

April 7, 2009

The Reverend Monsignor Pietro Parolin
Under-Secretary for Relations with States
Second Section
Secretariat of State
Città del Vaticano

Re: Request for Mediation

Dear Monsignor Parolin:

We address this Request for Mediation to you as the Holy See's under-secretary of state, respectfully urging:

- That the appropriate dicastery of the Holy See instruct the *Apostolic Signatura* and the Congregation for the Clergy to suspend reviews of American parishioners' appeals against parish closings from the dioceses listed below, whether by merger or by suppression; and
- That the appropriate dicastery of the Holy See instruct the bishops of the dioceses listed below to suspend any decrees regarding parish closings, to refrain from issuing new decrees *ad interim*, and to enter promptly into Vatican-mandated mediation with the undersigned parishioners regarding the future of their parishes, within the framework presented in this Request for Mediation.

We address this Request to you because, notwithstanding our limited knowledge of the Roman Curia's inner workings, we believe that in America our Church is at the "tipping point" of permanent damage and irreversible decline. *In parole povere*, by their actions in closing unjustly hundreds of vibrant parishes, American bishops are turning themselves into veritable "weapons of Mass destruction." We leave it to you to direct this Request to the appropriate Roman Curia officials.

Twelve parishioner groups in the Archdiocese of Boston are the initiators of this Request, and are joined in this effort by 19 parishioner groups in seven other American dioceses. These 31 parishioner groups from the eight dioceses are distributed as follows:

- Archdiocese of Boston, twelve parishioner groups
- Archdiocese of New Orleans, five parishioner groups
- Archdiocese of New York, two parishioner groups
- Diocese of Allentown, one parishioner group
- Diocese of Buffalo, one parishioner group
- Diocese of Cleveland, one parishioner group
- Diocese of Scranton, eight parishioner groups
- Diocese of Springfield, one parishioner group

Parishes and contact names are provided in Table I, attached.

Mediation as the Last Resort

As of today, five parishioners groups from the Archdiocese of Boston (all signatories of this Request) are in vigil inside their churches round-the-clock, peacefully and prayerfully:

- Four groups have been in vigil since October of 2004;
- The fifth has been in vigil since May of 2005.

This demonstration of devotion is the broadest-based, longest duration movement of peaceful resistance in the history of Catholic America. In the Diocese of Springfield, a parishioner group has been in vigil since December 26, 2008.

These hundreds of vigilers are mainstream Catholics, with no agendas other than safeguarding their faith communities, and with no attachment to any “neo” movements on either side of the ideological spectrum. Throughout more than four years of vigils in Boston there have been no violations of the *Magisterium* or of canon law by any of these groups. The most striking development within these communities has been an intensified devotion to Our Blessed Mother, with frequent praying of the Rosary during the vigils, something well beyond what was customary before the suppression of these parishes.

But now we are approaching the proverbial moment of truth: after years of *remonstrations* to bishops and fruitless appeals to the Congregation for the Clergy and to the *Apostolic Signatura*, it is widely anticipated that the *Plenaria* of the Apostolic Signatura will rule on nine Boston parishioner appeals, perhaps as early as this spring.

His Eminence Seán O’Malley, the cardinal-archbishop of Boston, has indicated repeatedly in the media that no action would be taken against the Boston vigilers until the Rome appeals have been decided. But with that deadline now drawing near, if the appeals are denied the cardinal will be faced with a difficult dilemma:

- To leave the vigil groups undisturbed, hoping they will voluntarily demobilize, a strategy of temporizing without an exit strategy; however, the Boston vigil groups have been steadfast for the past four-and-a-half years, and show no signs of weakening; or,
- To call in the police to remove the vigilers, and then face the inevitable media spectacle of dozens of Catholic women and men being forcibly removed from their places of worship; this would cause great harm to the Archdiocese of Boston, already on the defensive and under severe financial strain, and to Roman Catholicism in America.

Police were summoned to arrest Catholics in their churches by Edward Egan, the cardinal-archbishop of New York, in February of 2008; by Alfred Hughes, the archbishop of New Orleans, in the early morning hours of the Feast of the Epiphany in 2009; and by Richard Lennon, then vicar general of the Archdiocese of Boston, in November and

December of 2004. This was not only a shameful action by these ordinaries, it led to saturation media coverage and damaged permanently the pastoral credibility of these bishops. Any future actions of this kind are sure to attract national coverage.

From the standpoint of the Archdiocese of Boston and the Church in America, our mediation proposal is the only sensible way to avoid the dilemma of continuing vigil stalemates or the wholesale arrests of Catholics.

In all cases, the undersigned parishioner groups have attempted to engage their ordinaries in a respectful dialogue; and to find a sensible course of action that would, on the one hand, safeguard our places of worship, and on the other hand, would address the genuine problems confronting dioceses – including finances and parish staffing. But in all cases there has been no meaningful response from the chanceries. In fact, in selected cases parishioners have been told that the diocesan hierarchy cannot act without authorization from Rome:

Hence our request for mediation, urging Rome to speak through an instruction from the Secretariat of State or another dicastery, something that would redirect the energies of all parties away from the status quo towards creative solutions.

No Viable Alternatives to Mediation

Since the first massive wave of parish closings emerged in the U.S. in 2004 with the so-called Reconfiguration plan to suppress 83 parishes in the Archdiocese of Boston, throughout Catholic America there have been hundreds of *remonstraciones* to bishops and dozens of appeals to the Congregation for the Clergy. At this date there are at least nine appeals at the *Plenaria* of the *Apostolic Signatura* and one at the *Congressio* from parishioner groups in the Archdiocese of Boston.

So far, all of these parishioner recourses have been turned down administratively by the diocesan bishops and by the Congregation for the Clergy; and juridically by the *Congressio*. Thousands of Boston parishioners have little faith that these traditional mechanisms for recourse operate fairly. And the appeal procedures themselves have become reason for alienation:

- Ordinaries in Boston and elsewhere play unworthy tricks in withholding suppression decrees from diocesan parishioners, to invalidate the timely filing of *remonstraciones*; and
- The Congregation and the *Signatura* issue their decrees in Latin, a language of which many American prelates have no grasp:
 - The Archdiocese of Boston had to outsource for translation into English the *Congressio* decrees for the appeals from the “Boston Nine,” while - with the

benefit of some Jesuit education in the last century - the parishioners were able to fend for themselves.

