CANON LAW, THE MAINTENANCE OF SECRECY, AND THE FAILURE OF THE CATHOLIC CHURCH TO PROTECT CHILDREN FROM CLERICAL CHILD SEXUAL ABUSE

Submission in Response to Issues Paper 11 to the Royal Commission into Institutional Responses to Child Sexual Abuse

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This submission is in response to Issues Paper 11 with specific focus on the following:

1. (Issue 2) Factors that may have contributed to the occurrence of child sexual abuse in Catholic institutions, particularly by clergy and religious.

2. (Issue 3) Factors that may have affected the institutional response of the Catholic Church to child sexual abuse.

3. (Issue 5) Current and future approaches of Catholic Church authorities to:
   • responding to child and adult victims and survivors of child sexual abuse, including secondary victims
   • responding to individuals subject to allegations of child sexual abuse
   • the protection of children and the prevention of child sexual abuse.
This submission will respond specifically to the following questions:

1. To what extent have the following issues contributed to the occurrence of child sexual abuse in Catholic institutions or affected the institutional response to this abuse? The focus will be on two of the issues identified by the Royal Commission through case studies, submissions, private sessions, and a review of literature regarding child sexual abuse in Catholic institutions, namely:
   - Issue 2 d: Canon Law
   - Issue 2 j: The use of secrecy

2. To what extent are any factors that have contributed to the occurrence of child sexual abuse in Catholic institutions, or affected the institutional response to this abuse, unique to the Catholic Church?

3. The current and future proposed approaches of Catholic Church authorities to:
   a. responding to child and adult victims and survivors of child sexual abuse, including secondary victims
   b. responding to individuals subject to allegations of child sexual abuse
   c. the protection of children and the prevention of child sexual abuse.
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PREFACE

From as early as 1622 until the present day Canon Law has served to inform the response of the Catholic Church throughout the world to complaints of sexual abuse by clergy and religious. Since 1866 onwards the Canon Law has operated to protect the reputation and the "good of the Church" in preference to the protection of victims. From 1922 the Canon Law legislated for serious penalties only to be imposed on abusers if more than two corroborated complaints were received from more than two complainants whose good character had been verified by at least two witnesses. Canon Law to this day does not provide for the reporting of child sexual abuse to civil authorities and it provides specifically for all complaints and subsequent processes to be shrouded in complete and permanent secrecy.

SUBMISSIONS

1. It is submitted that both the Canon Law (Issue 2(d) of Issues Paper 11) and the use of secrecy (Issue 2(j) of Issues Paper 11) contributed to the occurrence of child sexual abuse in Catholic institutions and affected the institutional response to this abuse.

2. It is submitted that the Canon Law applicable from 1922 through to the present day, notwithstanding relevant additions and amendments made in 1962, 1974, 1983, 1988, 1997, 2001, 2003 and 2010 directly and unequivocally contributed, and still does contribute, to the occurrence of child abuse and the failure to prevent child sexual abuse in the Catholic Church.

7. It is submitted that the provisions currently in operation¹:

http://www.vatican.va/resources/resources_introd-storica_en.html
a. Fail to ensure the immediate reporting to civil authorities of possible cases of child abuse by clergy and religious,

b. Fail to provide for actions to repair damages to be dealt with in an external forum,

c. Provide for disciplinary action (including dismissal from employment) against those who report such cases to an “external forum” e.g. police or civil authorities (ASS 66 (1974) - Art III (2); 2010 Norms - Art 30, 31),

d. Place a blanket of secrecy and silence over all information and documentation relating to child sexual abuse cases (ASS 66(1974); 1983 - Can 1455, 127(3), 471(2); 1728(1); ASS 60(1988) - Art 37; ASS 84 (1992) - Art 38(2); AAS 91 (1999) 646 - Art 36(2); 2010 Norms - Art 30, 31),

e. Order that documents relating to child sexual abuse cases are to be kept in the secret archives in each Diocese and in the secret archives of the Congregation of the Doctrine of the Faith (2010 Norms – Art 30, 31; Can 489, 489(2), 490(1), 1719, 1455 (3), AAS 80 (1988) 874); AAS 91 (1999) 646)),

f. Direct Bishops to receive complaints, investigate complaints, determine the veracity and gravity of complaints, permit Bishops to make extra judicial decisions regarding penalties, and to negotiate claims to repair damages in child sexual abuse cases (Can 1311cf, 1341, 1342, 1395(2); 1717-1720, 173; 2010 Norms – Art 1, 31),

\(^1\)Code of Canon Law, 1983,
http://www.vatican.va/archive/ENG1104/__P56.HTM
g. Direct Bishops to report child sexual abuse cases to the Congregation of the Doctrine (CDF) of the Faith by the Bishop after a "preliminary investigation", following which the CDF can either sanction the decision of the Bishop, call the case to itself or direct the Bishop as to how to proceed (2010 Norms – Art 16),

h. Directly authorise Bishops to move offenders while the investigation process continues, in order "(t)o prevent scandals, to protect the freedom of witnesses, and to guard the course of justice" by imposing or forbidding "residence in some place or territory" (Can 1722 referred to specifically in 2010 Norms – Art 19),

i. Permit Bishops to impose a penalty "when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals" (1983 Can 1399; 2010 Norms – Art 31), and "according to the gravity of the offense" (2010 Norms – Art 3 (2)),

j. Allow extra judicial decisions by Bishops made before, during or after the investigation phase to be validated (sanated) by the Congregation of the Doctrine of the Faith (2010 Norms - Art 18),

k. Provide for the maintenance of good reputation rather than the protection of children from abuse, for example:
   i. "(c)are must be taken so that the good name of anyone is not endangered from this investigation" (1983 – Can 1717 (2));
   ii. documents need to be archived as disclosure "will endanger the reputation of others, provide opportunity for discord, or give rise to scandal" (1983 – Can 1455(3).
iii. "special norms for cases which pertain to the public good" need to be followed in addition to the Code (1983 - Can 1728 [1]).

3. It is submitted that provisions in the Canon Law, which were expressly and specifically applied to the cases relating to child sexual abuse by clergy and religious guided the response of Catholic Church authorities in Australia.

4. It is submitted that the responses designed and implemented by the Catholic Church in Australia to child sexual abuse:
   a. Were formulated in accordance with the Canon Law operating at the time,
   b. were unique to the Catholic Church, and
   c. contributed to the occurrence of and failure to prevent sexual abuse of children by clergy and religious in the Catholic Church.

