

August 6, 2019

A THIRD OPEN LETTER TO THE REVIEW BOARD OF THE DIOCESE OF OWENSBORO

By means of two prior open letters to the Review Board of the Diocese of Owensboro I have posed questions concerning “definitions of terms, rules of evidence, investigative procedures, and deliberative processes.” I have made suggestions as to the definition of “sexual abuse by an adult of a minor” and have proposed as the proper standard of evidence and deliberation that apparently used by the Vatican, namely, the standard of due moral certitude and, likewise, suggested that this is equivalent to the standard of “beyond a reasonable doubt.” Ms. Mary Beth Hurley, Review Board Chair, acknowledged my first open letter by assuring that “The Board takes its job very seriously and devotes a great deal of time, energy and prayerful consideration to each matter that comes before it.” She trusted that this response addressed my concerns. I then in turn acknowledged her letter and replied that her letter did not in fact answer my questions. My letters and her response to the first one have all been published in our Parish bulletin (La Viña).

Ms. Hurley referred me to the Board’s guiding documents, one of which is the *Diocesan Review Board Resource Booklet* of the USCCB. Study of that booklet (a set of several documents) has been enlightening. A number of excerpts from the booklet given here will serve as the basis of this third Open Letter.

Orientation of Board Members:

Orientation of Diocesan/Eparchial Review Boards: An orientation policy addresses the need to introduce new members of review boards to their responsibilities and tasks. A policy statement might outline, among other things particular to the diocese/eparchy, the materials to be presented to new members, the process used to assess allegations, and expectations of confidentiality. [Q&A, page 8] It is encouraging to know that members of our diocesan board are fully apprised of and competent with the process which they use to assess allegations. This is all the more reason for me to expect ready and specific answers to the questions I have raised previously, as well as to the ones presented here.

Allegation of the Crime of Sexual Abuse of a Minor by a Cleric (deacon/priest/bishop):

By inference, the *Handbook for Canonical Processes* defines clerical sexual abuse of a minor as “an offense against the sixth commandment of the Decalogue”, citing CIC, c. 1395 § 2. [page 3] It further specifies: *The age of “16 years” was raised to “18 years” for delicts committed in the United States, effective April 25, 1994. The universal law now stipulates that the delict is committed by a cleric who sexually abuses any minor under the age of 18. ... Further, if the cleric committed an act of sexual abuse before April 25, 1994 with a minor aged 16 or 17, his behavior was not criminal ... so the penalty of CIC, c. 1395 § 2 cannot be imposed even though other administrative actions may be taken to address the matter. [Committee on Canonical Affairs, page 3]* I am glad to find this definition of the crime or delict as “an offense against the sixth commandment of the Decalogue,” for this was the approach I took in my second letter. It begs the question of what then constitutes such an offense, to which question I also proposed an answer. This text also makes abundantly clear that these norms apply only to those in Holy Orders and do not apply retroactively to the 1994 revised age of 18.

Preliminary Investigation:

The USCCB Booklet makes clear that the review board does not conduct the investigation. The bishop is responsible for that and he may appoint a special investigator to conduct the inquiry. This is called a preliminary investigation to distinguish it from the judicial process of the Vatican Congregation for the Doctrine of the Faith (CDF). What strikes me here is how it views the level of truth or falsity of an allegation.

Both the Charter and Essential Norms require a preliminary investigation to take place when an allegation of sexual abuse of a minor has been received that does not appear manifestly false or frivolous. The investigation is always to be conducted in accord with the provisions of canon law governing the preliminary investigation process... The preliminary investigation required by canon law is intended to assist the bishop/eparch in reaching a decision as to whether it is probable that the canonical crime of sexual abuse of a minor by a priest or deacon did occur, and if so, what type of canonical process should be used to resolve the matter. [Q&A, page 5] The two poles between which an allegation is evaluated regarding truth seem to be that of “manifestly false” and that of “probable.” This bit of text does not provide any criteria for the determination of either. Do both poles require the same kind of evidence? The next section delves a bit deeper into the question.

Semblance of Truth/ Manifestly False / Frivolous:

The canonical preliminary investigation is undertaken whenever the bishop/eparch receives an allegation that at least seems to be true. In general practice, this means that any allegation that is not manifestly false or frivolous is subject to a canonical preliminary investigation. The purpose of the preliminary investigation is to allow the bishop/eparch to make a determination, based on the facts surrounding the allegation, as to whether or not a canonical crime has been committed, whether the alleged offender was imputable for the crime (responsible for it before the law), and what type of canonical process should be used to resolve the matter.