In theory, there remains a last *étape* on the canon appeal *iter* for the Boston Nine, namely the recourses - denied by the *Congressio* in 2008 - now on appeal at the *Plenaria*. These appeals are being followed with interest throughout Catholic America because they represent the culmination of a strategy formulated in Boston a few years ago, to test the fairness and integrity of the canon appeal process by going to its limit with a broad range of recourses, rather than relying upon one or two test cases.

However, expectations for relief from the *Plenaria* are low. The *en bloc* denials in 2008 from the *Congressio*, with identical language in key sections, ring ominously. Moreover, the diocesan track record of the incumbent prefect of the *Signatura*, Archbishop Raymond Burke, is not encouraging precedent for Catholics who challenge parish closings; *vide* the archbishop's performance as ordinary of St Louis and of LaCrosse, where he closed 23 and 26 parishes respectively; and the continuing saga of the parish of St Stanislaus Kostka in suburban St Louis.

Absent a change in the dynamics, in the near term it is likely that the *Plenaria* will rule against the Boston Nine, and that shortly afterwards the archbishop of Boston may decide to summon the police to remove Catholics from five churches. This would constitute a tipping point in the Archdiocese of Boston, and throughout Catholic America:

It would signal that a pastoral dialogue could not be established between the diocese and the vigilers, and that instead of pursuing a rational approach, the Boston hierarchy chose to wash its hands, and to rely upon the armed power of the state against its own flock.

Framework for Mediation

Mediation at the diocesan level should be undertaken to develop a new model of parish structures, in the framework of the following precepts:

- The reaffirmation of *Salus Animarum* as the *raison d'être* of dioceses and parishes;
- A grand financial compact among dioceses and parishes, setting out with clarity their respective material responsibilities; and
- The principle of *subsidiarity* in diocesan governance.

Diocesan governance was addressed by John Paul the Great in November of 2004 during an *ad limina* visit of American bishops, when the Holy Father said:

“The parish, in fact, is ‘pre-eminent among all the other communities in his Diocese for which the Bishop has primary responsibility; it is with the parishes above all that he must be concerned’ (Pastores Gregis, 45). The parish is, and should be, the first and foremost place where the faithful encounter and are

invited to share fully in the life and mission of the Church. The Diocese should always be understood as existing in and for its parishes.” [emphasis in the papal original]

The Holy Father’s statement was delivered in the immediate aftermath of the spontaneous resistance to parish closings that erupted throughout the Archdiocese of Boston during August through October of 2004, when parishioners mobilized vigils in eight churches. *Al giorno d’oggi*, the five parishioner groups currently in vigil have become an example and a rallying point for tens of thousands of Catholics in other dioceses facing the destruction of their parishes.

The details of mediation can be devised rapidly. The essential features of a successful mediation process would consist of the following:

- Even-handedness between parishioners and dioceses in the structure and arrangements to be agreed;
- Norms of respect and courtesy for all persons involved;
- Agreement by all persons involved on the appointment of an impartial mediator, someone of stature with knowledge of the diocese and of the parishioner groups;
- Appointment of two facilitators, one by the diocese and one by the parishioner groups, to assist the mediator and to serve as contact persons for the diocese and the parishioner groups;
- A deadline for the mediation to be convened, and a suggested timeframe.

As daunting as this task may appear, there is ample precedent for something along these lines:

The Archdiocese of Boston voluntarily reopened, or spared from closing, four churches that had mobilized vigils; the remaining five vigil groups are entitled to the same consideration.

Proliferating Destruction of Vibrant Parishes

There are difficult issues to resolve through mediation, but all parties – bishops and parishioners - would benefit from mediation as a constructive alternative, because over the next few years many other dioceses in America will have to restructure themselves. The current “command-and-control” approach in dioceses such as Allentown, Boston, Buffalo, Cleveland, New York, New Orleans, Scranton, and Springfield has been a failure.

More than one thousand American parishes have either been closed, or are scheduled to be closed in the near future. And this number will multiply several times over in the years ahead. No one would argue that every one of these thousands of endangered

parishes would meet all the criteria for spiritual and material vibrancy. But it is abundantly clear that many of the thousands of threatened parishes are indeed vibrant.

Repeating the mistakes of the recent past in dozens of other dioceses will set Roman Catholicism in America on a steep decline; and this is happening at an accelerating pace. To cite one recent example, on March 14-15 of this year Richard Lennon, bishop of Cleveland, announced his plan to rationalize the diocesan parishes through 29 suppressions and 41 mergers, all to be completed by mid-2010. Seventy parishes out of 224 presently operating in the diocese would be disrupted or worse, constituting more than 30% of the diocese's total.

It should be noted that Bishop Lennon's heavy reliance on canon 123's draconian mechanism of suppression goes explicitly against the Holy See's guidance, contained in a letter to all American bishop issued by the prefect of the Congregation for the Clergy in 2005 where he wrote:

"...this Congregation notes that the erroneous use of ca. 123 in the dioceses of the United States is not uncommon and therefore asks Your Excellency [the president of the USCCB] to bring this matter to the attention of the individual bishop members of the Episcopal Conference."

In 2005 the most egregious misuse of canon 123 was in the Archdiocese of Boston where, *mirabile dictu*, it was Bishop Lennon, then Boston's vicar general and the architect of Reconfiguration, who planned to apply the suppression canon to 83 parishes in the archdiocese, and had to be admonished by Rome. Notwithstanding this, the bishop has misapplied Canon 123 four years later as Cleveland's ordinary.

