CLSA PRECONVENTION – 2024
THE PENAL TRIAL

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ABBREVIATIONS

SST: Congregation for the Doctrine of the Faith, Normae de gravioribus delictis, **Sacramentorum Sanctitatis Tutela,** 9 October 2021.

DC: Pontifical Council for Legislative Texts, instruction **Dignitas connubii,** 25 January 2005.

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THREE PERSPECTIVES

- The perspective of the petitioner: the **promoter of justice**
  - responsible for accusing and calling for the imposition of a penalty;
  - concerned about truth, the restoration of justice, the repair of scandal, and the reform of the offender; and
  - seeking both the good of the Church and the accused.
- The perspective of the respondent: the **accused (*reus*)** / his **advocate**
  - responsible for countering the promoter and defending the accused;
  - sharing concern for truth, the good of the Church and the accused.
- The perspective of the **impartial judge**
  - objectively weighs the arguments on both sides.

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WHY CHOOSE THE PENAL TRIAL?

- Why a bishop might **not want to hold a trial**
  - Trials are hard; Trials take time; Trials require qualified personnel, possibly chosen from other dioceses.
  - Several other processes may be faster and similarly effective:
    - The extrajudicial administrative process
    - Application of administrative measures
    - Application of the Special Faculties of the Dicastery for the Clergy

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WHY CHOOSE THE PENAL TRIAL?

- Why a bishop might **want to choose the penal trial**
  - The bishop may want to stand apart from the decision or the choice of penalty.
  - The facts of the case are not sufficiently established by the preliminary investigation. The trial may help adduce evidence or a response from the accused.
  - A perpetual penalty (dismissal, privation) is sought, requiring a trial (cc. 1342 §2 and 1336).
  - A trial may be desirable for a *gravius delictum*, or if a more severe penalty is contemplated (e.g. excommunication, cf. c. 1425 §1, 2°).

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WHY CHOOSE THE PENAL TRIAL?

- **Dismissal** can be imposed for:
  - apostacy, heresy, schism (c. 1364 §1); attacking the Pope (c. 1370 §1); ordination of a woman (c. 1379 §3); Eucharistic violations (c. 1382 §§1, and 2); solicitation in confession (c. 1385); recording or maliciously diffusing a confession (c. 1386 §3); illegitimate absence from ministry (c. 1392); attempted marriage (c. 1394 §1); concubinage or other delicts contra sextum (c. 1395 §§1 and 2); abortion, homicide, etc. (c. 1397 §§1-3); abuse of a minor (c. 1398 §1).
  - not for breaking the seal of confession (c. 1386 §1).

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THE PROMOTER OF JUSTICE

- The **promoter of justice** is appointed by the bishop who initiates the action (c. 1721 §1).
  - Presumptively the promoter presents a libellus to the Tribunal of the same bishop who appointed him…
- The promoter accuses in penal cases to the exclusion of all others (c. 1721; CIC/17 c. 1934). He or she provides for the public good (c. 1430).
- The promoter bears the burden of proof (c. 1526 §1).
- The promoter is a party to the trial with active and passive rights (c. 1434, 1° and 2°).

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SELECTION OF THE PROMOTER OF JUSTICE

- The promoter may be a cleric or lay person, but must have a JCL (c. 1435).
  - SST requires the promoter to be a priest unless dispensed (SST, Artt. 13, 1° and 14).
- The stable promoter of justice or one *ad casum* can be appointed (c. 1430). The one who carried out the preliminary investigation may be appointed promoter of justice *ad casum* but not judge (c. 1717 §3).

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SELECTION OF THE PROMOTER OF JUSTICE

- The promoter may be subject to **recusal** (cc. 1448 and 1449).
  - However, the bishop will presumably not appoint a promoter with friendship for the accused.
  - Since the promoter accuses, must he withdraw for suspected animosity for the accused?

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APPOINTMENT OF THE ADVOCATE

- The accused must have an advocate. The accused can freely appoint an **advocate and procurator** (c. 1481 §1).
  - The law gives deference to the accused's choice of advocate.
  - The judge must supply for the negligence of the accused by appointing an advocate if he does not do so (cc. 1481 §2 and 1723 §2).
- The judge cannot appoint a procurator. If no procurator is appointed, the accused must respond personally. He should nevertheless be encouraged to consult with his advocate.

