

THE 1962 VATICAN INSTRUCTION
“*CRIMEN SOLLICITATIONIS*,” PROMULGATED ON MARCH 16, 1962

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1. The recently revealed (2003) Vatican document outlining the procedures for dealing with cases of solicitation of sex by priest-confessors has caused a swell of alarm and surprise on the part of survivors, attorneys and others.

2. This document was issued by the Congregation of the Holy Office in March, 1962. It was presented by the Prefect, Alfredo Cardinal Ottaviani, to Pope John XXIII for the Pope’s approval. This is the normal manner of receiving Papal approval for documents of this nature. It was then sent to all the bishops in the world. The bishops were admonished to maintain strict confidentiality about the document and ordered not to allow it to be reproduced or commented upon.

3. *Crimen Sollicitationis* remained in effect until 2001 when the Vatican published a new set of procedures for prosecuting especially grave canonical crimes, including certain sexual crimes committed by the clergy. Two official documents were issued. The first was an apostolic letter of Pope John Paul II, known by its Latin title *Sacramentorum sanctitatis tutela*, by which the actual norms were promulgated. This letter, dated April 30, 2001, was followed on May 18, 2001 by an official document that set forth the norms. This latter document was signed by Cardinal Josef Ratzinger, prefect of the Congregation for the Doctrine of the Faith. Both documents refer to certain serious canonical crimes and among those is sexual abuse by clerics. These documents represent revised procedures to be used by Bishops and major religious superiors in response to allegations of clergy sexual abuse.

4. Clergy sexual abuse issues are handled by the Congregation for the Doctrine of the Faith, a major department of the Vatican administration. This has been the case since the 18th century although the name of the present congregation has been changed twice during this period. It was first known as the Congregation of the Holy Inquisition. It later became known as the Congregation of the Holy Office and after Vatican II, the Congregation for the Doctrine of the Faith. Cardinal Ratzinger, presently Pope Benedict XIV, had been the prefect, or head, since

1981. Although he signed the letter containing the revised norms and quite possibly had a direct role in drafting it, the procedures themselves had to be approved or promulgated by the Pope for validity and effect.

5. Under ordinary circumstances *Crimen Sollicitationis* would have ceased to have legal force with the promulgation of the 1983 Code of canon Law. This was not the case however, and the words of the subsequent document, commonly known as *De delictis gravioribus*, signed by Cardinal Ratzinger, clarify this issue:

At approximately the same time the Congregation for the Faith, through an ad hoc Commission established, devoted itself to a diligent study of the canons on delicts, both of the Code of Canon Law and the Code of Canons of the Eastern Churches, in order to determine "more grave delicts both against morals and in the celebration of the sacraments" and in order to make special procedural norms "to declare or impose canonical sanctions," because the Instruction Crimen sollicitationis, issued by the Supreme Sacred Congregation of the Holy Office on March 16,1962,(3) in force until now, was to be reviewed when the new canonical Codes were promulgated.

6. This position has been reiterated by canonical scholars and by officials of the Congregation for the Doctrine of the Faith itself. The officers of the Canon law Society of America visited the Congregation for the Doctrine of the Faith in 1996 and discussed the document with the secretary who was Archbishop, now cardinal, Tarcisio Bertone. In its June 1996 Newsletter the Canon Law Society reported on their visit:

The norms on solicitation cases issued in 1962 are currently under review by a commission within the CDF. New norms are required in light of the revision of canon law. In the interim, the 1962 norms should be followed, with obvious adaptations.

Msgr. Brian Ferme, presently Dean of the School of Canon law at catholic University of America, Washington D.C., stated in an affidavit submitted in a California civil case in 2005 stated that “*technically the 1962 Instruction was in force until the publication of the 2001 document by the Congregation for the Doctrine of the Faith.*”

7. The document is essentially a set of procedural norms for processing cases of accusations against priests for soliciting sex while in the act of sacramental confession. Solicitation is an

especially heinous canonical crime and one which results in severe penalties for those found guilty. Prior to the publication of this document such cases were processed according to the norms for penal judicial processes found in the 1917 Code of Canon Law. The fact that the new instruction was issued does not necessarily indicate a rise in cases of clergy sex crimes but could indicate a heightened concern over the incidence of clergy crimes or over the maintenance of confidentiality.

8. It is known as an “Instruction,” and was sent to every bishop in the world; yet detailed awareness of its contents has been limited. In fact it is probably accurate to assume that the majority of bishops in today’s church as well as the majority of canon lawyers, were probably unaware of the Instruction’s existence until it was mentioned in the recent Letter on dealing with *More Grave Delicts*, issued by the Congregation for the Doctrine of the Faith, May 18, 2001 (*Sancitatis Sacramentorum Tutela*). It has come under discussion by canon lawyers and Vatican officials on several occasions in the past few years. Nevertheless the secrecy under which the document was originally distributed has possibly resulted in such restricted awareness.