"Errare humanum est, sed in errore perseverare est stultum"

Aggiornando la situazione in Boston, in the fall of 2007 and with the perspective of three intervening years, Boston's Auxiliary Bishop Robert Hennessey commented on the Reconfiguration program during a Presbyteral Convocation, as the keynote speaker; according to priests in attendance, Bishop Hennessey characterized Lennon's Reconfiguration program as

"an unmitigated disaster...not to be repeated"

Looking at the parish scene in the national context, the recent history of parish closings in America is instructive. Parishioners are pulled into an intensive planning process which is basically fratricidal, pitting faith communities against one another. The parishioners are assured throughout this unpastoral process that the need to "rationalize" parishes by downsizing has nothing to do with financial pressure on the diocese arising from clergy sexual abuse settlements or awards, or from mismanagement at the level of the diocese.

But in the case of Boston these assurances were false. In the Boston Nine parishioner appeals now before the *Plenaria*, the procurator-advocate for the Archdiocese of Boston

and for the Congregation of the Clergy, the “Public Administration,” submitted *Memoriales* to the *Signatura* with the following identical language **in every one of these nine appeals**:

[translated into English]

“In this truly special and very painful case, maximum discretion was given to His Excellency the Archbishop of Boston so that he might save the entire archdiocese from monetary ruin provoked not only, but also, by the sexual abuse crisis [in English]. It is in this context that all actions of this process of reconfiguration and ‘closing of parishes [in English] are to be understood, not excluding the suppression of wealthy parishes, not excluding the suppression of parishes of maximum vitality: ‘Viability must be seen [sic, means “must be seen”] not at the parish level but at the level of the whole Archdiocese,’ [in English] not excluding the giving of goods of extinct parishes to the archdiocese!” (Brief of the Public Administration).

[in the original Latin]

«In casu enim speciali et valde doloroso, summa discretionalitas Exc. Archiepiscopi Bostoniensis in eo erat, ut salvaretur tota archidioecesis a ruina pecuniaria, provocata non solum, sed etiam a “sexual abuse crisis”. In hoc contextu omnes actiones istius processus “reconfigurationis” et “closing of parishes” intelligendae sunt, non exclusa suppressione paroeciarum divitum, non exclusa suppressione paroeciarum maxime vitalium: “Viability must be seen not at the parish level but at the level of the whole Archdiocese”, non esclusa donatione bonorum exstinctae paroeciae archidioecesi!» (Memoriale pro administratione).

Res ipsa loquitur.

At the highest level of the Holy See’s juridical system, the procurator-advocate for the archdiocese has finally revealed the truth of the matter, that a double injustice is being inflicted on Boston’s Catholics: first, because the diocesan hierarchy failed to protect the parishioners’ children from predatory priests; and second, because the financial means to pay for these crimes and sins is to come from the liquidation of their parishes.

Parishes are not pieces of property to be sold off for salvage value; they are not the *bancomats* for improvident bishops; and they are not the property of these ordinaries, to be disposed of at will:

America’s Catholic parishes are the precious infrastructure of our Church, built up over more than two centuries through parishioners’ contributions, and are essential platforms for propagating our Catholic faith at a time of renewed spirituality, rising religious participation, and an influx of Catholic immigrants coming to America from predominantly Catholic countries of origin.

Urgency for Secretariat of State Intervention

One cannot overlook the context in which this malignancy of parish destruction in America is unfolding: a time of dramatic institutional failure in the economy, including finance, commerce and industry; of material hardship not experienced since the Great Depression; and growing rage at betrayal by those to whom the financial resources of millions of families had been entrusted. In the past, America's parishes have been centers of solidarity, shared information, and spiritual solace; but as parish closings climb into the thousands, millions of Catholics will be faced with locked church doors in their neighborhoods, a sad but apt metaphor:

We cannot emphasize strongly enough to Your Eminence the immense and irreversible damage that will result to the moral authority, the material well being, and the future prospects of **Roman** Catholicism in America, if ordinaries are allowed to proceed on their present path of parish destruction.

This process is already underway, as millions of American Catholics have started to “vote with their feet.” This phenomenon is especially in evidence among ‘legacy’ Catholics, the descendants of European immigrants who came to the U.S. in the migration waves of the 19th and the early 20th centuries.

We highlight for your consideration excerpts from a recent survey of religion in America, the *Pew Forum on Religion and Public Life*. In February of 2008, the *Pew Forum* released one of the most thorough surveys on religion in America; approximately 35,000 people were interviewed. The Boston Globe described this project as “a groundbreaking study of the American religious landscape...the most comprehensive [such] examination of the country in at least half a century.” The following excerpt from the survey concerning Catholics in America is noteworthy:

*“...the Catholic share of the U.S. adult population has held fairly steady in recent decades at around 25%. What this apparent stability obscures, however, is the large number of people who have left the Catholic Church. **Approximately one-third of the survey respondents who say they were raised Catholic no longer describe themselves as Catholic. This means that roughly 10% of all Americans are former Catholics.**”* [Emphasis added]

The “*roughly 10% of all Americans [who] are former Catholics*” refers to ALL adult Americans, *circa* 220 million people. These 22 million former Catholics would constitute, by themselves, the second largest religious denomination in the U.S.

The loss of tens of millions of adherents to Roman Catholicism explains the apparent paradox of voting in some of the “swing states” with large Catholic populations, mostly legacy Catholics. Swing states in America are those where the electoral outcome is usually in doubt, and where the two major parties try to mobilize blocs of sympathetic voters; Catholics are often the most important single bloc in such states.

Breaking from their docile behavior of the past, Catholics in these states are increasingly likely to vote against the explicit admonitions of local bishops. This was the case in the 2008 presidential election, where legacy Catholics in the swing states of Pennsylvania, Ohio, and Michigan, were of decisive importance, and where local ordinaries (as well Archbishop Burke from Rome) intervened publicly and vigorously against the Democratic party and its presidential candidate. Yet each of these states gave a majority of its votes to the Democratic candidate, and by sizeable margins.

Looking to the future, it is indeed true that, according to the *Pew* survey,

“...the Catholic share of the U.S. adult population has held fairly steady in recent decades at around 25%...”