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APPOINTMENT OF THE ADVOCATE

- The advocate must be an adult of good reputation with a canonical degree or "otherwise expert" (c. 1483).
- The advocate must be **approved** by the diocesan bishop in order to practice before the Tribunal in general (c. 1483).
- Can the diocesan bishop refuse to admit an advocate?
  - It is presumed that the advocate should be admitted if he or she possess the required qualities.
  - Advocates can be suspended or removed for misconduct such as bribery (cc. 1488 and 1489).
  - A decision must be based in objective fact and the rule of law.

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APPOINTMENT OF THE ADVOCATE

- The judge **admits** the advocate upon presentation of a mandate to the specific tribunal constituted for the penal trial (c. 1484).
- The judge can **punish, suspend** or **remove** the advocate in certain cases (cc. 1486-1488), including one gravely lacking in respect and obedience due to the tribunal (c. 1470 §2).
  - The judge must act on objective facts and the rule of law.
  - As these are contentious causes by definition, a good advocate should be vigorous in defense of the accused.
  - Just as the promoter should not be removed for accusing, the advocate should not be removed for defending the accused.

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APPOINTMENT OF THE ADVOCATE

- It is not likely that a diocese will have a stable list of advocates who receive a stipend (c. 1490).
  - If necessary, the accused may **ask for help** in obtaining the services of a qualified advocate.
- What about an **incompetent advocate**? Should a diocesan bishop or a judge reject him or her?
- What if the accused cannot find an advocate? Could a judge provide an incompetent advocate?

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APPOINTMENT OF THE ADVOCATE

- Regarding the **expense** of retaining an advocate:

1. The accused selects his own advocate and assumes financial obligation.
2. The accused selects his own advocate but asks for financial assistance.
   - The bishop can limit the fees for advocates and can grant gratuitous legal assistance or a reduction of expenses (c. 1649 §1, 2° and 3°).
3. The accused asks for an advocate to be provided.
   - The bishop or judge may provide an advocate, whom the accused may choose to reject. Canon 1649 still applies.

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APPOINTMENT OF THE ADVOCATE

- Regarding the **expense** of retaining an advocate:

4. The accused does not appoint an advocate.
   - The judge appoints an advocate, presumably free of charge (cc. 1481 §2 and 1723 §2).

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ROLE OF THE ADVOCATE

- The advocate does not bear the burden of proof. The innocence of the accused is presumed by law until the contrary is proven (c. 1321 §1).
- The advocate is a party to the trial with active and passive rights (c. 1434, 1° and 2°).
- The advocate and/or the accused has the right to speak last (c. 1725).

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APPOINTMENT OF THE JUDGES

- A trial may be conducted by a single clerical **judge**.
- In more serious cases (e.g. excommunication or dismissal), there must be three judges, only one of whom may be a lay person (cc. 1421 §2 and 1425 §1, 2°).
- Judges must have a JCL or JCD (cc. 1420 §4 and 1421 §3).
- Judges must withdraw for reasons that might impair their objectivity (c. 1448 §1). The one appointed to the preliminary investigation cannot be a judge or assessor (c. 1717 §3; DDF Vademecum 2.0, 39).
  - Possible advantages in choosing judges outside the diocese of the accused.
  - Possible disadvantages in judging from a distance.

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APPOINTMENT OF THE NOTARY

- A **notary** must be appointed for the validity of the acts of the process (c. 1437 §1). The notary must be a priest in cases which involve the reputation of a priest or in a penal trial (c. 483 §2; CIC/17 c. 373 §3).
- The notary must put everything regarding the procedure and everything worth remembering in writing (cc. 1472 §1 and 1568).

Remember the ancient maxim:

Quod non est in actis non est in mundo.

