPICS

GENERAL TOPICS

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- "Use of the Computer and Internet Resources for Canon Law," 63 (2001) 111-125, Paul Hartmann

ADVOCACY, RECOURSE, DUE PROCESS

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- "Hierarchical Recourse to the Holy See: Theory and Practice," 62 (2000) 19-47, Joseph R. Punderson
- "Hierarchical Recourse: Procedures at the Local Level," 62 (2000) 93-106, John P. Beal
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- "Clergy Records, Part II: Canon Law Considerations," 58 (1996) 346-353, Ralph E. Wiatrowski
- "Issues in the Relationship and Role of the Diocesan Attorney and the Diocese," 60 (1998) 44-67, Gregory T. Bittner
- "La Présence du Droit Canonique dans le Droit Étatique," 57 (1995) 129-146, Ernest Caparros
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"The Supreme Court and Freedom of Religion: Present Trends," 58 (1996) 83-133, William W. Bassett

CULTURAL ISSUES

"Canonical Ministry to Migrants," 63 (2001) 215-232, Ricardo Ramírez, CSB, and Catherine Darcy, RSM

"Many Peoples Living in One Church," 63 (2001) 11-16, Donald Pelotte, SSS

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DIOCESAN AND PARISH ISSUES

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- "The Diocesan Synod Before and After the Vatican Instruction," 62 (2000) 129-134, Lawrence A. DiNardo
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- "The Principle of Subsidiarity Revisited," 64 (2002) 191-208, Roch Pagé
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- "Norms of Particular Law for the Byzantine Metropolitan Church *Sui Iuris* of Pittsburgh, USA, and Its Implications for Latin Dioceses," 62 (2000) 233-243, Nicholas R.A. Rachford
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- "The Office of Bishop in Mainline Protestant Churches," 60 (1998) 103-123, John E. Lynch, CSP
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EDUCATION

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EPISCOPACY

"Bishops and the Apostolates of Religious," 63 (2001) 49-83, James J. Conn, SJ

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LITURGY, SACRAMENTS

- "An Examination of Various Forms of Preaching: Toward an Understanding of the Homily and Canons 766-767," 58 (1996) 308-325, Lynda A. Robitaille
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- "*Communicatio in sacris*: An Effort to Express the Unity of Christians or Simply an Exercise in Politeness?" 63 (2001) 173-214, Aidan McGrath, OFM
- "Current Issues in Liturgical and Sacramental Law," 62 (2000) 245-262, Ann Rehrauer, OSF
- "Ministry to the Sick and Dying in View of the Shortage of Priests," 63 (2001) 127-146, John Huels, OSM
- "Principles of Liturgical Adaptation in Light of Justice and Forgiveness," 61 (1999) 1-25, John M. Huels, OSM
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MINISTRY

- "Bishops and the Apostolates of Religious," 63 (2001) 49-83, James J. Conn, SJ
- "Canonical Education of Official Church Ministers," 57 (1995) 325-336, Elissa A. Rinere, CP
- "Canonical Ministry to Migrants," 63 (2001) 215-232, Ricardo Ramírez, CSB, and Catherine Darcy, RSM

- “‘Chaplains’: Canon 564, Canonical Theory and Current Practice,” 61 (1999) 267-281, Francis G. Morrissey, OMI
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- “From Words to Deeds: Inclusivity in Ministry,” 64 (2002) 157-175, Lynn Jarrell, OSU, and Daniel J. Ward, OSB
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RELIGIOUS

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- "*Vita consecrata*: The Post-Synodal Exhortation on Consecrated Life," 58 (1996) 176-186, Doris Gottemoeller, RSM

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- "Error," 63 (2001) 101-109, James Graham

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- "Jurisdiction Exercised by Non-Ordained Members in Religious Institutes," 58 (1996) 292-307, Elizabeth McDonough, OP
- "L'avenir des Tribunaux Ecclésiastiques de Mariage au Canada: Évaluations, Souhaits et Prévisions," 57 (1995) 1-16, André Desrochers
- "Levels of Church Authority: Conflict or Complementarity. Relations between First and Second Instance Tribunals," 65 (2003) 135-150, John P. Lucas
- "Paradigm Shifts in the Theology of Marriage," 60 (1998) 124-131, Joseph Martos
- "Procedures for Favor of the Faith Cases," 61 (1999) 93-121, Mark L. Bartchak
- "Proofs in Defect of the Will Cases: Jurisprudence Regarding Positive Acts of the Will Contrary to Marriage," 57 (1995) 337-354, Lynda A. Robitaille
- "Reverential Fear," 58 (1996) 283-291, Daniel A. Smilanic
- "Rotal Jurisprudence in the 1990s," 60 (1998) 224-242, William A. Vavaro
- "Selected Issues in the Administration of a Diocesan Tribunal," 58 (1996) 187-209, Michael A. Hack
- "Simulation Revisited," 65 (2003) 241-256, Rev. William H. Woestman, OMI

- "The Adjudication of Interritual Marriage Cases in the Tribunal," 61 (1999) 211-249, Francis J. Marini
- "The Defender of the Bond: Then and Now," 59 (1997) 136-164, Frederick C. Easton
- "The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special Reference to Countries of Southeast Asia," 57 (1995) 231-292, Augustine Mendonça
- "The Internal Forum," 59 (1997) 123-129, John Catoir
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