But this apparent stability should be a cause for concern because ‘legacy’ Catholics of long-standing are being replaced by immigrant Catholics, mainly *Latinos*, who show alarming signs of readiness to leave the Roman Catholic Church. Again from the *Pew* survey:

“The number of Latinos...who identify themselves as Catholic (58%) is considerably lower than in a major survey of Latinos...conducted in 2006...where more than two-thirds (68%) identified as Catholic...most of the corresponding increase takes place among unaffiliated Latinos (14% vs. 8%) and, to a lesser extent, Latino Protestants (26% vs. 22%).”

This is a **ten percent drop** among *Latino* Roman Catholics in only two years. Moreover, as ordinaries close inner city parishes and follow legacy Catholics to the suburbs, *vide* New York, Boston, and Cleveland, the Church will suffer a double loss:

- Among legacy Catholics in the suburbs who will continue to leave the Church by the millions; according to The Official Catholic Directory, as recently reported by in the CNN.com website, there was a drop of 400,000 Catholics between 2007 and 2008.
- Among *Latino* immigrants in urban centers where Catholic churches are chained shut, and Pentecostal storefront sects flourish.

Si monumentum quaeris, circumspice East Boston et East Harlem.

Consequences of Inaction by Holy See

Within the Archdiocese of Boston, Catholics have accumulated almost five years of hard-won experience in their ongoing struggle, beginning in May, 2004 when the original Reconfiguration suppression list of 83 parishes was announced. With this perspective, it is likely that inaction by the Holy See with regard to this Request for Mediation will result in several consequences, all of them adverse for the Roman Catholic Church in America:

- **Protest movements against parish closings growing to nation-wide proportions**, on the model of the parish vigils now underway in the Archdiocese of Boston and the Diocese of Springfield, and for 70 days in the Archdiocese of New Orleans;
- **Class-action lawsuits against the Holy See** by aggrieved parishioners, arising from the orchestration of diocesan parish closings by the prefect of the Congregation for the Clergy in collusion with local bishops, and in clear violation of the fiduciary responsibility of diocesan bishops as trustees of parish properties under American civil law, and as affirmed in federal court through sworn *affidavits* by Catholic bishops and their expert witnesses;
- **Schismatic movements through the emergence of neo-Catholic faith communities**, organized under autonomous models of governance, with loosened ties to Rome, and beyond the reach of ordinaries who abuse their power under American civil law, and manifestly fail in their fundamental responsibility under Canon 1752, *Salus Animarum*.

The consequences are discussed in more detail below.

More Vigils

With virtually no preparation and absolutely no experience, nine parishioner groups in the Archdiocese of Boston went into vigil during the period, August, 2004 through May, 2005; these nine groups were a sizeable fraction of the sixty parishes eventually suppressed. Considering the difficulties of mobilizing quickly for round-the-clock coverage, the steadfastness of these vigil groups has been remarkable:

- Four of the vigils now under way have completed 54 months of peaceful activity; and the fifth has completed 47 months;
- The four other vigil groups have secured the reopening of their places of worship by the cardinal-archbishop of Boston; and
- Not a single Boston vigil has collapsed or demobilized.

The media coverage of these vigils has become national, with in-depth coverage especially around the Christmas and Easter seasons. Two of the national television networks have featured the Boston vigils on evening newscasts. A third network has firm plans to come to Boston for this story in the near future. And coverage by the local media, print and electronic, is extensive.

On January 6 of this year The New York Times ran a three-column story on its front page with an article of 1,400 words accompanied by pictures. Time magazine has covered the vigil in the Diocese of Springfield. It is a source of amazement to many that the vigilers are not radical Catholics, with elaborate agendas involving the Church's teaching; instead, these vigil communities are the base of Catholicism, remain in communion with

Rome through years of vigil, and have reached out successfully in their neighborhoods to bring separated Catholics back into the fold; all of this while “standing watch” 24/7.

The Boston vigils propagate the message that there is indeed an alternative to submitting passively to abusive bishops. And with the likely prospect of thousands more parish closings in America, there is the strong likelihood of additional vigils by aggrieved parishioner groups. This has already happened beyond the Archdiocese of Boston in New York, in New Orleans, and in Springfield, Massachusetts. More vigils will mobilize as threatened parishes in other dioceses reach out to Boston’s Catholics for advice, something that is occurring right now.

As the disenchantment in the pews spreads nationally, it will be interesting to see what happens to contributions from American Catholics towards *L’Obolo di San Pietro*, Peter’s Pence. For the most recent year reported, the *Bilancio Consuntivo Consolidato 2007 della Santa Sede*,

American Catholics were the highest contributors, with \$18.7 million accounting for 28% of the total; this from a country with around 6% of the global Catholic population.

It is fair to anticipate that the traditional generosity of American Catholics towards Rome will be badly strained by a continued refusal of the Holy See to redress the injustices being done currently to hundreds of thousands of parishioners, and prospectively to millions.

Many more American bishops will soon face the *Scylla* of churches in vigil, or the *Charybdis* of Catholics being dragged out of their churches in handcuffs.

Recourse in Federal and State Courts, including Class-action Lawsuits Against the Holy See

Lawsuits in the American court system arising from allegations of clergy sexual abuse and from the alleged failure of the hierarchy to supervise abusive clerics, have resulted in billions of dollars in legal settlements and awards against Catholic ordinaries:

- The Associated Press estimated recently that the total of all settlements disclosed by Catholic dioceses could be over \$2 billion;
- In the summer of 2008, the Archdiocese of Los Angeles announced a settlement for \$660 million; and,
- In the spring of 2006, the Archdiocese of Boston acknowledged in its audited financial statements that the total costs relating to clergy sexual abuse were more than \$150 million, considerably above the \$85 million paid in its much-publicized comprehensive settlement of late 2003.