  - The appellate judges know only what is documented and written in the acts.
  - When in doubt… write it out…

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CHOICE OF FORA

- The choice of **fora** and the reason to choose one over another:
  - The forum of the domicile or quasi-domicile of the accused (c. 1408),
    - (The diocese of incardination)
  - The forum of the delict (c. 1412),
  - The forum of the maladministration (c. 1413)
  - The forum of connected cases (c. 1414).
- The Bishop and promoter of justice chose the forum by presenting the libellus. The forum is fixed by the citation (cc. 1415 and 1512, 2°).

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CHOICE OF FORA

- ***Graviora delicta*** are the exclusive competence of the Dicastery for the Doctrine of faith.
  - The ordinary is competent to deal with cases of heresy, apostacy, or schism in first instance (SST, Artt. 1 and 2 §2).

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THE LIBELLUS AND CITATION

- The promoter of justice alleges the violations of law that will form the basis of the doubt and presents at least a summary of the evidence against the accused.
  - The promoter of justice should mention the title of competence by which he seeks the intervention of the judge (c. 1504, 1° and 2°).
- The judge who accepts the libellus immediately cites the accused and communicates the libellus (cc. 1507 and 1508).
  - The accused is invited to appoint an advocate.
  - The accused, assisted by his advocate, is invited to offer a response before the joinder (c. 1513).

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PRESCRIPTION AND A CHANGE IN LAW

- **Prescription** extinguishes criminal action after 3, 7, or 20 years based on the delict (c. 1362). When there is a change in law, the more favorable law is applied (c. 1313 §1).
- Note that ***Pascite gregem Dei*** became effective, 8 December 2021. *Pascite* invariably strengthened the former law. Questions to ask:
  - When was the delict committed?
    - Delicts committed before *Pascite* are punished according to the former law.
  - If continual, when did the delictual behavior begin and end?
    - Delicts committed after *Pascite* or which continued through *Pascite* are punished according to the current law.

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SAMPLE LIBELLUS

- I, N, duly nominated promoter of justice *ad casum*, and by mandate of the Bishop of X, petition the Tribunal for a penal process against Father A, a priest of the same diocese. Father A remains incardinated in the Diocese of X and is subject to the authority of the Bishop of X who has received complaints regarding his delictual behavior. This libellus is presented based on the rights of the Diocesan Bishop to discipline his clergy in canon 1311 §§1 and 2 according to the procedures established in canon 1721 and following.
  - In particular, I allege that Father A has committed the delict of concubinage by [include details…] (c. 1395 §1). He did this before/after the effective date of *Pascite Gregem Dei*, December 8, 2021. This delict calls for suspension or even dismissal from the clerical state, both before and after *Pascite*.
  - I also allege that Father A has violated his obligation of obedience by disobeying a legitimate precept given to him by his ordinary (c. 1371 §1, formerly c. 1371, 2°). He did this before *Pascite*, in which case a just penalty is required, and after *Pascite*, in which case a censure or an expiatory penalty is required.
  - As proof of these contentions, I offer the following proofs: …

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THE LIBELLUS AND CITATION

- What if the accused cannot be **cited**?
  - If the accused cannot be found, his citation by edict or another means must be documented (cf. DC Art. 132). An advocate must still be appointed for the accused.
  - If the accused refuses to receive the citation, this must be documented (cc. 1509 §2 and 1510). He is considered cited and must be declared absent (c. 1592). An advocate must be appointed.
  - If the accused receives the citation and does not respond, he is to be cited again and then declared absent (c. 1594). An advocate must be appointed.
    - Modern difficulties with certified mail…
    - Modern means of locating a party…

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THE LIBELLUS AND CITATION

- What if the accused **goes missing** during the trial?
  - Once the accused is cited, the cause is pending and is no longer a *res integra* (c. 1512).
  - The cause may continue to the definitive sentence (cf. DC, Art. 138 §1).
  - If the accused reappears, he may again exercise his rights. Yet, the judge should not overly prolong the trial (c. 1593).

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THE LIBELLUS AND CITATION

- Can the judge **withhold the libellus** until deposing the accused (c. 1508 §3)?
  - Yes, but an advocate will counsel his or her client not to respond until knowing the details of the accusation.

