

THE 1962 VATICAN DOCUMENT ON SOLICITATION IN THE CONFESSIONAL

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The recently revealed 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. Since my name has been associated with the news reports I wish to state that I did not translate the document. I am aware of at least two separate English translations, both of which are private and unofficial. I was asked by an attorney if I could provide a copy of the document which had been cited in the May 18, 2001 document from the Congregation for the Doctrine of the Faith on handling cases of certain grave canonical offenses. I was not aware that the 1962 document would be circulated to the media and to other attorneys. Had I been told this I would have insisted that a commentary and explanation by a competent canonist accompany the text. Failure to do so has led to some degree of misunderstanding of the historical role of the document and its relevance to the contemporary sexual abuse crisis in the church.

Although this document was sent to every bishop in the world, detailed awareness of its contents has been limited. 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 probably has resulted in such restricted awareness.

This document was issued before the Second Vatican Council had taken place and before the revision of the present Code of Canon Law had even been envisioned. 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 in an actual confessional box or in the context of the administration of the sacrament outside of the traditional place.

Title V of the document refers to the crimes of sexual contact with same sex partners, sexual contacts with minors, and bestiality and states that these 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 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.

The imposition of the "Secret of the Holy Office" on all involved in the processing of a case is not unusual. In fact, this represents the highest degree of Vatican secrecy and is imposed on a variety of processes and situations. It is certainly not unique to this document nor to the sexual crimes mentioned therein. 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. In the case of this document the seemingly excessive reference to secrecy and the dire consequences for those who violate it is primarily rooted in the fact that deals with the sacrament of penance to which is attached inviolable secrecy. Reading through the document one finds that the greatest pains are taken to protect the confessional secrecy. 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 and most serious reason for the secrecy however is the protection of the inviolability of the sacrament of penance.

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.

Although the objective reasons for the extreme secrecy may be understandable within the context of the time it was written, the sad fact is that 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.

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. This is probably true even though copies have been stored in church offices throughout the world.

What is also true however is the fact that this 1962 document reflects a secretive attitude with regard to internal church matters that is understandable for the time it was written, but not 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. Nevertheless we cannot accurately interpret and criticize this document solely by our contemporary standards based on the institutional church's disastrous handling of clergy sex abuse cases over the past few years. In other words, it is dangerous to isolate the document and strain to make it more than what it was intended to be. This is quite apart from the culture of secrecy that gave rise to the widespread policy of keeping clergy sex crimes covered up at all costs even to the detriment of the victims.

If however, this document actually has been the foundation of a continuous policy to cover clergy crimes at all costs, then we have quite another issue. 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. If this document has been used as a justification for this intimidation then we possibly have what some of the more critical commentators have alleged, namely, a blueprint for a

coverup. This is obviously a big “if” which requires concrete proof.

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. If there is a shameful dimension to either document, even the 1962 document in spite of the fact that it is now 42 years old, it is the fact that neither one gets beyond canonical legalism and concern for church structures and invokes the more fundamental value of Christian compassion for the horrendous harm done to the victims of such crimes.

It should not be too 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, stonewalling, 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.