More recently, there have been developments on the legal front that suggest another form of legal and financial jeopardy to the Catholic Church: two class-action lawsuits in the American federal system against the Holy See, which have cleared initial procedural challenges and are now moving forward:

- In November of 2008, in reviewing the case of O’Bryan v. Holy See, the Sixth Circuit Court of Appeals ruled that claims by alleged victims of sexual abuse could proceed against the Holy See itself, for alleged failure to supervise abusive clerics, and therefore committing tortious acts within the United States;
- In March of 2009, in the case of Doe v. Holy See, the Ninth Circuit Court of Appeals ruled similarly, with the court noting that the alleged victim Doe
 - “...has sufficiently alleged that [the alleged abusive priest] was an employee of the Holy See acting within the ‘scope of his employment...[the alleged abusive priest]’s acts can be attributed to the Holy See.....[the alleged abusive priest]’s acts come within the FSIA’s [Foreign Sovereign Immunities Act] ... exception, so the Holy See is not immune from suit.”

This means that two federal appellate courts have upheld lower court decisions to breach the insulation previously afforded to the Holy See as a sovereign jurisdiction. Now, pursuant to the Foreign Sovereign Immunities Act, the Holy See is open to suits and no longer has a legal shield protecting it from lawsuits alleging tortious acts as a sovereign entity. Thus, in two potentially landmark cases the patrimony of the Holy See is exposed to tort claims in America’s federal court system.

Additional causes of action will probably arise directly from the decisions of American ordinaries to close parishes unlawfully; the resulting lawsuits may be brought not only against the bishops and archbishops in the United States, but against the Holy See itself. These lawsuits would draw upon hundreds of parishioner groups in dozens of dioceses who are aggrieved by the suppression of their parishes, and who have appealed and been denied by the Holy See’s dicasteries and tribunals. The parishioner groups participating in this Request for Mediation could be the catalysts for this new wave of lawsuits.

The legal theory of such causes of action would be based upon the following legal arguments, expressed in language accessible to those not trained in the law:

1. Diocesan bishops do not own the parishes’ material goods, but merely hold these in trust within the formal meaning of civil law in the American states.
 - In recent years, the Roman Catholic Church has gone on record in the American federal court system through sworn statements filed voluntarily by bishops and their experts, citing and interpreting canon law, and attesting that the bishop holds all parish properties in trust for the exclusive use and benefit of the parish and its parishioners.

- These documents establish – from statements of Catholic bishops – that a legal relationship exists between the diocesan bishop and the parishes and parishioners of the diocese, in canon law as well as in civil law, *namely a fiduciary relationship*.
2. A bishop violates his fiduciary obligations as trustee by closing diocesan parishes through the canon law technique of “suppression,” in clear violation of his fiduciary duties under civil law.
- By suppression, the bishop injures the primary beneficiaries of the trusts, viz. the parishes and parishioners. The bishop compounds his offense under civil law by taking the trust property for his own use to pay the debts of the diocese. This conduct violates the core concepts of fiduciary duties underlying basic trust law, which, among other things, prohibit a trustee from diverting property held in trust to his own benefit, or to the benefit of a third party (viz. the diocese or other parishes).
 - The procurator-advocate for the archbishop of Boston has established in her *Memoriales* to the *Congressio* of the *Signatura* that this is precisely what transpired in the Boston archdiocese; *vide supra*, p. 6:
 - “...*maximum discretion was given to His Excellency the Archbishop of Boston so that he might save the entire archdiocese from monetary ruin provoked not only, but also, by the sexual abuse crisis...*” and
 - “... “*Viability must been [sic, means “must be seen”] not at the parish level but at the level of the whole Archdiocese, [in English] not excluding the giving of goods of extinct parishes to the archdiocese!...*”
3. Financial and civil liability for American bishops’ tortious acts of suppression will probably extend to the Holy See, for several reasons:
- As noted above, two federal courts of appeal have allowed broad-based lawsuits against the Holy See to go forward in two federal district courts.
 - With this threshold crossed, it would probably be argued by the plaintiffs, in a suit brought forward on grounds of breach of fiduciary duties, that, because all diocesan bishops are ordained through “sacramental consecration” by the Pope, then under the American legal doctrine of *respondeat superior*, the responsibility for the official actions of bishops flows to the Pope in his capacity as the Holy See’s head of state.

- At the seat of government in Rome, of course, direct supervision of diocesan bishops for all matters involving property under their control is exercised by a major dicastery of the Holy See, the Congregation for the Clergy (“*Clericis*”), which functions as the executive agent for the Pope since “prefects” (chief executives) of the congregations are appointed directly by the Pope.
4. The prefect of “*Clericis*” exercises tight control over the financial affairs of all dioceses, worldwide:
- Each diocesan bishop operates under a limit of financial authority, imposed from Rome by “*Clericis*” to control the “alienation” (sale) of real property within the diocese,
 - i.e., a monetary threshold above which any property sale within the diocese is subject to review and prior approval by *Clericis*.
 - For major dioceses in the U.S. this limit of authority is usually in the range of \$5 million; where the suppression of several parishes is planned *en bloc*, the aggregate estimated value of the parish properties to be sold is typically a large multiple of the limit’s threshold, thus approval must be sought from *Clericis*.
 - At the outset of Reconfiguration in the Archdiocese of Boston, it was announced that 83 parishes would be suppressed in a period of just a few months starting in the summer of 2004; contemporaneous press reports indicated that the archdiocese hoped realize \$200 million from the sales of the properties in these parishes.
5. In the several years of parish closings and media reporting in the Archdiocese of Boston, the guiding hand of the Holy See has been very much in evidence, in particular from several interventions by *Clericis*:
- Through the Roman Curia’s role in causing the redrafting of several diocesan suppression decrees, originally drafted locally in contravention of canon law; and in assisting the archdiocese in bypassing canon law, by sanctioning a subterfuge reported prominently in the Boston press in August of 2005:
 - Since the archdiocese had been chastised by *Clericis* for abusing the suppression mechanism for closing parishes, canon 123 (*vide supra*, p.5), the Boston Curia was directed by Roman Curia to rewrite suppression decrees as ‘merger’ decrees;
 - However, by the merger mechanism, under canon law the material goods of the closing parishes would have to follow the faithful to the receiving parish, rather than going to the archdiocese;

lengths to accommodate the openly schismatic *Ecône* movement. While the media focus has been upon the *Shoah*-denying individual (who does not merit the title of “bishop” as a matter of common decency), the issue posed by *Ecône* goes beyond this infamy. For decades the Lefebvrist movement has challenged much of what was arduously achieved at Vatican II, including ecumenism, relations with Judaism, religious freedom, and collegiality. That precious part of the Church’s *Magisterium* would be severely damaged if there were to be a compromise on these matters with these schismatics.