9. This document was issued before the Second Vatican Council had taken place and before the revision of the present Code of Canon Law. The Vatican practice of issuing special procedural rules for its various courts or tribunals is not unusual. It is also not unusual to have a special document issued for a specific type of problem which in this case was solicitation of sex in the context of sacramental confession.

10. Title V of the document includes the crimes of sexual contact with same sex partners, sexual contacts with minors and bestiality which are also to be processed according to these special norms. The document does not imply that these crimes were to have been perpetrated through solicitation in the confessional. It included them under the title “The worst crimes” and presumably because of their serious nature, they were included under these special procedural norms. The norms of *Crimen* were thus established as the obligatory procedures for prosecuting cases of four separate and distinct canonical crimes, namely, a) solicitation for sex in the act of sacramental confession, b) homosexual sex, c) sexual abuse of minor males or females, d) bestiality or sex with animals. It is therefore incorrect to state that the norms and procedures of *Crimen Sollicitationis* are applicable only to cases of solicitation for sex in the confessional.

11. It must be noted that these types of sexual crimes were already included in the Code of Canon Law (1917 version). Solicitation is covered in canon 2368, 1 and sexual contact with minors and bestiality in canon 2359, 2. Ordinarily the prosecution of these crimes would be processed according to the procedural laws of the Code. The 1962 document provided special norms with an added emphasis on confidentiality because of the very serious nature of the crimes involved. It may seem to be some sort of clandestine plan but in fact it is an expansion with added detail, of the procedural laws to be followed. The existence of this document also clearly proves that the highest Catholic Church authorities were aware of the especially grave nature of the clergy sexual crimes considered. This of course makes it difficult for any Church leader to credibly claim that the problem of clergy sexual abuse was an unknown quantity prior to 1984.

12. Though some have claimed that *Crimen Sollicitationis* applies only to solicitation in the confessional, and not to other sexual crimes perpetrated by clerics, the opposite is true. The very words of the document itself clearly establish that those acts included under the classification of “the worst crime” (*de crimine pessimo*) are to be processed according to the norms set forth for the crime of solicitation. This very issue was taken up by Msgr. Brian Ferme, J.C.D., in his article entitled “*Graviora delicta: the apostolic letter M.P. Sacramentorum sanctitatis tutela.*” which appeared in the book Il processo penale canonico (Rome: Lateran University Press, 2003):

While the instruction dealt specifically with solicitation and the procedural norms to be applied in judging this crime, the fifth chapter stated that the same norms were also to be observed for the “crimen pessimum (art. 71), which was understood to include paedophilia (art. 73). In other words at the promulgation of the CIC83 [Code of Canon Law, 1983] the “graviora delicta” reserved to the CDF seemed to be those concerned with solicitation, the violation of the seal of confession and the ‘criminum pessimum” as understood by the 1962 Norms, though the actual praxis of the Congregation may have included others.

13. Furthermore, in a deposition of Msgr. Ferme taken in a civil case in California in 2005, he repeated this processional opinion when asked by the attorney taking the deposition about the relationship of pedophilia to the 1962 document:

Q. And according to your article, the '62 instruction was understood to include the crime of pedophilia, correct?

A. Correct, as was the Code of Canon Law of 1917.

Q. And that would be pedophilic acts committed either in connection with the confession or not, correct?

A. Correct.

In 2005 Msgr. Ferme also submitted an affidavit in the same civil case in which he said: A careful and correct reading of Titulus V of the 1962 instruction establishes that what had heretofore been established for the crime of solicitation in the 1962 Instruction, namely the precise procedural rules, was to be applied to the ‘crimine pessimo, and obviously taking into account the different configuration of the crime given that it was not as such solicitation (n. 72).

14. The Instruction specifically states that those involved in processing cases under these norms are bound by the Secret of the Holy Office, the highest form of confidentiality employed by the Holy See. Violation of the secret resulted in automatic excommunication, the lifting of which was especially reserved to the Holy Father. In fact, this represents the highest degree of Vatican secrecy which is imposed for the most serious processes and situations. The Instruction imposes the same oath of secrecy on the accuser and on witnesses but states that the penalty of automatic excommunication is not imposed. However this or other penalties may be imposed on the accuser or witnesses should the church authority handling the case deem it necessary.