5. It is submitted that the Melbourne Response initiated in 1988 and Towards Healing initiated in 1997 coincided with changes to Canon Law made at the time.

6. It is submitted that Canon Law applicable today impacts negatively on current and future proposed approaches of Catholic Church authorities to:
   a. respond to child and adult victims and survivors of child sexual abuse, including secondary victims
   b. respond to individuals subject to allegations of child sexual abuse
   c. protect children and prevent child sexual abuse.

8. It is submitted there is to date no provision in Canon Law for the reporting of child sexual abuse to civil authorities despite a media statement from the Cardinal Sean O’Malley, the head of the Pontifical Commission for the Protection of Minors, on 16 February 2016, which
said: “We, the president and the members of the commission, wish to affirm that our obligations under civil law must certainly be followed, but even beyond these civil requirements, we all have a moral and ethical responsibility to report suspected abuse to the civil authorities who are charged with protecting our society” and where he affirmed that the United States Bishops’ Charter provides for this.

9. It is submitted it will be hypocritical to find any Bishop who acted within the context and provisions of the Canon Law guilty of negligence as proposed in a Decree by Pope Francis on 4 June 2016 that provides for the dismissal of Bishops who were negligent in regard to child sexual abuse cases.

10. It is submitted that the Catholic Church as an institution can be found to have been negligent in its response to child sexual abuse by clergy and religious, in that:

   i. As early as 1922 the Norms make two separate references to the fact that where there is one complaint, there are “as not infrequently happens” ... “other persons named who likewise have been solicited (to be read to include the “abuse of prepubescent minors)” (Art 29 and 37).

ii. The 1922 Norms establish serial offending as the basis for the case (1922 and 1962 Norms – Art 29, 30, 32, 33, 43, 44, 45 and 46), and provide that no punishment other than a warning could be given without the corroboration of at least two other complaints from two complainants of good character coming to light.


iv. It therefore could be argued that the church failed to provide any punishment greater than a warning from 1922 until at least 2001 unless evidence of serious serial offending was available.

v. The church failed to act decisively despite its written acknowledgement that serial offending was “not infrequent” and this failure to act amounts to a failure in its duty of care to protect children.

vi. The church failed to meet the standard of care, established in Roman Law as the care of a “good paterfamilias” (good father of a family), or the standard of care expressed recently as that of “a loving mother”⁵ according to Pope Francis in his June 2016 Decree.

vii. Against either standard, the church can be found guilty of negligence (culpa).

11. It is submitted that it could be argued further that the church was not only negligent (culpa) but that it deliberately and wilfully (ex dolo) enacted laws that failed to prevent child abuse, in the full knowledge there was a strong possibility that offences would be repeated, and with the deliberate intention of protecting the abusers and/or the institution.

12. It is submitted that unless universally applicable Canon Law is enacted providing for:
   a. mandatory reporting to civil authorities,
   b. claims for damages to be dealt with in an external forum, and
   c. the secrecy provisions preventing external reporting are removed,

the failure of the Catholic Church to protect children and prevent child abuse all over the world will continue,

13. It is submitted that universally applicable Canon Law modelled on the provision in the “Charter for the Protection of Children and Young People” adopted by the United States Conference of Catholic Bishops in 2011 is required, as follows:

   ARTICLE 4.
   “Dioceses are to report an allegation of sexual abuse of a person who is a minor to the public authorities. Dioceses are to comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and cooperate in their investigation in accord with the law of the jurisdiction in question. Dioceses are to cooperate with public authorities about reporting cases even when the person is no longer a minor. In every instance, dioceses are to advise victims of their right to make a report to public authorities and support this right”.

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INTRODUCTION

The Canon Law which is currently in place and which provides the legislative framework for the response of the Catholic Church to incidents of child sexual abuse will be presented together with the Canon Law that applied historically.

It is submitted that these laws, promulgated by the Vatican from as early as 1622, and administered by Archbishops and Bishops and the Congregation of the Doctrine of the Faith (formerly the Sacred Congregation of the Holy Office) have contributed to the occurrence of child sexual abuse in Catholic institutions and have affected the institutional response.

It is submitted that these laws, as they remain in operation to the present day, continue to contribute directly to the failure of the Catholic Church to adequately protect children from sexual abuse.

An early attempt to stamp out sexual abuse by priests and clergy in 1622 was endorsed by successive Popes in 1661, 1665 and in 1741 in the “Constitution Concerning the Sacrament of Penance”. Although the focus was on the abuse of power in the confessional the provisions applied much more broadly to any intention to "solicit or provoke the penitent to impure and obscene matters" in or out of the confessional by actions, words or writing as the follow extract from Article 1 of the 1741 Constitution shows:

7 Pope Benedict XIV, (1741), "Constitutio Sacramentum Poenitentiae"
confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or in a place other than that designated for hearing confessions or in a place chosen for the alleged purpose of hearing a confession; the object of this temptation is to solicit or provoke the penitent toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after the note has been read or whether he has had with that penitent prohibited and improper speech or activity with brazen audacity. Let [the Inquisitors] severely punish those whom they shall find guilty of any nefarious excesses of this sort, in a way appropriate to the nature and circumstances of the crime, by fitting penalties. This is in accordance with the celebrated

The 1741 Constitution augmented previous provisions by specifically allowing single witness evidence “in order that a crime so enormous, and so injurious to the Church of God, not remain unpunished, on account of lack of proof”, by the inclusion of the following paragraph into Art 1:

“We give also and grant again, if necessary, the faculty already otherwise granted in the prior constitution, of proceeding with individual witnesses, provided that assumptions, evidence, and other support agrees, in order that a crime so enormous, and so injurious to the Church of God, not remain unpunished, on account of lack of proof.”

In 1866 need to maintain secrecy in these matters became the focus in an “Instruction issued by the Sacred Congregation of the Holy Office”. This instruction provided clarification on certain aspects of the abovementioned, Constitutio Sacramentum Poenitentiae (1741) as follows:

Art 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

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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.” (emphasis added)

This secrecy was reiterated over time including in 1974 and has continued to apply. Secrecy provisions are discussed in greater detail below.