Yet, in addressing the aftermath of the Lefebvrist fiasco, the Holy Father recently wrote:

“Was it, and is it, truly wrong in this case to meet half-way the brother who ‘has something against you’ [the Lefebvrists] (cf. [Matthew], 5:23ff.)...”

Well, actually yes: there is something profoundly wrong in meeting schism “half-way.” In fact there are cases where an absolute refusal to meet certain positions halfway, or even part way, would be appropriate; and where willingness to compromise would itself be morally compromising. In taking a stand against the Nazi regime before the outbreak of World War II in Europe, Winston Churchill defined his position by saying:

“I decline utterly to be impartial between the fire brigade and the fire”

If the Lefebvrist schismatics are eventually met “half-way” by Rome, this would be a shift of seismic proportions in the *Magisterium*, and not for the better:

It would signal to Catholics worldwide that Rome is willing to go to extraordinary lengths to split “half-way” its doctrinal differences with this schismatic cult, but is apparently not willing to budge a millimeter in meeting the legitimate demands of mainstream American Catholics who are safeguarding their parishes.

So, to return to the ‘purification’ of the Roman Catholic Church, if it is indeed an episcopal or a Curial objective to “purify” the Church by shedding important elements of Vatican II, or by driving away American Catholics who are determined to protect their parishes from seizure by bishops, then this is a grave error, one of historic proportions. One might as well describe the Schism of 1054 or the Reformation as successful instances of ‘purification.’ The very essence of Catholicism is universality, and to accelerate deliberately the alienation of Catholics in America would diminish the Church irreparably.

Secularisation

Another term heard frequently from Rome is ‘secularization.’ While it may be appropriate to speak of secularization in Europe, it would be a mistake to use this term as an explanation for the accelerated downsizing of Roman Catholicism in America. By consensus among sociologists, Americans, notwithstanding rampant materialism and cultural vulgarization, continue to be profoundly religious by comparison with other

industrialized societies. And yet the Roman Catholic Church in America is losing adherents by the millions.

What, then, is the logic of driving many more millions away? From the extensive experience with parish closings in the Archdiocese of Boston, surveys among parishioners indicate that within one year of the closing of a parish, something in the range of 35% to 40% of formerly registered parishioners disappear from parish enrollment and Catholicism in two waves, the first within 30-45 days of their parish's closing, and the later one usually after a year, as the displaced parishioners conclude that they are unwelcome in the designated receiving parishes. These life-long Catholics become *anime perdute* to the Church. What happens to these lost souls?

- Many of the elderly retreat into alienation because they are too wounded to continue their practice of Catholicism, but they cannot redirect their devotion to another religious denomination; and
- Younger Catholics, particularly those with families to raise, are likely to migrate to other Christian denominations.

However, there is yet another grouping among these lost souls, a growing network of alienated parishioners of all ages who are creating an indigenous American form of Catholicism, without the "Roman" prefix or deference. This trend is particularly noticeable in certain regions of legacy Catholicism, notably the Northeast, the Mid-Atlantic and the Mid-West.

In the wake of the eruption of the clergy sexual abuse scandal in early 2002, over the past seven years many in the American pews have shed their traditional instincts of pray-and-obey; for them, the bond of trust with their diocesan hierarchy has become severely strained. This has been reinforced by the paleolithic 'command-and-control' management style of several American ordinaries, a geriatric mode of governance that does not work in contemporary developed countries on either side of the North Atlantic basin.

Placing in today's context the massive loss of adherents, the alienation of Catholics whose parishes have been unjustly closed, the erosion of the diocesan hierarchy's moral authority, and the strong underlying religious impulse of Americans, it is not difficult to discern on the horizon a new form of Catholicism emerging from the wreckage, characterized by vibrant communities of displaced parishioners who are ready to retain their core Catholic beliefs, and equally ready to renounce their allegiance to the hierarchies.

This is a new manifestation of *Cafeteria Catholicism*, not simply a disregard of the validity of a particular encyclical or doctrinal tenet; rather, a challenge to the legitimacy of diocesan bishops and Rome itself.

It is perhaps difficult to appreciate from the banks of the Tiber the profound dislocations now underway throughout Catholic America. To deprive unjustly America's parishioners of their spiritual sanctuaries, especially during these somber times, carries the strong likelihood that convulsive changes will be set in motion, on the scale of those which fractured the Roman Catholic Church during the 11th and the 16th centuries.

If this turns out to be the case, it will be the Church that is leaving many of its adherents, not the other way around.

Indeed, with great respect, the Holy Father might have profited from a fuller citation of Matthew (*vide supra*, p.16); there is a later verse in chapter 5, that seems very appropriate to the current situation of bishops in Catholic America - verse 25:

“Lose no time; settle with your opponent while on your way to court with him.”