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THE FORMULATION OF THE DOUBT

- When **joining the issue**, the advocate will presumably not agree with the grounds proposed by the promoter of justice.
- Unless a ground appears to be without any foundation, the judge sets the terms of the controversy based on the delicts alleged by the promoter of justice.
- The formulation of the doubt defines **the scope of the trial**.
- Based on the established doubt, the judges will determine what proofs are relevant and the parties will determine what proofs are to be presented.
- The judge sets the time limit for presenting proofs (c. 1516).

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THE FORMULATION OF THE DOUBT

- The Formulation of the Doubt in the penal trial:

1. Did [the accused] commit the delict of X as mentioned in canon N?
2. …repeat if there are multiple alleged delicts…
3. If so, is the accused gravely imputable for this violation (these violations)?
4. If so, what penalty is to be imposed?

- Do not list each accusation separately, as individual "counts" like in civil law.

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AGREEMENT, COMPROMISE, ARBITRATION?

- Judges are encouraged to avoid litigation (c. 1446 §§1 and 2).
- **Arbitration** or **agreement** is not possible in matters related to the public good (c. 1446 §3, 1715).
- All penalties in Book VI are now preceptive and not facultative (NB: c. 1399).
- Is **compromise** a reasonable solution?
  - In cases of *graviora delicta*, the DDF will often suspend a trial if the accused requests laicization.
  - In cases of the removal of a pastor, the priest may offer a conditional resignation from office (c. 1743).

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AGREEMENT, COMPROMISE, ARBITRATION?

- An agreement with the accused would presumably be followed by an action to **renounce the trial** by the promoter of justice. Note the following:
  - The promoter of justice requires the consent of the ordinary to renounce the trial (c. 1724 §1).
  - The renouncing party must pay the expenses of the trial (c. 1525).
  - If a trial is renounced in second instance, it becomes a *res iudicata* (c. 1641, 3°).
- Danger of resolving a penal case by coming to an "arrangement" outside of the canonical norms.

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PRESENTATION OF WITNESSES

- The promoter of justice, bearing the **burden of proof**, will introduce the majority of the witnesses.
- The advocate does not need to prove the innocence of the accused (c. 1321 §1), but may present defense witnesses, either to testify to the innocence of the accused, or to contradict testimony of guilt.
- Additional co-witnesses can be called to reinforce or contradict assertions made during the trial (c. 1572, 4°).
- For each witness presented, the party presents the items on which the witness should be questioned (c. 1552 §2). These are the so-called positions or articles (CIC/17 c. 1761 §1).

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PRESENTATION OF WITNESSES

- The opposing party may request the **exclusion of a witness** (c. 1555).
- A witness may be excluded because:
  - the witness is exempt or incapable (cc. 1548 §2 and 1550);
  - the witness does not have useful information (c. 1527 §1);
  - for another canonical reason, but not because the witness is thought to be unfavorable or biased against the other party.
    - The bias of the witness will be brought out during the examination.

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PRESENTATION OF WITNESSES

- The judge decides whether to hear a witness based on the **useful testimony** that may be offered (c. 1527 §1). The judge may exclude witnesses if the number presented is excessive (c. 1553).
- The decision of the judge cannot be appealed during the trial (c. 1527 §2).
  - The judge should take care not to deny the right of defense as a consideration on appeal.
- If mere **character witnesses** are offered – who have no direct knowledge of the alleged criminal behavior – they need not be heard. A written statement could be accepted into the acts.

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THE INTERROGATORY

- The judge prepares the **interrogatory** in advance. This is implied by the following canons:
  - The questions are not communicated to the witness beforehand (c. 1565 §1).
  - Ex officio questions (those added to the interrogatory during the session) are noted by the notary (c. 1568).
  - The promoter or the advocate may not ask questions, but only the judge (c. 1561).
- Unlike a civil trial, the judge takes an active role in managing the collection of proofs. The prepared interrogatory ensures that the gathering of proofs stays on target.