Following the Codification of the Canon Law in 1917 a new Instruction was issued instructing Bishops on how to deal with sexual abuse cases in 1922. This instruction was reprinted with a small addition and reapplied in 1962 (referred to hereafter as the 1922(1962) Norms) (ANNEXURES 1962 A and B). The 1922 (1962) Norms moved a long way away from the 1741 aim to ensure that these crimes did “not go unpunished”. On the contrary the 1922(1962) Norms set out very specific procedures making secrecy the primary objective and imposed strict rules of evidence counteracting punishment of offending priests based on the evidence of a single witness. These procedures are discussed fully below.


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2001(2003) A). The 2001(2003) Norms did not directly address the standard of proof required to verify a complaint but established the connection between the processes to be followed in these cases according to the Norms and the 1983 Code of Canon Law and clarified the roles of the Congregation and the Bishop in receiving complaints, investigating complaints and processing these cases. The implications of these Norms are discussed in detail below.

The current laws and regulations relating to the substance, jurisdiction and procedural adjudication of child sexual abuse cases in the Catholic Church are set out in *Normae de gravioribus delictis*, (Norms for the Most Grave of Crimes)\(^{13}\) (referred to hereafter as the 2010 Norms) (ANNEXURE 2010 B). The 2010 Norms were accompanied by an Historical Introduction by the Congregation of the Doctrine of the Faith (ANNEXURE 2010 A)\(^{14}\)

The 2010 Norms are set out in detail below preceded by a full exposition of the laws, norms and regulations set down in 1922\(^{15}\) as reissued in 1962\(^{16}\), as well as the norms issued in 2001 as amended 2003.\(^{17}\)

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\(^{13}\) Pope Benedict XVI, (2010), "*Normae de gravioribus delictis*, (Norms for the Most Grave of Crimes) as revised by Pope Benedict XVI on 21 May 2010"

[link](http://www.vatican.va/resources/resources_norme_en.html)

\(^{14}\) Congregation for the Doctrine of the Faith, (2010) Historical Introduction accompanying the Norms on the Most Grave Crimes,

[link](http://www.vatican.va/resources/resources_introd-storica_en.html)

\(^{15}\) Instruction on the Manner of Proceeding in Cases of Solicitation, (Vatican Press, 1962) [link](http://www.cbsnews.com/htdocs/LegF/Criminales.ml)


[link](http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html)

The full texts of the relevant instruments are annexed to this submission for easy reference and hyperlinks are provided in the footnotes. Specifically relevant sections have been reproduced in the text as well. The texts are presented in the Annexures in chronological order rather than the order of appearance in the submission.
SUMMARY OF PROVISIONS RELATING TO CHILD SEXUAL ABUSE

The provisions of the Canon Law that have particular significance to child sexual abuse by clergy and religious are summarised below and will be dealt with in their historical context later:

a) Provisions directing Bishops as to how to receive complaints, investigate complaints, determine the veracity and gravity of complaints and make decisions regarding penalties and damages in child sexual abuse cases by extra judicial decree (1922 and 1962 – Art 2, 29, 30, 42, 71-74; 1983 Can 1311cf, 1341, 1342, 1395(2), 1717 - 1720, 1731; 2001/2003 – Art 1, 4, 13 (13 as amended in 2003), 15; 2010 – Art 1, 31).

b) Provisions regarding when these cases are to be reported to the Congregation of the Doctrine of the Faith (CDF) by the Bishop, namely: after the preliminary inquiry and investigation (1922 and 1962 – Art 27), or after the "preliminary investigation" (2001/2003 – Art 13 (as amended); 2010 – Art 16), following which the CDF can either sanction the decision of the Bishop, call the case to itself or direct the Bishop as to how to proceed.

c) Provisions allowing the Bishop to make temporary arrangements and to impose restrictions on the accused to "prevent scandals, to protect the freedom of witnesses and to guard the course of justice" and to take summary action where necessary (1983 – Can 1720,1722; 2001/2003 – Art 15; 2010 - Art 19, 31)

d) Provisions ensuring that a Bishop may only impose a penalty "after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender" (1983 Can 1341), or after a warning (1983 Can 1347) except "when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals" (1983 Can 1399, 1722) and later "according to the gravity of the offense" (2001/2003 – Art 4(2)), 17; 2010 – Art 3(2)).
e) Provisions permitting the transfer of priests from place to place as a penalty by the Bishop or by Superiors of religious orders if the Bishop had not commenced the investigation (1922 and 1962 - Art 4, 27, 28, 29, 74; 1983 - Can 190, 1336 (4), 1337, 1722).

f) Provisions permitting penalties such as orders to reside in a “house designated for clerics doing penance or being rehabilitated” (Can 1337 (2)).

g) Provisions establishing a standard of proof that requires the existence of multiple complaints from more than two complainants whose characters have been verified by at least two witnesses to justify a penalty more than a warning for the accused (1922 and 1962 - Art 29, 30, 32, 33, 43, 44, 45, 46).

h) Provisions ensuring that extra judicial decisions by Bishops made before, during or after the investigation phase, can be validated (sanated) by the Congregation of the Doctrine of the Faith (2003 - Art 13 (as amended); 2010 Art 18).

i) Provisions which blanket all cases under permanent secrecy (under the Pontifical Secret) by virtue of the nature of the case, which is “of the utmost importance for the common good of the Church” (1922 and 1962 - Art 70), and which commit all officials and participants, including complainants, to silence and secrecy on pain of dismissal from office in the case of officials (1922 and 1962 - Art 11, 12, 13, 23, and 70; ASS 66(1974); 1983 - Can 1455, 127(3), 471(2); 1728(1); ASS 60(1988) - Art 37; ASS 84 (1992) - Art 38(2); 2001/2003 - Art 25; 2010 - Art 30).

j) A provision that makes the reporting to an “external forum”, such as the police, a serious violation of the “Pontifical Secret” and can result in disciplinary action including dismissal (ASS 66 (1974) - Art III (2)).

k) Provisions requiring documents relating to these cases to be kept in the secret archives in each Diocese (1917 - Can 379, 380; 1922 and 1962 - Art 28, 42(b)) to which the Bishop and one other person had the key prior to 1983, in secret archives to which only the Bishop
had the key post 1983 (1983 - Can 489, 489(2), 490(1), 1719, 1455 (3); 2001/2003 — Art 25; 2010 — Art 30, 31)

l) Provisions for documents relating to the case to be kept in a secret archive “(w)hen ever the nature of the case or the proofs is such that disclosure of the acts or proofs will endanger the reputation of others, provide opportunity for discord, or give rise to scandal” (1983 - Can 1455(3); 2010 Norms — Art 31).