15. The secrecy that was (and still is) imposed on parties and witnesses in canonical proceedings is intended to assure witnesses that they can speak freely. It is also intended to protect the reputations of the accused and accuser until guilt or innocence is determined. The almost paranoid insistence on secrecy throughout the document is probably related to two issues: the first is the scandal that would arise were the public to hear stories of priests committing such terrible crimes. The second reason is the protection of the inviolability of the sacrament of penance.

16. According to the document, accusers and witnesses are bound by the secrecy obligation during and after the process but certainly not prior to the initiation of the process. It seems to be stretching a bit too far to conclude that this process is a substitute for civil law action or is an attempt to coddle or hide clergy who perpetrate sex crimes. The document was written in 1962 in a style and within an ecclesiastical context common for that pre-conciliar age. It is also a legal-canonical document written in highly technical language. The translation, though basically accurate, is also strained and awkward which can lend itself to misunderstanding.

17. To fully understand the concern for secrecy one must also understand the traditional canonical concept known as the “privilege of the forum” or “*privilegium fori*” which has its roots in medieval Canon Law. Basically this is a traditional privilege claimed by the institutional church whereby clerics accused of crimes were tried before ecclesiastical courts and not brought before civil or secular courts. Although this privilege is anachronistic in today’s society, the attitude or mentality which holds clerics accountable only to the institutional church authorities is still active.

18. Although the objective reasons for the extreme secrecy may be understandable within the context of the time it was written, the obsession with secrecy through the years has been instrumental in preventing both justice and compassionate care for victims. It has enabled the widespread spirit of denial among clergy, hierarchy and laity. The secrecy has been justified to avoid scandal when in fact it has enabled even more scandal.

19. The press reports quote several church sources which state that this document is obscure and probably had remained unknown to the vast majority of bishops and church bureaucrats until it was cited in the new norms issued in 2001. Though the document may have been unknown to many in Church authority positions in recent years, there is documentary evidence that it was used in the prosecution of cases of clergy sexual misconduct in the past. Several clergy files from dioceses around the country have contained documents which referenced *Crimen Sollicitationis*.

20. The 1962 document reflects a highly confidential and even secretive attitude with regard to internal church matters that is understandable for the time it was written, but is no longer acceptable as the preferred way of dealing with such heinous crimes. These crimes have a profound impact on the lives of the victims, yet this impact can become lost in the concern for confidentiality. The obsession with secrecy causes denial to flourish. Certainly the institutional church and its clergy and hierarchy would have been deeply embarrassed in 1962 were the public to have learned of clergy sexual crimes. This embarrassment should have been endured because it is nothing compared to the spiritual, emotional and physical devastation of the victims.

21. Nevertheless we cannot accurately interpret and criticize this document solely by our contemporary standards based on the institutional church's handling of clergy sex abuse cases

over the past few years. It is dangerous to isolate the document and strain to make it more than what is was intended to be for in so doing the meaning of the document and the actual intention of the framers can become distorted.

22. The institutional Catholic Church has been criticized for having a culture of secrecy, especially with regard to clergy sexual misconduct. Such secrecy in these matters has not been the constant practice of Church leadership since its own official documentation from the past demonstrates that official attempts to curb violations of mandatory clerical celibacy were regularly published to all. For example, the Apostolic Constitution *Sacramentum Poenitentiae*, issued by Pope Benedict XIV in 1741, was included in the 1917 *Code of Canon Law*. The next major official document dealing with solicitation in the confessional which applied to the universal Church was a set of procedural norms similar to those contained in the 1962 document. This document was issued in 1922 and was shrouded in total secrecy. According to Msgr. Ferme, the 1922 document is almost identical to the 1962 document (cf. affidavit, n. 7).

23. It appears that the obligation of secrecy on such cases was imposed by Pope Pius IX in 1866. The official document that imposes the secrecy was published on February 20, 1866 by the Sacred Congregation of the Holy Office in the form of an “Instruction”. This instruction provided clarification on certain aspects of the previous papal constitution dealing with solicitation in the confessional, *Sacramentum Poenitentiae* (1741) of Pope Benedict XIV. The actual text is as follows:

Par. 14. In handling these cases, either by Apostolic commission or the appropriate ruling of the Bishops, the greatest care and vigilance must be exercised so that these procedures, inasmuch as they pertain to [matters of] faith, are to be completed in absolute secrecy, and after they have been settled and given over to sentencing, are to be completely suppressed by perpetual silence. All the ecclesiastic ministers of the curia [court], and whoever else is summoned to the proceedings, including counsels for the defense, must submit oaths of maintaining secrecy, and even the Bishops themselves and any of the local Ordinaries are obligated to keep the secret. (in Codicis Iuris Canonici Fontes, Rome, 1926, vol. IV, n. 990, p. 267.