Table I: List of Participating Parishioner Groups

Archdiocese of Boston

Holy Trinity	South End	Kathleen O’Connell	
Infant Jesus/St Lawrence	Brookline	Warren Hutchison	
Mount Carmel	East Boston	Steve Ashcrafy	vigil since 10.12.04
Our Lady of Lourdes	Revere	John Verrengia	
Sacred Heart	Lexington	Mary Ellen De Natale	
St Frances Cabrini	Scituate	Jon Rogers	vigil since 10.26.04
St James the Great	Wellesley	Suzanne Hurley	vigil since 10.31.04
St Jeremiah	Framingham	Mary Beth Carmody	vigil since 05.06.05
St Michael the Archangel	Lynn	Joan Noble	
St Therese	Everett	Harry Whelan	vigil since 10.26.04
Ste Jeanne d’Arc	Lowell	Joseph Clermont	
Star of the Sea	Quincy	Maureen Mazrimas	

Diocese of Allentown, PA

St Canicus	Mahanoy City	Leonard Brylewski
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Diocese of Buffalo

St George	Niagara Falls	Maryanne Schultz
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Diocese of Cleveland

Sacred Heart of Jesus	Akron	Marian Beresh
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Archdiocese of New Orleans

Blessed Sacrament	New Orleans	Rhonda Bonds	
Epiphany	New Orleans	Demetric Mercadel	
Good Counsel	New Orleans	Rich Hebert	vigil 10.26.08-1.6.09; arrests
St Henry	New Orleans	Alden Hagardorn	vigil 10.26.08-1.6.09; arrests
St Raymond	New Orleans	Carol Boudy	

Archdiocese of New York

Our Lady of Vilnius	Lower West Side	Ramute Zukas	
Queen of Angels	East Harlem	Carmen Villegas	vigil 2.12.07; arrests

Diocese of Scranton

Holy Child	Nanticoke	John Kubricki
Holy Trinity	Wilkes-Barre	Robert Stavich
Sacred Heart	Wilkes-Barre	Noreen Foti
SS Peter and Paul	Avoca	Mary Francis
St Francis of Assisi	Scranton	Albert Belardi
St Francis of Assisi	West Hazelton	Carl Puschauer
St Francis of Assisi	Miners Mills	Andrew Lazar
St Stanislaus	Nanticoke	Lawrence Charnecki

Diocese of Springfield

St Stanislaus Kostka	Adams	Laurie Haas vigil since 12.26.08
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Glossary of Foreign Language Terms Translations & Explanations

p.1

dicastery...generic term for a department of the Holy See's government

Apostolic Signatura...the Holy See's highest tribunal for parishioner appeals, functions as a court

Curia...the central government of the Holy See which includes nine congregations

In parole povere...in simple words

p.2

Magisterium...the body of teaching of the Roman Catholic Church

p.3

remonstraciones...first appeals by parishioners to the diocesan bishop

Plenaria...the full bench of the *Apostolic Signatura*, the Holy See's highest tribunal

Congressio...the screening panel of the *Plenaria*

p.4

étape ...stage

iter...path

Salus Animarum...the salvation of souls

p.5

Al giorno d'oggi...nowadays

p.6

USCCB...United States Conference of Catholic Bishops

mirabile dictu...a wonder to behold

Errare humanum est, sed in errore perseverare est stultum...modified version of an old saying, to err is human but to persevere in error is diabolical; but instead of concluding with 'diabolical' the punch line is "...to persevere in error is dumb [stultum]"

Aggiornando la situazione...updating the situation

p.7

Res ipsa loquitur...the matter speaks for itself

Bancomats...ATMs

p.9

Si monumentum quaeris, circumspice East Boston et East Harlem...If you wish to behold your legacy, look around East Boston and East Harlem

p.11

L'Obolo di San Pietro, Peter's Pence...Monies donated by individual Catholics worldwide directly to the Holy See

Bilancio Consuntivo Consolidato della Santa Sede... Consolidated Financial Statements of the Holy See

Scylla and Charybdis... from mythology, the two monsters flanking the Straits of Messina; shorthand for a hopeless dilemma, either way you lose

p.13

Memoriales... memoranda submitted to the Signatura by advocates; sworn legal statements

respondeat superior... the superior (boss) must be accountable for the acts of subordinates

p.16

Ecône movement... the town in Switzerland where the headquarters of the Lebfevrists is located

Shoah... the Holocaust

p.17

anime perdute... lost souls

DRAFT DRAFT DRAFT

EMBARGOED for Release until Tuesday, April 7, 2009 at 12:00 noon EDT

Thirty-one American Parishioner Groups Request Vatican Mediation

A Request for Mediation has been delivered today to the Holy See's Under-Secretary for State in the Second Section of the Secretariat of State, on behalf of 31 parishioner groups in eight American dioceses, asking the Vatican to instruct its departments and courts to suspend reviews of appeals against parish closings, and to instruct American bishops to enter promptly into mediation with these parishioner groups. This Request is a last resort because of the likelihood of across-the-board denials by the Vatican's highest court of nine pending appeals from Boston parishioners, and a possible future decision by the archbishop to resort to police to clear five churches currently in vigil in Boston, resulting in numerous arrests of Catholics praying in their churches; a lose-lose outcome.

The framework for Mediation would be a New Deal between bishops and parishioners, with clear responsibilities on both sides. The late John Paul himself admonished visiting American bishops, in late 2004, that "The Diocese should always be understood as existing in and for its parishes" [emphasis in the papal original].

The Roman Catholic Church in America is now in free-fall with one thousand parishes closed or scheduled to close; thousands more parishes are in jeopardy; and one-third of persons raised as Catholics now describe themselves as "former Catholics" (*Pew Forum* survey, 2008).

Failure of the Vatican to act on this Request will generate several negative consequences:

- More church vigils, i.e. 24/7 sit-ins;
- More class-action lawsuits against the Holy See itself;
- Schismatic Catholic movements distanced from diocesan bishops and from Rome.

Vigils originated in Boston in the latter part of 2004, with a total of nine churches going into vigil since October, 2004: four have been in vigil for 54 months, since October, 2004, and a fifth since May, 2005; the other four have been reopened by the cardinal.

Lawsuits alleging clergy sexual abuse have cost American dioceses well over \$2 billion in reported settlements and verdicts; and a new form of legal jeopardy has emerged: class-action lawsuits against the Holy See itself. Traditionally, sovereign states (including the Holy See) have been shielded against lawsuits in American courts, but

there are exceptions to this, and in recent months two federal appellate courts have upheld lower court decisions allowing suits v. the Holy See to proceed. Boston Catholics are formulating the legal basis for parishioner suits against the Holy See, based upon the diocesan bishops' self-described roles as trustees of parish property; violation of their fiduciary duties to parishioners as beneficiaries; the liability of the Holy See under the doctrine of negligent supervision; the collusive actions of the Congregation for the Clergy in orchestrating parish closings in the Archdiocese of Boston; and failure of the Congregation for the Bishops to supervise bishops who breached their fiduciary duties. **Catholic schismatic movements** have been in the news recently due to the Holy See's lifting of the excommunication of four Lefebvrist bishops, including a *Shoah* denier. In an unusual explanatory letter to all bishops, the Holy Father cited the following from Matthew:

"...is it..truly wrong in this case to meet half-way the brother [the Lebvrist]..."

