

13 DEC 1997

Catholic Presbytery
61 Queens Pde.,
Clifton Hill 3068
6/12/97

Mr. Michael Casey
Diocesan Centre
EAST MELBOURNE 3002.

Dear Michael

Re: MICHAEL GLENNON

Further to my letter of November 30th, I now submit the following observations on procedural options in the event that he does not respond affirmatively to the request that he seek laicization. As respected U.S. canonist John Beal remarks, *"Frankly none of the options is particularly palatable; none is easy; and none solves all the problems that are apt to arise as a result of cases of this kind"*¹.

Restriction of Rights

This is my preferred procedure.

A U.S. civil lawyer has remarked that there is no effective legal process for determining that in a given instance a priest's presence in ministry may be contrary to the common good of the community. He complains *"While there are many tragedies involved in the whole question of sexually abusive priests, this legal gap - the inability of the canonical system to resolve this conflict of rights in a meaningful way - is one of the greatest..."*²

However Woestman, Professor and Vice-Dean of the Canon Law faculty at St. Paul's University, Ottawa, vindicates the Ordinary's authority to restrict pastoral rights in these terms: *"The answer is found in the role of the bishops as 'the high priests, the principal dispensers of the mysteries of God and the moderators, promoters and guardians of the entire liturgical life in the Churches entrusted to their care' (can. 835 #1). 'They are constituted Pastors in the Church, to be the teachers of doctrine, the priests of sacred worship and the ministers of governance' (can. 375 #1), 'are to be solicitous for all Christ's faithful entrusted to [their] care' (can, 383 #1) and 'to have a special concern for the priests...to defend their rights and to ensure that they fulfil the obligations proper to their state' (can. 384). To fulfil these duties 'the diocesan bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to*

¹. "Doing What One Can" The Jurist 52(1992):2, p. 672.

². Nicholas Cafardi "Stones instead of Bread" in Studia Canonica Vol. 27/1 1993, p.172.

some other ecclesiastical authority' (can.381 #1).

"Since in 'the eucharistic assembly the people of God are called together under the presidency of the bishop or of a priest authorised by him' (can. 899#2) the bishop should restrict any priest from celebrating the Eucharist with the people if his celebrating is an obstacle to the unity of the people of God and does not contribute to the building up of the body of Christ' (cf. can. 897)...

In this case the restriction from the public exercise of ordained ministry, including the celebration of the Eucharist, is not a penalty or punishment but a pastoral measure for the welfare of the Church. When there is a conflict between the right of an individual and the common good, the exercise of the individual's right must cede to that of the community: 'In exercising their rights, Christ's faithful..must take account of the common good of the Church as well as the rights of others and their own duties towards others' (can. 223 #1). The Code expressly recognises that 'ecclesiastical authority is entitled to regulate, in view of the common good, the exercise of rights which are proper to Christ's faithful' (can. 223 #2)³.

Action of this nature is an individual administrative act and therefore subject to the norms of can. 35-47; it would also have to contain all the necessary elements of an individual decree (can. 45-58). Therefore since it impinges on the cleric's rights he must be heard (can. 50); and there must be a written decree specifying the restriction on eucharistic celebration (can. 900 #2) and withdrawal of faculties to preach (can. 764) and to hear confessions (can. 974 #1) and giving at least in summary form the reasons for the action (can. 51).

The obligation to provide for the support of the cleric continues for the diocese unless he has been dismissed from the clerical state (can. 1350 #1) and even in that event the diocese must see that he is not left destitute (can. 1350 #2). Morrisey suggests that provision up to two years would satisfy the obligations of a diocese⁴ and that the poverty level for a single person in the region could be taken as the benchmark⁵.

The cleric retains the right of appeal through hierarchical

³. Restricting the Right to Celebrate the Eucharist"
Studia Canonica Vol. 29/1 p. 174-175. Underlining
mine.

⁴ "The Pastoral and Juridical Dimensions of Dismissal from
the Clerical State" Proceedings of the Canon Law
Society of America 1991, p. 233

⁵. *ibid.* "Procedures in the case of Alleged Sexual
Misconduct by a Priest" Studia Canonica 26/1 1992,
p.67

recourse.

Declaring an impediment to exercises of Orders

Because of the difficulty in applying the laws on penal processes several U.S. Bishops have resorted to can. 1044 #2 *2 which impedes from the exercise of Orders "one who suffers from insanity or from some other psychological infirmity mentioned in can. 1041 n.1 until such time as the Ordinary, having consulted an expert, has allowed the exercise of the Order in question". Canon 1041 n.1 in its turn specified such an infirmity as one in which the subject was "judged incapable of properly fulfilling the ministry".