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THE INTERROGATORY

- The interrogatory is prepared according to canons 1562-1566:
  - The witness is to take an oath and establish his or her identity and connection with the parties.
  - The questions are to be brief, straight-forward, and objective.
  - The questions are to be asked orally.
- Preparing the interrogatory will help the judge **maintain objectivity**. The judge should not "side with the witness" or sympathize.
  - This can happen in abuse cases and may imperil the objectivity of the trial.
  - If someone needs to be sympathetic to an alleged victim, let it be someone other than the judge!

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HEARING THE WITNESSES

- The judge **cites the witness** (c. 1557). The **citation of the promoter of justice** is required for validity of the acts (c. 1433).
- The advocate, but not the accused, is generally present for the hearing of a witness (c. 1559).
- Secrecy of office is imposed on the officials (c. 1455 §1) and can even be imposed on the witnesses (c. 1455 §3). Any danger of collusion or corruption among the parties or the witnesses must be avoided (c. 1570).

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HEARING THE WITNESSES

- The judge adds **ex officio questions** to clarify obscure points, determine the source of the witness' knowledge, and assess the reliability and consistency of the testimony (cf. c. 1572).
  - The judge must not accept testimony uncritically. He must sift the witness in the search of the truth.
  - The judge moderates the questions of the promoter and advocate.
  - Yet, the judge must be attentive to the right of defense.

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HEARING THE WITNESSES

- The notary need not be a court stenographer but must write down the **exact words** regarding the points at issue and anything else worthy of remembering (cc. 1567 and 1568).
- The testimony is reviewed by the witness and confirmed by oath (c. 1569 §1).

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HEARING THE WITNESSES

- **In abuse cases,** witnesses may be cooperative at first and may become uncooperative (cf. c. 1548 §2, 2° on fear or grave harm).
- The auditor in the preliminary investigation should obtain as much information as possible during the first interview with an alleged victim.

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HEARING THE WITNESSES

- Witnesses in **confessional matters** can choose to remain anonymous. If so, they are not identified to the accused or the advocate (SST, Art. 6 §2).
- The judge must respect the seal of confession. Questions may not inquire into the content of any confession (SST, Art. 4 §2).
  - "Without revealing any sins… When did you confess the sin that was betrayed? When did you learn that your confession was betrayed? To whom did the confessor betray your confession? How do you know your confession was betrayed? Did the confessor reveal your identity and the specific sin? Was this specific sin previously known to anyone else? Could the confessor have known this fact through any other means?"

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HEARING THE WITNESSES

- In **confessional matters:**
  - The judge must be attentive to safeguarding the rights of the accused, since the advocate will not be able to offer any defense of the accused.

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HEARING THE WITNESS: DISTANCE ISSUES

- Testimony is heard in a stably located Tribunal (c. 1468) or at another location **in the same diocese** (c. 1558 §§1 and 3).
- With the permission of the local bishop, the tribunal officials—the judge, the promoter of justice, the advocate, and the notary—may hear testimony **in another diocese** (c. 1469 §2).
- The judge may appoint an **auditor** who takes the testimony of a witness with the assistance of a notary. The promoter and the advocate may be present (c. 1561).
- The judge may ask another Tribunal to conduct a **rogatory** to hear a witness (c. 1418).

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HEARING THE WITNESS: DISTANCE ISSUES

- Issues regarding the **expense** related to time and travel.
- Note that the expenses incurred by the witness and the income lost are to be reimbursed according to the assessment of the judge (c. 1571).
- Note that *Mitis Iudex Dominus Iesus*, Art. 7 §2 encourages cooperation among tribunals to facilitate participation with minimum of cost.

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HEARING THE WITNESS: DISTANCE ISSUES

- Difficulties with taking testimony by **phone**:
  - Confirming the identity of the witness; that the witness is alone, without notes, and is not being coached; observing the physical behavior of the witness
  - See William Daniel, "The Canonical Norms on the Judicial Examination or Interrogations" in Jurist 78 (2022) 132-202.
- Presence of **the advocate by phone**?
  - Advantages of saving time and expense…
  - Disadvantages…

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HEARING THE WITNESS: DISTANCE ISSUES

- Taking testimony by **video conferencing**:
  - All participants can see, hear and participate in a session.
  - The Congregation for the Clergy allowed canonical consultation via videoconference during Covid (8 May 2020 letter, Prot. 2020/1683).
  - Video conferencing is now common in civil judicial proceedings.
  - Consider the phrase in canon 1469 §2, "For a just cause and after having heard the parties…" Proceed with the agreement of the parties?
  - Yet, a virtual session may take place in multiple diocesan territories…
  - If the judges are chosen from other dioceses, might they meet to discuss the case virtually?