m) Provisions that focus on the maintenance of good reputation rather than the protection of children from abuse, such as:

i. “(c)are must be taken so that the good name of anyone is not endangered from this investigation” (1983 — Can 1717 (2));

ii. secrecy must be maintained “for the common good of the Church” (1922 and 1962 Art 70);

iii. documents need to be archived as disclosure “will endanger the reputation of others, provide opportunity for discord, or give rise to scandal” (1983 — 1455(3).

iv. “special norms for cases which pertain to the public good” need to be followed in addition to the Code (1983 — Can1728 (1));

n) Provisions relating to the age at which child sexual abuse was recognised i.e. pre-puberty (1922 and 1962 — Art 2); under 16 years of age (1983 Can 1395(2)), and under 18 years of age (2001 — Art 2; 2003 — Art 2; 2010 — Art 2).

o) Provisions relating to the prescription period (statute of limitations period) in cases of child sexual abuse i.e. from 1922 the period was one month after the incident (1922 and 1962 — Art 16), from 1983 the period was five years after the incident (1983 — Can 1395, 1362(1)(2)), from 2001 the period was 10 years after the child’s eighteenth birthday (2001/2003 — Art 5), and from 2010 the period was 20 years after the child’s eighteenth birthday (2010 — Art 7).

These provisions are discussed in greater detail hereunder.
A set of instructions for the handling of cases such as child sexual abuse by clergy and religious was promulgated in 1922 following the codification of the Canon Law in 1917\textsuperscript{18}.

The 1922 Instruction issued by the Holy Office was entitled “\textit{Crimen Sollicitationis}” and contained instructions on how to deal with clergy who committed crimes in the context of the confessional including those of a general sexual nature. The instruction also specifically covered “\textit{Crimen Pessimum}” [“the foulest crime”] being... “any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way whatsoever with a person of his own sex” (Art 71), and:

\begin{quote}
    “any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with pre-adolescent children [impuberes] of either sex or with brute animals (\textit{bestialitas})” (Art 73) (emphasis added).
\end{quote}

Art 72 of the 1922 Instruction specifically provides that the inclusion of \textit{Crimen Pessimum} applies, with the necessary changes being made (\textit{mutatis mutandis}), to the procedures set down in the document for dealing with \textit{Crimen Sollicitationis}. This means that wherever the words \textit{Crimen Sollicitationis} are used or the English words “a crime in the administration of the Sacrament of Penance”, these words need to be read to include “\textit{Crimen Pessimum}” and therefore refer also crimes related to child sexual abuse by clergy. Similarly any reference to the “penitent” is a reference to the victim of abuse where abuse occurred outside the context of the confessional. Art 72 also provides that where the act did not occur in the confessional, the report or preliminary inquiry into the complaint did not have to follow the formula for “denunciation”, which was required to take place in the confessional and according to specified procedures.

\textsuperscript{18} Congregation of the Doctrine of the Faith, “Historical review, 2010 norms”
http://www.vatican.va/resources/resources_norme_en.html
Significantly article 74 expressly provides for superiors of religious orders to take action in cases where the offence relates to *crimen pessimum*, which includes abuse of children.

74. “Against clerics guilty of these crimes, if they are exempt religious – and unless the crime of solicitation” (i.e. within the context of confession) “takes place at the same time – Religious Superiors also can proceed, according to the sacred Canons and their proper Constitutions, either administratively or judicially. However, they must always communicate a sentence rendered, or an administrative decision in those cases, which are more grave, to the Supreme Congregation of the Holy Office. The Superiors of a non-exempt religious can proceed only administratively. In the case where the guilty party has been expelled from religious life, the expulsion has no effect until it has been approved by the Holy Office.

This means that priests in religious orders who abused children, could be transferred or cautioned without recourse to a judicial process. Superiors of religious orders could deal with offending members as they saw fit and were simply obliged to notify the Holy Office. They were not even expected to notify the Bishop.
1962

The 1922 instruction was reprinted in 1962 and was intended for circulation at Vatican II however it was apparently only issued to those Bishops and Archbishops who were facing these issues in their respective Dioceses at the time\(^{19}\). There is no information available to the author as to whether or not any Bishops from Australia were specifically provided with the document in 1962 or at any time thereafter.

The 2010 historical review (ANNEXURE 2010 A) provided by the Congregation of the Doctrine of the Faith with the 2010 Norms (ANNEXURE 2010 B) notes that the 1922 Instruction was amended in 1962 by the addition of a "small section regarding the administrative procedures to be used in those cases in which religious clerics were involved" (See Art 29 of the 1962 Instruction below).

The full text of 1962 typed document entitled "Instruction on the Manner of Proceeding in Cases of Solicitation"\(^20\) is attached as "ANNEXURE 1962 A" for ease of reference. This document provides a step-by-step instruction for the administrative and judicial processes required for the "more grave" crimes, including child sexual abuse by clergy.

The Instruction includes word for word scripts, or "formulae", for the conduct of the preliminary hearing of the complaint, interrogation of character witnesses, oaths of truth and secrecy, as well as direct instructions regarding the secret archiving of records.

This 1962 document came to light in the United States of America in 2003 when the US Attorney General was presented with it and requested to determine


whether the procedure for dealing with child abuse cases was tantamount to an
obstruction of justice. 21 At the time no official version was publically available.

The online Vatican archive now provides a version of the document without the
prescribed formulae, entitled “Instruction of the Supreme Sacred Congregation
of the Holy Office Addressed to all Patriarchs, Archbishops, Bishops and Other
Local Ordinaries On the Manner of Proceeding in Causes of Solicitation”. 22 (The
full text is reproduced as “ANNEXURE 1962 B” for ease of reference).

Both versions carry the warning immediately after the title:
“TO BE KEPT CAREFULLY IN THE SECRET ARCHIVE OF THE CURIA FOR
INTERNAL USE.
NOT TO BE PUBLISHED OR AUGMENTED WITH COMMENTARIES”

The 1922(1962) Norms, as they will be referred to hereafter, provided that the
responsibility for dealing with cases, which expressly included “any external
obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with
pre-pubescent children [impuberes] of either sex “ rested with the Bishop of the
territory in which the act occurred, but was also capable of being dealt with by
the Sacred Congregation of the Holy Office (Art 2) and had to be reported to the
Holy Office at the “first notification of the crime” (Art 66).