It appears to have been precisely because of the problems in applying this provision that Woestman published the article on which the preferred solution above is based. The problems reduce to the proper interpretation of "psychological infirmity" and of the word "properly" (latin = "rite"), given the fact that laws of this nature must be strictly interpreted. Hence Woestman's conclusion "it seems that most priests suffering from pedophilia and ephebophilia have sufficient use of their intellect and will to act rationally and to exercise the power of orders validly. Consequently the declaration of an impediment in their case is invalid"⁶

Lagges, Adjutant Judicial Vicar, Chicago, accepts the problem vis-a-vis the necessity of establishing by the evaluation of experts skilled in the relevant discipline and based on personal contact a psychological problem rendering the subject incapable of placing a juridical act, but tends to interpret the word "properly" more widely⁷.

He describes this solution as a "'cleaner process' by which a bishop can safeguard the integrity of ministry in his diocese while at the same time avoiding the perils which are inherent in the application of canonical penalties. The Code of Canon Law does not describe a process for the imposition of a decree declaring a person impeded from the exercise of orders and thus all the intricacies of a penal trial are avoided. There does not have to be the formal investigation described in can. 1717, and there is no need for the prior warning described in can. 1347 #1. Furthermore there is no need for the establishment of a tribunal or the conducting of a trial". Nevertheless he has countervailing concerns: "There are nevertheless some dangers in applying this canon. For the penal process of the Church is also designed for the protection of the rights of the person concerned. No such protection of rights is inherent in can. 1044. For example he does not have to be warned that his behaviour is calling into question his ability to minister (can. 1347 #1). He also does

⁶. l.c. p.169.

⁷ "The Use of Canon 1044 #2 *2 in the removal of parish Priest" *Studia Canonica* Vol. 30/1 1996, p. 60

not have to be shown the proofs which have been gathered against him as provided for in can. 1720 *1 nor does he have the right to canonical counsel as provided for in can. 1723 #1. When all is said and done the cleric does not have the right to speak last or to present final written comments in the case against him which is accorded him in a penal trial according to can. 1725. Finally the cleric does not have the right to appeal the decision except through administrative (hierarchical recourse)."8

I have strong doubts about the applicability of this measure in Glennon's case.

Penal provision

Sexual offences "with force or threats or publicly or with a minor below the age of sixteen" may be punished with "dismissal from the clerical state if the offence warrants" (can. 1395 #2). Consequently penalties can be imposed for such offences only in the course of a judicial process involving a turnus of three (can. 1425 #1 *2). As Cafardi rightly observes "the Church's own experience rejects that alternative as a meaningful solution to this problem. The process is seldom if ever used"9.

Canonical prescription of a penal action for sexual interference with minors is inflexible. Unless faculties such those conceded to the United States Church are available, the action is extinguished after five years from the time the offence was committed (can. 1'361 #1 *2) even if full proof of the commission of the offence and of imputability has emerged. Moreover the constraints on the presumption of imputability (can.1324) allow "the very illness that causes pedophilliac or ephobophiliac acts to be used as a mitigating factor that can prevent the more drastic penalty of loss of ministry from being imposed"10

We are precluded from adopting this procedure by prescription. In any event it has the disadvantage of taking the matter out of the Ordinary's hands and allocating it to the Tribunal with the unavoidable time frame that such a case involves..

Doctrine of the Faith Congregation

Two U.S canonists 11 raise the query whether, when criminal action has been extinguished because of the lapse of the five

8. o.c. p. 68

9. l.c. p. 171.

10. Cafardi l.c.

11. Beal l.c p.679; Griffin "The Reassignment of a Cleric who has been Professionally Evaluated and Treated for sexual Misconduct with Minors" The Jurist 51(1991:2 p. 338.

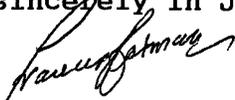
year prescription, recourse may be had to the S. Congregation for the Doctrine of the Faith which under article 52 of "Pastor Bonus" can examine "more serious crimes against morals which have been reported to it and, where necessary, proceeds to the declaration or imposition of canonical sanctions according to the norm of common or proper law". The query is raised because the ordinary norms for prescription do not apply to the Congregation (can. 1362 #1 *1), but there is no indication that the proposal has actually been tried, much less that there is any case law.

My instinct would be that even though the prescription problem may be overcome, the Code's provisions for extinguishing or diminishing imputability would still create a problem.

Conclusion

The foregoing is a relatively brief digest from the extensive canonical literature on the subject. I hope it does not confuse the issue too much.

Yours sincerely, in JC



(Rev.) Francis Harman.