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HEARING THE ACCUSED

- The **accused may be asked to testify** by the promoter and may be required to testify by the judge (c. 1530). There is no "Fifth Amendment" right not to be called to testify.
- But, the accused is not bound to admit guilt nor to take an oath (c. 1728 §2). Furthermore, in *Pascite*, the accused benefits from the added formulation of canon 1321 §1: "A person is considered innocent until the contrary is proved."
- Therefore, there is no benefit in questioning the accused unless questions can be asked without calling for self-incrimination. The advocate will counsel the accused not to answer an incriminating question.

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HEARING THE ACCUSED

- The accused may remain silent.
- The judge may interpret what can be inferred by the silence of a witness (c. 1531 §2).
- Since the accused enjoys the presumption of innocence, the judge **may not interpret the silence of the accused as a proof of guilt**.
- Yet, the silence of the accused might be proof of **some element** of the case (e.g. that the accused was acquainted with another party).
- Is there an alternative? The judge may put questions in writing that invite the accused or the advocate to respond.

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DOCUMENTARY PROOFS

- The following **Documents** may be probative:
  - In monetary delicts: financial documents;
  - In cases of heresy or inciting hatred or contempt: books, articles, letters, or notes;
    - Also consider video or audio recordings of homilies or talks, blogs, podcasts, social media posts;
  - In cases of other illicit behavior, consider internet search history, cell phone data, email.
  - Possible complications…

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USE OF EXPERTS

- **Experts** may provide useful evidence:
  - Tribunals rely on psychological experts in causes of nullity of marriage.
  - A psychological expert to assess the credibility of an accuser in an abuse case?
  - A theologian to testify regarding heresy?
  - An accountant to testify regarding financial crimes?
  - A legal/criminal expert regarding computer crimes *contra sextum*?

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JUDICIAL INSPECTION

- A **judicial inspection** may assist in the evaluation of a case:
  - The layout of a rectory may prove or disprove the credibility of an accuser in a case of abuse.

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BUILDING A CASE

- **Imputability:** The promoter of justice does not need to prove imputability. However, the advocate may want to question whether there was a lack of malice or negligence on the part of the accused (c. 1321 §2).
- The advocate may appeal to factors that mitigate culpability (cc. 1323-1324).
- The promoter of justice may appeal to factors that may aggravates culpability (cc. 1325 and 1326, 4°).

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BUILDING A CASE

- An argument for **mitigated culpability** may lead to the conclusion that the accused is not suitable or competent for an assignment
  - A priest may be impeded if he labors from amentia (c. 1041, 1°).
  - A pastor may be removed if he suffers from ineptitude or a permanent infirmity of mind or body (c. 1741, 2°).

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BUILDING A CASE

- The accused may not be punished for **past offenses** that are barred by **prescription,** by which criminal action is extinguished (c. 1362 §1).
- However, proofs regarding past behavior may be introduced if they have probative value regarding a delict presently under consideration.

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PUBLICATION OF THE ACTS

- Publication serves as the opportunity for the promoter of justice and the advocate to examine the acts of a penal trial, under penalty of nullity (c. 1598 §1).
  - Publication takes place in the Tribunal or, if a party lives far away, in another tribunal (c. 1418).
  - Withholding a specific act for a most grave danger vs protecting the right of defense (c. 1598 §1). The bias favors **disclosing information to the accused**.
  - Delicts around confession require special protection of the accuser (SST, Art. 4 §2). In this case, the bias reverses and favors withholding information from the accused.