The process for adjudicating and dealing with these cases was set out step by
step in the instruction. The process is extremely particular and onerous.
Significantly it distinguishes a process following the first notification of the

Many bishops unaware obscure missive was in their archives”, National
Catholic Reporter, NCRonline.org, posted 7 August 2003,
http://www.nationalcatholicreporter.org/update/bn080703.htm accessed
28/5/16.

Congregation of the Holy Office Addressed to all Patriarchs, Archbishops,
Bishops and Other Local Ordinaries On the Manner of Proceeding in Causes of
Solicitation”, Vatican Polyglot Press.
http://www.vatican.va/resources/resources_crimen-sollicitationis-
complaint referred to hereafter as the “preliminary inquiry”, from a second stage “investigation”, followed by a third stage “trial”, if determined necessary.

The preliminary inquiry into the complaint by the Bishop determines if the matter should proceed to investigation; the investigation includes an interrogation of two witnesses as to the character of the complainant and the accused priest, a search of the secret archives for previous records of complaints, an interrogation of any other complainants against the same accuser, and/or corroborating witnesses; and a determination whether or not the matter should proceed to trial.

It is submitted that this document prescribed and directed the response of the Catholic Church in Australia and elsewhere in the world in dealing with clergy who sexually abused children from 1922, and together with a minor addition to Art 29, directed the response from 1962 onwards.

The Instruction reinforces secrecy and has no provision for cases to be reported to or dealt with by civil authorities. There is no emphasis on the protection of victims save to protect their privacy by the strong implementation of secrecy provisions.

The whole document can be construed as contributing to the occurrence of child abuse, however for the purposes of this submission the most glaring provisions will be identified.

The responsibility for the adjudication of the cases involving priests and members of religious orders was placed on the Bishop. Superiors of religious orders were strictly forbidden from acting after the investigation began (Art 4).

Art 4 specifically provides however that where the Bishop has not begun an investigation process (second stage), the superior of a religious order was expressly authorised to act and to decide how to treat the offender including transferring the offender “to another place”. The text of this section is reproduced below (emphasis added).

"4. The local Ordinary is judge in these causes for Religious as well, including exempt Religious. Their Superiors are in fact
strictly prohibited from involving themselves in causes pertaining to the Holy Office (Canon 501, §2). Nonetheless, without prejudice to the right of the Ordinary, *this does not prevent Superiors themselves, should they discover that one of their subjects has committed a crime in the administration of the Sacrament of Penance, from being able and obliged to exercise vigilance over him; to admonish and correct him, also by means of salutary penances; and, if need be, to remove him from any ministry whatsoever. They will also be able to transfer him to another place, unless the local Ordinary has forbidden it inasmuch as a complaint has already been received and an investigation begun.*

NOTE: The words “a crime in the administration of the Sacrament of Penance” are translated from the Latin “Crimen Solicitationis” which was read to include “Crimen Pessimum” after 1922 and therefore include crimes related to child sexual abuse by clergy. (Art 72)

The abovementioned provision facilitates and expressly sanctions the practice of transferring offenders in religious orders from place to place. This is to be read in conjunction with Art 74, which expressly allows superiors of religious orders to act unilaterally and then notify the Congregation of the Holy Office. As a consequence, religious priests could be dealt with extra judicially without any hearing taking place and no one being informed of the outcome other than the Holy Office in the event of punishment less than dismissal. In the case of dismissal of the offender, approval for the dismissal was required from the Holy Office.

The provision for extra judicial action could have been beneficial to the protection of children if it had been used to deal swiftly and effectively with

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http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html
offenders. However in the testimony provided to the Royal Commission so far it would appear that this law facilitated a practice of transfer of priests from place to place with the result that children were not protected.

The prescribed process authorised the Bishop to preside over the preliminary inquiry but he could delegate to another judge (one only “for reasons of confidentiality”) or appoint assessors in extreme cases. The judges in preliminary hearings and trials, investigators, assessors and promoters of justice all had to be priests with varying degrees of seniority and qualification, as did the accused’s defence if he was brought to trial (Art 5,6,7).

Several articles deal with the presence or otherwise of prosecutors and notaries (to record proceedings) (Art 8,9,10).

Articles 14 to 28 deal with the process for receiving the first notification of the crime, which was formal and highly specific.

Articles 11, 12, 13 and 23 deal with secrecy and confidentiality and provide that the cases “are covered by permanent silence” and require all concerned to be sworn to an oath of permanent secrecy. These provisions are set out and discussed in greater detail below.

Articles 24, 25, and 26 cover the process of taking and recording complaints, when to place the complainant under oath and when and how to record the complaint in various circumstances.

Article 27 provides that the decision as to whether or not a clear case has been made rests with the promoter of justice who would refer the matter to the Sacred Congregation of the Holy Office if he and the Bishop disagreed on the outcome.

Article 28 provides that if they (the Bishop and the promoter of justice) decide that no case has been made and no further action is required, the Bishop “is to order the acts (documents relating to the complaint and preliminary inquiry) to be put into the secret archive, or to exercise his right and duty in accordance with the nature and gravity of the matters reported”. This means that the destruction of documents by the Bishop at this stage was not ruled out. This
may have had serious implications as will be seen below as the prosecution of a case rested primarily on the fact that other prior complaints had been received against the same offender and had been archived by the Bishop of the Diocese where the complaint had previously been received.

In 1962 when the 1922 Instruction was reissued, the only amendment made was the addition of the following sentence, which prohibits the transfer of members of religious orders once the investigation has started.

“Once the investigation has been opened, if the accused priest is a religious, the Ordinary can prevent him from being transferred elsewhere before the conclusion of the process” (Art 29).

It is submitted that in the intervening period between the preliminary inquiry into the complaint and before the Bishop made a decision to start the investigation (second stage), the priest could be transferred “to another place” where the Bishop was no longer responsible for him.

It is submitted that the combined provisions of Art 4, which expressly allows the superior of a religious order to transfer priests, and the provisions of Arts 27 and 28, which allow for the Bishop and the promoter of justice to determine whether or not to proceed with the investigation, left an opportunity for the transfer of priests by superiors to prevent further action being taken by way of investigation.

As the documents would have been “put in the secret archive” or may have been destroyed at the discretion of the Bishop in terms of Article 28, no records at all may exist in these cases, and it may not be possible for the Royal Commission to determine definitively how many preliminary inquiries were conducted, what evidence was presented and on what basis the cases did not proceed to investigation.