In advising the bishop/eparch, the review board will have to determine whether all the available evidence meets the threshold of a credible allegation. Except for cases in which an act is acknowledged or admitted (in which case the Review Board is assessing severity or notoriety), Review Boards have applied a variety of standards: believable and plausible, reasonable and probable, or preponderance of evidence. A diocesan canonical advisor will have to assist the Board in setting the proper threshold. The diocesan/eparchial review board should consider any objective information that is available, for example,

consistency of the testimony of witnesses, accuracy of details such as the place of assignment of the accused at the time the allegation is said to have taken place, and physical evidence. In addition the Board may want to consider other corroborating evidence from files or other possible witnesses. [Q&A, page 6]

The determination of the sense of truth or falsity of an allegation clearly is to be based upon “facts” rather than mere “common sense” appearances. The board is to make three determinations based on the facts: (1) Was a delict (crime) of the sexual abuse of a minor by a cleric committed? (2) Was the accused cleric culpable and his guilt of the crime imputable? (3) What type of canonical process should be used in response? The board is to consider “whether all the available evidence meets the threshold of a credible allegation.” Interestingly, the *USCCB Booklet* does not set but recognizes that different dioceses/bishops employ different standards of evidence and thus different assessments of truth and falsity concerning allegations. The types of evidence to be examined include “consistency of the testimony of witnesses, accuracy of details such as the place of assignment of the accused at the time the allegation is said to have taken place, and physical evidence” as well as additional historic or filed evidence and witnesses. Clearly, the marshaling of the evidence to discern truth or falsity is not perfunctory and demands in-depth research. This supports the questions I have raised as to the actual methods and operational definitions of our review board given the latitude the *USCCB Booklet* recognizes that they and the bishop have. What threshold definitions apply for them to determine if a delict has been committed? What are the board’s criteria? What thresholds apply for them to determine the culpability or imputability? What range of canonical processes do they have to draw upon for the specific conditions they determine in making their recommendations to the bishop?

I question by what kind of evidence one might be able to meet the standard of “manifest falsity” or “frivolous”. This appears to place the burden of the proof of one’s innocence upon the accused rather than the burden of proof being upon the accuser or the complainant. If that is the case, is there in any real sense an operative “presumption of innocence until proven guilty”? To claim, as the *USCCB Booklet* does, that this is an administrative and not a judicial process [*Committee on Canonical Affairs, page 9*] matters little in that a recommendation of imputability, i.e., guilt, is determined or recommended. Effectively, it presents a distinction without a real world difference.

How substantial is the determination that the allegation has “the semblance of truth” or is “probable”? Such a determination requires that the case be presented to the CDF for adjudication, an explicitly judicial process. I ask again, does not such a profoundly consequential decision by a bishop at the recommendation of the review board demand a “due moral certitude” of that “semblance” based upon evaluated evidence?

Does the bishop always report the case to the Congregation for the Doctrine of the Faith? A: The general rule is that all cases are referred to the Congregation. The exception, as noted above, would be when the allegation is manifestly false. In other words, if there is any semblance of truth at all to the allegation, the bishop seeks the intervention of the Congregation. If he is in doubt about the semblance of truth, he may seek the assistance of the Congregation to assist him in coming to a decision. [Q&A Canonical process]

The CDF and the diocese have the exact same set of evidence for their considerations. Does not a sense of the truth “beyond a reasonable doubt” afford the only kind of probability appropriate to the matter?

From the descriptions of the diocesan processes in the *USCCB Booklet* it seems as though the diocesan process may be likened to a grand jury investigation. The bishop and the promoter of justice (prosecutor) serve as the state’s attorney with the board as the impaneled jury. Their determination is like the issuance or non-issuance of an indictment. Is this a fair comparison?

If the CDF does not find the cleric guilty of the crime:

The presumption is that the cleric will be returned to ministry if he is not found guilty. However, the answer to this question depends on several factors that are particular to each case. It might turn out that even though a priest or deacon is not proven to have abused minors, other issues surrounding his ministry or behavior might have arisen during the investigation that cause concern for the bishop. This might involve, for instance, unacceptable boundary violations or improper behavior with adults. These situations would need to be addressed before the priest or deacon is returned to public ministry. [Q&A Canonical process]

None of the proffered review board materials offer guidance on matters of boundary violations which are not “offenses against the sixth commandment of the Decalogue.” The *USCCB Booklet* above recognizes the distinction between the two. It also distinguishes these from improper cleric/adult behaviors. Does our review board have distinct standards and procedures for these kinds of considerations if they are brought before it for consideration?

Lastly, the *USCCB Booklet* itself cites the necessity of a review board to review its policies and procedures, retrospectively and prospectively, so that they may advise the bishop.

Charter, art. 2: [The diocesan review board] is regularly to review diocesan/eparchial policies and procedures for dealing with sexual abuse of minors. Also, the board can review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases. [Q&A, page 1]

This being done, a board must of necessity have answers for the questions which I have raised on behalf of our people. So, I respectfully request that these letters receive substantive and specific answers to the questions raised.

Rev. Richard Meredith