

Canon Law and Clergy Sexual Abuse Crisis: An Overview of the U.S. Experience

Sr. Sharon Euart, RSM, JCD

**USCCB/CLSA Seminar
May 25, 2010**

Introduction

I want to express my gratitude and that of the Canon Law Society of America to the USCCB Media relations Office for the invitation to co-sponsor this briefing for media representatives. As canon lawyers, it is important to us that reporting on canonical matters reflect accurately the provisions of canon law. We are committed to assisting you as you navigate this maze of unfamiliar notions and words.

In my remarks this morning I want to provide an overview of the U.S. bishops' efforts to deal with issues related to the sexual abuse of minors by clergy. It is obvious today that clerical sexual abuse of minors is not and never was solely a United States problem. However, the fact that this crisis has surfaced in Europe, Australia, and elsewhere across the globe does not excuse or lessen the U.S. bishops' responsibility to address the problem openly and honestly and to ensure the future protection of children. Utilizing the provisions of canon law is essential to carrying out this responsibility.

Before focusing on the U.S. experience in addressing sexual abuse of minors by clergy, it's important to note that the Church's canon law has made provision for sexual abuse of minors to be a grave offense since the Middle Ages. Sins against the sixth commandment with a minor were considered criminal acts.

Condemnation of this kind of crime has always been firm and unequivocal.

Accordingly, when all church laws were compiled for the first time into a single Code of Canon Law in 1917, the Code reinforced the condemnation of such acts, reasserting in no uncertain terms the gravity of these crimes and the severe penalties to be imposed on clergy who committed them. Furthermore, even though the number of ecclesiastical crimes and penalties was considerably reduced in 1983 when the Code of Canon Law was revised, the condemnation of the sexual abuse of minors by clergy was retained as a crime that was punishable by dismissal from the clerical state.

Episcopal Conference and the Holy See

The clergy sexual abuse crisis has brought attention to the role and authority of episcopal conferences and their relationship to the Holy See, a canonical relationship that at times has needed clarification.

The involvement of the U.S. bishops conference in addressing issues of sexual abuse of minors by clergy dates back to the mid-1980s, continued throughout the 1990s and at various times involved discussions with and decisions by the Holy See. Most of these discussions concerned the development of canonical procedures for the canonical separation from the clerical state of priests who were guilty of sexually abusing minors in the past and who continued to represent a danger to children in the future.¹

The U.S. bishops and representatives of the Holy See were in dialogue for many years on how best to handle these cases. With the promulgation of the 1983 Code of Canon Law, the options for dealing with such grave cases were two: 1) voluntary petition by the priest in question for laicization, that is, dispensation from the obligations of the clerical state and a return to the lay state, or 2) penal

¹ John Alesandro, "Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State: A Background Paper," *Ius Ecclesiae* 8 (1996) 173.

dismissal from the clerical state by means of the judicial process – a collegiate tribunal of three qualified priest-judges.

The bishops were of the opinion that the judicial penal process was too cumbersome, lengthy, and difficult to carry out. In place of this process, the bishops sought an *administrative process of dismissal from the clerical state* from the Holy See. The U.S. bishops' goal was a streamlined decision-making process placed more fully in the hands of the diocesan bishop.² They considered the situations involving clergy sexual abuse pastorally devastating and requiring immediate response and decisive action.

All parties agreed. But what the bishops wanted was not only a streamlined procedure but a decision-making process in which the diocesan bishop himself would dismiss the priest based on pastoral necessity rather than as a penalty. In other words, the criteria for removal would be not only the redress (remedy) of a past harm but primarily the protection of children in the future.

From the canonical perspective, however, an administrative process in which the diocesan bishop imposed the penalty of dismissal from the clerical state in a non-judicial manner still required due process protections for the priest. Dialogue with the Holy See was not successful in reaching an agreement on an *administrative non-penal procedure* that would include the necessary protections for the rights of all involved: victims, priest, bishop and ecclesial community. In lieu of such an administrative approach, the discussion shifted to ways of facilitating the *judicial penal process of dismissal from the clerical state*.

While discussions were taking place between bishops' conference officials and the Holy See on one track, the bishops' discussions on clergy sexual abuse of minors

² Alesandro, p. 175.

in their plenary assembly began to take place in public rather than only behind closed doors in executive session. This was a turning point in how the bishops would address the sexual abuse of minor by clergy.

In June 1992 the bishops publicly adopted several principles of action which recommended that U.S. dioceses

1. respond promptly to all allegations of abuse where there is reasonable belief that abuse has occurred;
2. if such an allegation is supported by sufficient evidence, relieve the alleged offender promptly of his ministerial duties and refer him for appropriate medical evaluation and intervention;
3. comply with the obligations of civil law as regards reporting of the incident and cooperating with the investigation;
4. reach out to the victims and their families and communicate sincere commitment to their spiritual and emotional well-being; and,
5. within the confines of respect for privacy of the individuals involved, deal as openly as possible with the members of the community.³

These five principles had been offered to the bishops since 1987 though they had not been made public until 1992.