Furthermore it may no longer be possible to obtain accurate records of the coincidence of transfers of priests following preliminary hearings because the records of the preliminary hearings were archived or destroyed.
It is submitted that the fact that these records were not able to be scrutinised at the time by the public or by civil authorities would have contributed significantly to the decisions not to proceed to investigation, leaving an opportunity for the quiet transfer of priest by their superiors.

In addition, the fact that the people involved in the preliminary inquiries as well as the complainants were under oath of secrecy in accordance with Articles 11, 12 and 13, no one else would have been able to contradict the decision not to proceed to investigation made by the promoter of justice.

The investigation itself, the second stage of the process, contributed to the failure to protect children in that it required evidence of previous or simultaneous allegations by other complainants (Art 29). Art 29 provides that the investigation had to determine if there were prior complaints and to obtain any archived documents relating to prior claims (Art 30), to look for other victims who had made similar complaints against the accused and to investigate the "soundness" of the allegations through a prescribed process referred to as "diligences" (diligentias peragere) (Art 32). Two verified complainants supported by the evidence of two additional witnesses as to their good character of the complainants were not enough to justify even a warning against the accused (Art 42(a-d)).

The investigation into the character of the victim (diligences) was prescribed through the interrogation using the Formula G (see typed version of the Instruction ANNEXURE 1962 A) of two witnesses who knew both the victim and the priest and to question them "concerning the life, conduct and public reputation of both the accused and the accuser; whether they consider the accuser worthy of credence, or on the other hand capable of lying, slander or perjury; and whether they know of any reason for hatred, spite or enmity between the accuser and the accused" (Art 33). These witnesses were also sworn under oath to tell the truth and then sworn to keep the permanent secret as per Formula F (see above) regarding the investigation. If this process was not possible the witnesses' statements could be obtained in writing or from separate sources (Art 36).
It is submitted that this process defies the laws of natural justice in that the victim would not have been present and would not have been able to cross examine the character witnesses or defend his or her character. The archived record of the testimony was not open to scrutiny.

Article 37 provided for the interrogation of other potential complainants or corroborating witnesses according to Formula I (see ANNEXURE 1962 A) and makes reference to the fact that "as not infrequently happens" there are "other persons named who likewise have been solicited" (emphasis added).

This statement (Art 37) and the need to establish prior incidents of abuse before prosecuting a complaint (Art 29 and 42) is evidence that as early as 1922 the Catholic Church was aware that where a priest was abusing his position for sexual gratification, whether in the confessional or not, it was likely that he would be committing the same abuse with more than one victim. This knowledge, if anything, should have prevented the practice of transferring abusers.

It is submitted that Art 29, 37 and 42 contradict any claim on the part of the church that it did not understand the nature of abuse or the fact that abusers were likely to repeat the pattern of behaviour.

Article 38 deals with the discretion required in calling witnesses and the place where the interrogation should be conducted, with special consideration given to "young girls, married women, and domestics". The article quotes an 1890 instruction as follows: "If those to be examined live in monasteries or in hospitals or in religious homes for girls, then they are to be called with great care and on different days, according to particular circumstances [Instruction of the Holy Office, 20 July 1890]."

It is submitted that this level of discretion was entrenched less for the protection of the girls than to prevent anyone else from realising that there was a serial offender in their midst.

The decision as to the outcome of the investigation rested with the promoter of justice (Art 41). Most importantly, two verified complaints by two
complainants whose characters were confirmed by two witnesses each was sufficient only to justify a warning against the offender (Art 42(c)). Similarly “several” verified complaints from different complainants who did not have sufficient witnesses to confirm their characters, also only resulted in a warning for the abuse (Art 42 (c)). The determination at the end of the investigation process is precisely set out in Article 42:

"42. Once the investigative process has been closed, the Ordinary, after hearing the promoter of justice, is to proceed as follows, namely:

a) if it is clear that the denunciation is completely unfounded, he is to order this fact to be declared in the acts, and the documents of accusation are to be destroyed;

b) if the evidence of a crime is vague and indeterminate, or uncertain, he is to order the acts to be archived, to be brought up again should anything else happen in the future;

c) if, however, the evidence of a crime is considered grave enough, but not yet sufficient to file a formal complaint – as is the case especially when there are only one or two denunciations with regular diligences but lacking or containing insufficiently solid subsidiary proofs (cf. No. 36), or even when there are several [denunciations] but with uncertain diligences or none at all – he is to order that the accused be admonished, according to the different types of cases (Formula M), by a first or a second warning, paternally, gravely or most gravely according to the norm of Canon 2307, adding, if necessary, the explicit threat of a trial should some other new accusation be brought against him. The acts, as stated above, are to be kept in the archives, and vigilance is to be exercised for a period with regard to the conduct of the accused (Canon 1946, §2, No. 2);
d) finally, if certain or at least probable arguments exist for bringing the accusation to trial, he should order the Defendant to be cited and formally charged."

It is submitted that this provision contributed significantly to the occurrence of child sexual abuse on a number of levels.

Firstly the Bishop alone determined whether the complaint was "unfounded" (Art 42 (a)) and could destroy the documents so that there would be not further recourse. All the witnesses had been sworn to secrecy so an incorrect decision would allow an offender to continue to offend until such time as there were sufficient accusers as to ensure that the complaints were not regarded as unfounded. The secrecy and destruction of documents rendered the Bishop's decision unchallengeable.

Where the complaints were not determined to be "unfounded". But "vague and indeterminable" (Art 42 (b)), the only consequence was that the records would be placed in the secret archive. This presumes that there may be future offending and that an investigator in another matter would access them in due course in accordance with Arts 29 and 30. It is submitted that no concern was given to the safety of possible future victims. The Canon Law's anticipation that their may be a future possible incident indicates that the Church foresaw the possibility of future harm and failed to act to prevent it. This amounts to negligence in common law, Roman Law and Canon Law.

It is submitted that Art 42 (c) contributed very significantly to the occurrence of child abuse as even where "the evidence of a crime is considered grave enough" but "not yet sufficient to file a formal complaint" (Art 42 (c)) the offender was let off with a warning.

The provisions of Art 42 (c) clearly state that one or two complaints from victims whose characters have been verified by two witnesses are not enough to send an offender to trial. Similarly several credible complaints from more than two complainants but whose character may not have been fully verified would only result in the accused being "admonished". The addition of
"vigilance is to be exercised for a period with regard to the conduct of the accused" seems to indicate an expectation of reoffending.