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PUBLICATION OF THE ACTS

- Whether or not to give the advocate **a copy of the acts** (c. 1598 §1), or to allow for their inspection in a Tribunal (c. 1418).
  - Providing the advocate with a copy of the acts will facilitate the ability of the advocate to protect the rights of the accused.
  - The advocate is bound by an oath of secrecy and may not disclose the acts to another party (c. 1455 §1).
  - The accused is not given a copy of the acts but must be allowed to inspect them.
- Time limits for viewing the acts are set by the judge (c. 1466), and can be extended in the interest of justice (c. 1465 §2), but should not prolong the trial (c. 1465 §3).

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PUBLICATION OF THE ACTS

- The purpose of publication is to determine if **additional evidence** should be presented,
  - to contradict an assertion made in the acts, or
  - to support a point not sufficiently elucidated in the acts.
- The possibility of introducing additional proofs (c. 1598 §2) is
  - at the discretion of the judge (c. 1527 §2),
  - within the time set by the judge (c. 1466),
  - for the sake of justice,
  - but without unnecessarily prolonging the trial (c. 1465 §3).

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PUBLICATION OF THE ACTS

- The publication of the acts also allows for the advocate and the promoter to prepare their **vota** or **animadversions**.
  - The advocate must be allowed to see the votum of the promoter and respond to it (c. 1725).
  - In the vota, each party speaks to the judges and makes the best case possible either for or against the guilt of the accused. Building a strong and well-supported argument is the best way to win the judges to your side.

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SENTENCE

- The standard required for a decision is **moral certitude**. If moral certitude cannot be reached on a ground, the judges must find ***non constat*** and dismiss the accused.
- A ***non constat*** finding does not mean the accused is innocent (*constat de non*). Penal remedies may be applied, if warranted, to correct the accused.
- While one witness can constitute **full proof** in an annulment, one witness alone cannot constitute full proof sufficient for moral certitude in a penal trial. Corroboration is required by other witnesses or by other evidence in the acts (cc. 1536 §2 and 1573).

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SENTENCE

- If the judges have arrived at a finding of guilt, they must decide on the **appropriate penalty** to impose.
- The judges should be mindful of the accused and weigh the appropriate penalty that will reform the offender.
- The judges should also be mindful of the community who has been wounded by the delict committed and weigh the appropriate penalty that will restore justice and repair scandal.

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SENTENCE

- The *in iure* section may need to address the possible **change in law** since *Pascite* (c. 1313).
  - Note the date on which the delict was committed, the law that applied at the time, and any subsequent change in the wording of the law.
  - Note the penalty that applied at the time and any subsequent change in penalty.

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CHALLENGING THE SENTENCE

- **Appeals** are heard by the appellate tribunal or by direct appeal to the Roman Rota in second instance (cc. 1444 §1 and 1632 §1).
  - However, *graviora delicta* cases are subject to the Dicastery for the Doctrine of the Faith (SST, Art. 16).
- Unlike annulments, new grounds cannot be added in second instance in the penal trial (c. 1639 §1).

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CHALLENGING THE SENTENCE

- The purpose of the penal appeal is to subject the case to a **higher level of justice**. The appellate tribunal is not bound by the decision in first instance and can reverse any decision.
  - An appeal made to request a lighter sentence might result in a harsher sentence in second instance.
  - An appeal of only part of the sentence allows the other party to appeal the remainder of the sentence.
  - If the advocate appeals the choice of penalty, the promoter can appeal a *non constat* decision on one of the other grounds.

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CHALLENGING THE SENTENCE

- A **complaint of nullity** can be proposed if there is a defect rendering the sentence irremediably or remediably null (cc. 1620, 1°-8° or 1622, 1°-6°).
- The complaint is heard by the original judge or by the appellate judge.
- Judges must take care, in particular, to **not deny the right of defense** and give rise to a possibly null sentence (c. 1620, 7°).
  - While deference should be shown to the accused and to the safeguarding of his rights, the judge must make decisions in the interest of justice and equity. Unreasonable demands of the advocate or the accused do not need to be honored.

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CHALLENGING THE SENTENCE

- A **restitutio in integrum** is an extraordinary remedy and can only be granted if one of the unusual situations in canon 1645 §2, 1°-5° is present.

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