These principles were not binding on the bishops; they did not constitute a national policy. Why not? Because the episcopal conference is not a governing body with the power to enact regulations binding its members except in those matters where universal law (i.e., the Code of Canon Law) requires it (e.g., c. 1246 requires the conference to establish holydays of obligation for its territory) or where a special mandate of the Holy See has permitted it *motu proprio* (at its own initiative) or at the request of the episcopal conference (canon 455). Though the

³ See USCCB Efforts to Combat Clergy Sexual Abuse Against Minors: A Chronology 1982-2006 on the USCCB website www.usccb.org.

ability of the USCCB to legislate for its territory is minimal, nonetheless, most dioceses accepted the guidance offered by the conference and drafted their own written policies incorporating the principles of action.

At that time (early-1990s) the bishops publicly committed their pastoral energy to attempting to break the cycle of abuse. In 1993 the conference established the Ad Hoc Committee on Sexual Abuse which was to provide additional organized resources to assist the dioceses and help the bishops understand the scope of the problem for the sake of the victims, priests and people. The committee's work was extremely helpful in advancing the USCCB's efforts to address the gravity of the problem facing the bishops.

When discussions between representatives of the USCCB and the Holy See failed to reach agreement on an administrative non-penal procedure, Pope John Paul II set up in 1993 a joint commission of representatives from the Holy See and the USCCB to study the judicial penal process and propose ways of streamlining it. The work of the joint commission resulted in the proposal of derogations of canon law (i.e., changes in specific laws) to provide a wider applicability of the penal process of dismissal in cases of sexual abuse of minors. The derogations were overwhelmingly approved by the bishops and then, with some modifications, promulgated by the Holy See in 1993.⁴

The derogations included raising the age of a minor in canon 1395§2 from below 16 to below 18 and extending the period of prescription (the period in which canonical action can be taken, similar to the civil law statute of limitations) until the victim turned twenty-eight years of age. Following the promulgation of the derogations the Canonical Affairs Committee of the bishops conference published an instruction in 1995 entitled "Canonical Delicts Involving Sexual Misconduct

⁴ See Alesandro, pp. 182-188.

and Dismissal from the Clerical State" to assist bishops and canonists in applying the judicial process for dismissal from the clerical state.

By the late 1990s, most dioceses had policies incorporating the guidelines issued by the Ad Hoc Committee for Sexual Abuse, which provided a smoothly functioning response to the cases that were coming forward. Many had established review boards to advise bishops on child sexual abuse allegations against priests. The remaining canonical issues were mainly ensuring that priests who were predators would not be returned to ministry and that these decisions would be upheld by the appropriate offices in Rome. At that time, there seemed to be a lack of clarity over which Roman congregations had final authority in these matters, a situation that left many bishops frustrated in their attempts to discipline priest offenders.

In 2001 Pope John Paul II, in what might be viewed as an effort to locate authority in the Holy See for allegations of clergy sexual abuse of minors, issued the *motu proprio Sacramentorum Sanctitatis Tutela*, (SST) in English "The Safeguarding of the Sanctity of the Sacraments."⁵ The purpose of the apostolic letter is to define the *graviora delicta* (more grave crimes) against morals and those committed in the celebration of the sacraments. For such crimes, the Congregation for the Doctrine of the Faith has exclusive Church authority and is to provide special procedural norms to declare or impose canonical sanctions in cases involving these canonical crimes. *SST* and the procedural norms that were later issued in 2002 for handling cases involving the sexual abuse of minors by clergy became universal law for the entire Church. Included among the procedural norms of *SST* are provisions reflecting the derogations approved for the U.S. by the Holy See in 1993, effectively speaking, turning the provisions that were formerly only

⁵ John Paul II, apostolic letter *motu proprio Sacramentorum Sanctitatis Tutela*, "The Safeguarding of the Sanctity of the Sacraments" April 30, 2001, AAS 93 (2001), pp 737-739.

particular law for the United States into universal law applicable throughout the world.

From this brief overview we can see that dialogue and discussion between the U.S. bishops and the Holy See had been going on for many years when news of the scandal broke in 2002. However, with claims by people that bishops were putting canon law or the reputation of the church ahead of the protection of children, it was clear that approval of a less cumbersome and speedier process for the dismissal from the clerical state of priests who had sexually abused minors had become more urgent.

In April 2002 the U.S. cardinals and USCCB officers met with Roman officials in Rome to discuss the clergy sexual abuse crisis in the United States. The proposals that resulted from that meeting became preparatory material for the upcoming June plenary assembly of bishops in Dallas.

The report of the Rome meeting made it clear that the United States bishops would be responsible for developing a set of national standards that would identify essential elements for policies dealing with the sexual abuse of minors in dioceses and religious institutes in the United States.

This endorsement of the USCCB's approach by the Holy See led to the development of "Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons."⁶ These *Essential Norms* contained canonical provisions implementing the "Charter for the Protection of Children and Young People."⁷ The norms became binding on the

⁶ See *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* in USCCB, *Promise to Protect, Pledge to Heal* (Washington, DC: USCCB 2006) pp. 21-31.