24. The 1962 document and its predecessor from 1922 are not proof of an explicit world-wide conspiracy to cover up clergy sex crimes. It seems more accurate to assess both statements

as indications of a *policy of secrecy* rather than a *conspiracy of cover up*. The reasons for the insistence of such confidentiality were no doubt grounded in positive intentions to protect the sacraments of penance and holy orders, to safeguard the inviolability of the confessional seal and to prevent false accusations of solicitation, among other things. Nevertheless such secrecy has not been well accepted or understood in the present day in light of the official Church's response to reports of clergy sex abuse. This policy of extreme confidentiality, whether it has ever been officially published as such or not, has been deeply rooted in the ecclesial culture for centuries. The documents under consideration are a product of that culture. They did not create it.

25. On the other hand, there are too many authenticated reports of victims having been seriously intimidated into silence by church authorities to assert that such intimidation is the exception and not the norm. It is quite possible that most of the bishops who have served during the past thirty years were not aware of the existence of the 1962 document until it was publicly acknowledged by the Vatican in 2001. The cover-up happened whether or not bishops were aware of the 1962 document. It was and remains grounded in a culture of secrecy, clericalism and institutional self-preservation. The 1922 and 1962 documents did not create this culture. They arose out of it and gave legal force to the culture of secrecy. If the 1922 and 1962 documents have been used as a justification for any cover-up or intimidation then we possibly have what some of the more critical commentators have alleged, namely, the distinct appearance of a blueprint for a cover-up.

26. There is also an over-riding omission in both the 1962 document and its descendant, the 2001 declaration. Both documents concentrate on prosecuting the alleged offenders and protecting the institutional church from the fallout of public knowledge of the crimes. Neither document approaches the far more challenging and important task of pastoral care and spiritual healing for the victims of these crimes. There is no evidence that the official Church ever issued any norms, guidelines or instructions on the pastoral care of those harmed by clergy sexual abuse.

27. In light of the controversy that these documents have prompted, it is essential that they be properly understood before they are used as evidence of either criticism or affirmation of the policies and practices of the Catholic Church.

- a) The 1922 and 1962 documents were not limited to cases of solicitation for sex in

the confessional. The procedures and norms also applied to the cases of sexual abuse by clerics mentioned in Title V of *Crimen Sollicitationis*. There are documents available that confirm that these norms were used in canonical judicial procedures in cases of clergy sexual abuse of minors.

- b) Although the 1922 and 1962 documents were issued in secrecy and never publicly announced, they nevertheless were communicated to every bishop in the world. It is not correct to state or assume that these documents were sent only to selective bishops or, because of the imposed secrecy, not applicably to the universal Church.
- c) The absolute secrecy was imposed on all members of the Church tribunals or diocesan administration who were involved in processing cases. The witnesses and principal parties were also obliged to secrecy but not with the automatic penalty of excommunication.
- d) The obligation of secrecy only went into effect once a case had been initiated. Nothing prohibited a bishop or religious superior from notifying civil authorities of an allegation prior to the initiation of the canonical process.
- e) It is not correct to state that the popes under whose authority any of these documents (1922, 1962, and 2001) were published were either creating a blueprint for a cover-up or mandating a church-wide cover-up of clergy sexual abuse. If anything, they were continuing to enforce a church policy of secrecy in the canonical handling cases of clergy sex abuse. It is also incorrect to use these documents to accuse any of the personnel charged with administering the Church courts, such as the Prefects of the Vatican Congregations, with participation in a cover-up in the conventional sense.

28. Yet it is not difficult to see why so many have seen in the 1962 Vatican Instruction a "smoking gun." Over the past 18 years but especially since January 2002 we have witnessed wave after wave of deception, stone-walling, outright lying, intimidation of victims and complex schemes to manipulate the truth and obstruct justice. If anything we have watched as the culture

of secrecy ended up causing much of what its proponents hoped it would prevent. The Vatican document did not cause the clandestine mode of dealing with clergy sex abuse. Rather it reflects it and should be a strong reminder that there is a much more important value than protecting the institutional church and its office-holders and that value is the creation and nurture of an attitude and aura of openness and honesty wherein true justice and compassion can flourish as the most visible of Catholic virtues.

29. The reasons for the seemingly perennial problems of clergy sexual abuse and its cover-up will not be found in Church documents alone. One must delve deeper than the documents into the very nature of the ecclesial culture. The documents may be indicators of the official Church's awareness of sexual abuse of minors and other vulnerable persons by the clergy, but these documents surely are not the cause of clergy sexual abuse nor are they the foundation of the official Church's response to such abuse.