Regrettably, meeting "half-way" a schismatic group that denies important elements of Vatican II would be morally compromising. To quote Churchill confronting Naziism,

"I decline utterly to be impartial between the fire brigade and the arson."

An accommodation would signal that Rome went to extraordinary lengths to accommodate a schismatic cult on the far right, while denying the legitimate demands of mainstream parishioners, driving away hundreds of thousands of American Catholics away towards a new form of Catholicism already emerging in some dioceses. In Boston, within a year of closing, 35%-40% of former parishioners drop away from Roman Catholicism, with some starting their own neo-Catholic faith communities. And thousands more parishes are likely to be shut in the years ahead. If, to use a term heard frequently from Rome, the Church in America is to be *purified* by continued waves of parish closings, it will be the Church that is leaving its American adherents, not the other way around. A verse or two below the Matthew scripture quoted in the papal letter sounds like good advice for some American bishops:

"Lose no time; settle with your opponent while on your way to court."

Summary: Request For Mediation

A “Request for Mediation” was delivered today in Rome to the Holy See’s Under-Secretary for Relations with States, Second Section of the Secretariat of State, on behalf of 31 American parishioner groups in the following eight Catholic dioceses:

- Allentown; Boston; Buffalo; Cleveland; New York, New Orleans; Scranton; and Springfield (MA).

The Request urges the Secretariat of State to instruct the Vatican Curia to suspend reviews of parish closings; and to instruct the diocesan bishops to suspend parish closing decrees, and instead to enter into Mediation with the 31 parishioner groups.

The Mediation proposal is a last resort before a deeper crisis emerges, namely a possible future decision by diocesan bishops to order the police to remove by force Catholics now in vigil in five Boston-area churches, and one church in Adams, MA.

Hundreds of appeals by Catholic parishioners in America through the Vatican’s canon law mechanism have been denied, including nine Boston appeals now for final review at the highest Vatican court, the *Plenaria* of the *Apostolic Signatura*,. There is no realistic chance for relief, given that the *Plenaria* has not granted any parishioner appeals in the past forty years. All efforts by parishioners for a pastoral dialogue with their bishops have failed.

The closing of Catholic parishes across America is surging: at least one thousand communities have been, or will soon be, closed. And many more, in the thousands, will face this fate in the years ahead as the Church continues to implode. Bishops give a variety of reasons, but most of these are pretexts. The ugly truth for these wholesale closings was given by the advocate for the Archdiocese of Boston in a sworn brief to the *Signatura*:

“...maximum discretion was given to...the Archbishop of Boston so that he might save the entire archdiocese from monetary ruin provoked not only but also by the sexual abuse crisis. It is in this context that all actions of this process...are to be understood, not excluding the suppression of parishes of maximum vitality...”

Catholicism in America is in a crisis ranging far beyond the Archdiocese of Boston. A comprehensive survey by the *Pew Forum* last year found that,

“Approximately one-third of the survey respondents who say they were raised Catholic no longer describe themselves as Catholic. This means that roughly 10% of all Americans are former Catholics.”

In last fall’s presidential election, despite a vigorous campaign by some American bishops against the Democratic candidate, many Catholics in the swing states of Pennsylvania, Ohio, and Michigan disregarded these admonitions, and those of

Signatura Prefect Archbishop Raymond Burke. Docility in the pews is a thing of the past.

If the Holy See fails to intervene, there will be consequences for the Church in America:

- Spreading protests against parish closings, including vigils – i.e. 24/7 sit-ins;
- More class-action lawsuits against the Holy See itself; and
- Schismatic communities of neo-Catholics, with fraying ties to Rome.

Protests emerged in Boston in 2004-2005, with nine churches going into vigil; currently, four have completed 54 months, and a fifth has been in vigil for almost four years; the other four were reopened by the archdiocese. Vigils have received attention from national media, including The New York Times, Time magazine, several television networks, as well as local press and TV. Arrests of vigilers in their churches in Boston, NYC, and New Orleans, were covered; any future actions will not go unnoticed.

Currently two **class-action lawsuits** against the Holy See alleging clergy sexual abuse have cleared the legal barriers shielding it as a sovereign state, and are moving through federal courts. In Boston, parishioners are formulating a legal theory based on the bishop's fiduciary duties as the trustee of parishes; violation of these duties by seizing parish assets; extension of liability to the Holy See which appoints bishops; collusive actions of the Congregation for the Clergy in orchestrating parish closings; and negligent supervision of bishops by the Congregation for the Bishops.

Catholic **schismatic groups** have been in the news with the lifting of excommunication on four Lefbvrst bishops, including a *Shoah* denier. After-the-fact the Holy Father explained in an unusual letter, quoting from the Gospel of Matthew,

"...is it truly wrong in this case to meet half-way the brother 'who has something against you'..."

Meeting "half-way" a schismatic cult on the far right would indeed be morally compromising: in the words of Churchill about Naziism,

"I decline utterly to be impartial between the fire brigade and the arson."

It would signal that the Holy See split the difference with the *Ecône* schismatics, but would not budge a millimeter towards mainstream American Catholics.

In the wake of parish closings in Boston, 35%-40% of Catholics have dropped out. Nationally, hundreds of thousands and eventually millions will be lost. Many of them are finding their way into new Catholic communities with no ties to the bishops; this is not merely *Cafeteria Catholicism*, but separation from Rome. A citation from Matthew, fuller than what was in the papal letter, might be instructive for these bishops:

"Lose no time; settle with your opponent while on your way to court with him."