⁷ See *Promise to Protect, Pledge to Heal*, pp. 3-20.

dioceses and eparchies of the United States when the Holy See granted the required *recognitio* initially in 2002 and extended it in 2006 *donec aliter provideatur*, or until otherwise provided.⁸

Immediately following the promulgation of *Essential Norms*, the USCCB with the assistance of the Congregation for the Doctrine of the Faith and the Canon Law Society of America, sponsored three workshops for canon lawyers to train them in the procedures for the implementation of *SST* and *Essential Norms*. These sessions were extremely important since those canon lawyers who participated would later serve as advisors to bishops and as judges in the penal trials held in this country.

The procedures outlined in *SST* which are reflected in *Essential Norms* are the basis for how bishops respond canonically to allegations of sexual abuse of minor by clergy. The process is a complex and technical one but one that respects the rights of all persons involved. Our presentations this afternoon will address more concretely some of the components of the canonical processes dealing with the sexual abuse of minors by clergy.

Observations

What might we learn from this brief overview of the U.S. experience? Let me offer four observations.

1. First, amid allegations of denial, evasion, cover-up, disregard for victims, special treatment for perpetrators and protection for diocesan finances in a story so extensively covered by the media and so much a part of the public's awareness, a better approach for the bishops may have been to hold open discussions about this matter as early as the mid-1980s and to continue its discussions in public session until the public was as aware of the bishops'

⁸ See *Promise to Protect, Pledge to Heal*, p. 22.

commitment to dealing with the problem as they were with the misconduct leading to the crisis. The "transparency" that was called for then and now from all quarters of the church might have been more evident had this been the practice.

2. Second, in 2002, as news of the extent of clergy sexual abuse of minors spread across the country, the importance of accountability, particularly on the part of bishops and religious superiors, was highlighted. The response of bishops to the scandal varied: some simply apologized for the harm that had been inflicted by the accused; others took actions to ensure the future protection of children; while others simply did not seem to understand the impact of their decisions, such as reassigning accused priests without thorough investigation of the allegation. Bishops needed then, and continue to need today, to embrace the problem, accept their responsibility for their sometimes flawed solutions and ensure that future cases will be handled swiftly and effectively. Pope Benedict XVI's recent statement that the church must take responsibility in the face of the scandal delivers a very clear message to bishops. He said that "the greatest persecution of the church doesn't come from enemies on the outside, but is born in sin within the church. The church thus has a deep need to re-learn penance, to accept purification, to learn on one hand forgiveness but also the necessity of justice. Forgiveness does not exclude justice. We have to re-learn the essentials: conversion, prayer, penance, and the theological virtues."⁹

3. Third, though cited at times as a problem, canon law was not really the problem. The problem was the bishops' reluctance to utilize the then-

⁹ See Apostolic Journey of Pope Benedict XVI to Portugal, interview of the Holy Father Benedict XVI with the journalists during the flight to Portugal, Papal Flight, Tuesday, 11 May 2010, www.vatican.va. See also *Origins* 40:3 (May 27, 2010) pp 35-36.

existing provisions of canon law for removing priests from ministry. The canonical tools were there. That being said, however, the bishops' application of the canonical procedures was hindered at times by the extraordinary and cumbersome procedures and by the fact that few canonists had training and experience in canonical penal law. The 2003 workshops for canonists and subsequent workshops offered by the Canon Law Society of America and the School of Canon Law at the Catholic University of America have assisted greatly in providing the necessary training for canon lawyers in the application of canonical penal procedures.

At the same time, efforts to expedite the canonical process for the removal of priests from ministry resulted in a long and at times drawn out process. The derogations approved as particular law for the United States had been in effect for eight years prior to the promulgation of *SST* and the eventual modifications in the universal law for handling cases of clerical sexual abuse of minors. Perhaps had there been a greater openness and understanding of the seriousness of the problem on the part of officials of the Holy See to the concerns and requests of the United States bishops seeking remedies for the problems in their dioceses, the modifications to the canonical process for resolving such cases might have been promulgated much earlier than 2001, enabling the bishops to deal more quickly with the devastating effects of clergy sexual abuse of children. Now with nearly ten years experience in implementing *SST* and the procedures for *Graviora Delicta* in the United States, it may be timely to re-examine the canonical process with a view toward making modifications for improving it.

4. And finally, the clergy sexual abuse crisis has indeed highlighted the need for increased participation of all the faithful (laity, religious and clergy) in

the governance of the church. In a recent letter of the Belgian Catholic Bishops to their people in which they ask pardon for sexual abuse, they also committed themselves to reexamining how they managed the Church “so that the abuse of clerical power would not be repeated.”¹⁰ They state that this reexamination will require courage and humility, especially from bishops and other leaders in the Church. Such reform will call for a spirit of accountable leadership in which bishops and the faithful share responsibility, and in which meaningful collaboration with the laity on issues of church governance becomes the norm rather than the exception.

¹⁰ See “Belgian Bishops Beg Pardon for Abuse, on CathNewsUSA – A Service of Paulist Press, May 20, 2010 at <http://cathnewsusa.com/article.aspx?aeid=21453>.