If Art 42 is compared to Canon 1946 of 1917, which provided for the decision making at the conclusion of investigations it is difficult not to question the intention of the law makers who found it necessary to change the basic rules which complied with the rules of justice and equity and to provide these patently unjust rules where victims, whether children or adults were being sexually abused by priests.

If the provisions of the 1917 Canon Law in this regard, shown below, had remained in force the requirements for at least three verified complainants in any one case would not have been required. The assessment of the cases based on the character of the complainant and the requirement for repeated offences before a committal to trial would also not have existed. These specific requirements enacted in 1922 to override the 1917 Canon Law (Can 1946)\textsuperscript{24} definitely mitigated against the swift and effective prevention of sexual abuse by priests, and could certainly be seen to have contributed to the abuse of children.

Canon 1946  
(1983 CIC 1718–19)

§ 1. At the conclusion of the investigation, the investigator, adding his own opinion, refers everything to the Ordinary.

§ 2. The Ordinary or an official with his special mandate decides whether:

1. If it appears that the denunciation lacks sufficient foundation, this is to be declared in the acts and the acts themselves deposited in the secret archive of the Curia;

2. If there are indications of crime, but not sufficient to institute a criminal action, the acts are to be preserved in the same archives and in the meantime the behavior of the suspected one shall be observed and who, in the prudent judgment of the Ordinary, shall be opportunely heard about the matter and, if there is cause, warned according to the norm of Canon 2307;

3. If finally there are certain or at least probable and sufficient arguments available to institute an accusation, the respondent shall be cited to appear and [the matter] shall progress according to the norm of the canons that follow.

Arts 43, 44, and 45 of the 1922 (19620 Norms) pertain to the warnings given to abusers who were found complicit in some way but where there were not enough complaints to warrant an investigation:

43. "The warning mentioned in the preceding number (c) is always to be given in a confidential manner; nevertheless it can also be given by letter or by a personal intermediary, but in each case this must be proved by a document to be kept in the secret archives of the Curia (cf. Canon 2309, §§ 1 and 5), together with information about the manner in which the Defendant accepted it.

44. If, following the first warning, other accusations are made against the same Defendant regarding acts of solicitation which occurred prior to that warning, the Ordinary is to determine, in conscience and according to his own judgment, whether the first warning is to be considered sufficient or whether he should instead proceed to a new warning, or even to the next stage (Ibidem, §6).
45. The promoter of justice has the right to appeal these canonical measures, and the accused has the right to have recourse to the Sacred Congregation of the Holy Office within ten days from their issuance or notification. In this case, the acts of the cause are to be sent to the same Sacred Congregation, in accordance with the prescription of Canon 1890.

46. These [measures], however, even if they have been put into effect, do not extinguish a penal action. Consequently, if any other accusations are received thereafter, the matters, which prompted the aforementioned canonical measures, will also need to be taken into account.”

Art 46 provides that a warning does not finalise the matter and that if future complaints are brought the accused can be tried on the facts giving rise to the first warning.

Arts 47 to 60 refer to the arraignment, trial and appeal and the procedures related to them.

Articles 61, 62 and 63 relate to penalties and bearing in mind that Art 72 expressly includes the abuse of prepubescent children of both sexes, the penalties, or lack thereof would have undoubtedly contributed to the occurrence of child abuse. Furthermore there is a prohibition on criminal action being initiated in an external forum or for information to be provided to the civil authorities.

If an abuser admitted the offence the 1922(1962) Norms provide in the Formulae that this “confession” is to be heard in the “confessional”. The “seal of the confessional” made external reporting thereafter impossible. Article 64 (e) provides that if abuse has been confessed in the confessional, it is not possible to report the matter to an “external forum”. This and other secrecy provisions are discussed in greater detail later.

The provisions dealing with penalties are set out below:
61. "One who has committed the crime of solicitation" (to be read as to include abuse of prepubescent children)... is to be suspended from the celebration of Mass and from the hearing of sacramental confessions and even, in view of the gravity of the crime, declared incapable from hearing them. He is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable for all these, and in more grievous cases he is even to be subjected to reduction to the lay state [degradatio]. Thus states Canon 2368, §1 of the Code [of Canon Law].

62. "For a correct practical application of this canon, when determining, in the light of Canon 2218, §1, fair and proportionate penalties against priests convicted of the crime of solicitation, the following things should be taken into particular account in evaluating the gravity of the crime, namely: the number of persons solicited and their condition – for example, if they are minors or specially consecrated to God by religious vows; the form of solicitation, especially if it might be connected with false doctrine or false mysticism; not only the formal but also the material turpitude of the acts committed, and above all the connection of the solicitation with other crimes; the duration of the immoral conduct; the repetition of the crime; recidivism following an admonition, and the obdurate malice of the solicitor".

63. “Resort is to be had to the extreme penalty of reduction to the lay state – which for accused religious can be commuted to reduction to the status of a lay brother [conversus] – only when, all things considered, it appears evident that the Defendant, in the depth of his malice, has, in his abuse of the sacred ministry, with grave scandal to the faithful and harm to souls, attained such a degree of temerity and habitude, that there seems to be no hope, humanly speaking, or almost no hope, of his amendment".
64. “In these cases, the following supplementary sanctions are to be added to the penalties proper, to ensure that their effect is achieved more fully and securely, namely:

a) Upon all Defendants who have been judicially convicted there are to be imposed salutary penances, befitting the kind of faults committed, not as a substitute for penalties proper in the sense of Canon 2312, §1, but as a complement to them, and among these (cf. Can. 2313) chiefly spiritual exercises, to be made for a certain number of days in some religious house, with suspension from the celebration of Mass during that period.

b) Upon Defendants who have been convicted and have confessed, moreover, there should be imposed an abjuration, according to the variety of cases, of the slight or strong suspicion of heresy which soliciting priests incur due to the very nature of the crime, or even of formal heresy, if by chance the crime of solicitation was connected to false teaching.

c) Those in danger of relapsing and, even more, recidivists, are to be subjected to special supervision (Canon 2311).

d) As often as, in the prudent judgment of the Ordinary, it seems necessary either for the amendment of the delinquent, the removal of a near occasion [of sin], or the prevention or repair of scandal, there is to be added an order to live in a certain place or a prohibition from the same (Canon 2302).

e) Finally, since, by reason of the sacramental seal, there can never be any account taken in the external forum of the crime of absolving an accomplice, as this is described in the Constitution Sacramentum Poenitentiae, at the end of the sentence of condemnation there is to be added an admonition to the Defendant that, if he has absolved an accomplice, he should provide for his conscience by recourse to the Sacred Penitentiary.”
65. “In accordance with the norm of Canon 2236, §3, all of these penalties, inasmuch as imposed by law, cannot, once they have been applied by the judge ex officio, be remitted except by the Holy See, through the Supreme Sacred Congregation of the Holy Office.”

Articles 66, 67, 68, and 69 ensure that the Holy Office is informed of complaints as soon as they are received, and provided with the records of the investigation (Art 66). The Bishop is required to inform the Holy Office and the offender’s superior if the matter goes to investigation (Art 67), and if the offender is admonished or sentenced the result must be sent to the Bishop of the territory where he may have moved to (Art 68), and if the offender has been suspended from doing certain sacramental acts, that will apply in his new Diocese (Art 69).

Article 70 confirms that: “these official communications shall always be made under the secret of the Holy Office; and, since they are of the utmost importance for the common good of the Church, the precept to make them is binding under pain of grave [sin].”

It is interesting to note that secrecy is referred to here as “of the utmost importance for the common good of the Church”. It is submitted that this is the underlying principle that has led to the continued occurrence of child abuse and the church’s complete lack of care for the protection and safety of children. It is submitted that the “utmost good of the Church” took precedence over the protection of children and contributed directly to the occurrence of child sexual abuse by clergy.

The remaining articles 71 to 74 relate to the addition and applicability of the Instruction to of crimen pessimum as discussed fully above.

The 1962 Norms remained applicable after the Codification of the Canon Law in 1983. Can 1728 (1) explicitly provides for cases such as these to be dealt with
in accordance with "special norms" and this was confirmed in the introduction to the 2001 Norms. The relevant canons are set out hereunder.

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In 1983 the Code of Canon Law\textsuperscript{26} was revised. The Code contains clear substantive and procedural provisions for the punishments of crimes committed by the faithful as well as clergy and religious. Book VI, Part I sets out the crimes and penalties in general (Can 1311-1363), Part II sets out the penalties for individual crimes (Can 1364-1399).

Although full provision for the handling of child sexual abuse cases is set out in the Code, the Code itself prescribes in Can 1728(1) that special norms such as those issued in 1962 were still applicable:

\begin{quote}
Can. 1728 (1): "Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed" (emphasis added).
\end{quote}

The 1962 Norms are therefore to be read in conjunction with the 1983 Code and for that reason the applicable canons are discussed fully hereunder.

The specific canon relating to child sexual abuse is contained in Can 1395(2)) as follows:

\begin{quote}
Can 1395 (2) "A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants".
\end{quote}

\textsuperscript{26} Code of Canon Law (1983)
http://www.vatican.va/archive/ENG1104/INDEX.HTM
The crime as defined would only be committed if the child was under the age of 16. Can 1395 (1) deals with consensual sexual acts with adults and attracted a warning and gradual punishment including dismissal. However if the sexual act was "committed publically" it fell into the same realm as rape or child abuse and was "to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants" (Can 1395 (2)).

Part V of the 1983 Code sets down The Penal Process (Can 1717 – 1731) (ANNEXURE 1983 A). The Code focuses on the preliminary investigation (Chapter 1) by the Bishop; the development of the process (Chapter 2) where the accused is given an opportunity to defend himself and where any claim for damages would have to be lodged; and the action to repair damages (Chapter 3) where the limitations on claims for damages, and the rules for judgement on damages and penalties are set out.

Can 1720 provides specifically for the Bishop to complete the process extra jucially in the first stage of the process and to determine a penalty as well as to settle claims for damages in terms of Can 1731, by decree. Can 1720 reads as follows:

   Can. 1720 "If the ordinary thinks that the matter must proceed by way of extra-judicial decree:
   (1) he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defence, unless the accused neglected to appear after being properly summoned;
   (2) he is to weigh carefully all the proofs and arguments with two assessors
   (3) if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree
according to the norm of cann. 1342-1350, setting forth the reasons in law and in fact at least briefly".

According to the procedural rules set out in the Code, the "preliminary investigation" or first stage would only be triggered when a Bishop had "knowledge of a delict"... "which at least seems true". On receipt of the information the Bishop was to carefully "inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous" (Can 1717(1)).

Can 1717 (2) provides that: "Care must be taken so that the good name of anyone is not endangered from this investigation". This provision weighs against open and public inquiries and errs on the side of silence and secrecy. It is submitted that such protection of the good name of people has served less to protect victims of abuse than to protect the abusers and the institution.

Can 1718 provides that at the end of this inquiry the Bishop had powers to invoke a penalty and to decide the whether the penalty had to follow a judicial process or could be inflicted extra judicially, as well as whether with the consent of the parties compensation for damages could be agreed upon.

Can 1719 provides that all the records regarding the preliminary investigation had to be stored in the secret archive.

Can 1720 provides that the decision can be made by the Bishop by extra judicial decree.

It is important to note that Can 1731 extinguished the right of a victim to claim damages after an abuser had been found guilty if he or she had not put in a claim for damages at the time of lodging a complaint. This may have led to many claims being refused.
It is submitted that the combined penal and damages process prescribed by this section of the 1983 Code was the Canon Law underpinning of the Melbourne Response and Toward Healing.

The Code a favoured a remedial response in preference to punishment and followed only when "fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender" (Can 1341).

Can. 1341 "An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender".

Extra judicial penalties and processes were expressly allowed as per Can 1342:

Can. 1342(1) "Whenever just causes preclude a judicial process, a penalty can be imposed or declared by extra judicial decree; penal remedies and penances, however, can be applied by decree in any case whatsoever.

(2) Perpetual penalties cannot be imposed or declared by decree, nor can penalties be so applied when the law or precept establishing them prohibits their application by decree".

The penalties provided in the 1983 Code of Canon Law, which still apply today paved the way for removal and transfer of and the use of rehabilitation houses for offenders. Noteworthy in this regard is that Can 1336 (4) authorises transfer to another office as a penalty and Can 190 (2) requires that before a person can be transferred against his will, "grave cause" and due process are required. Can 1337 (1) authorises a prohibition to reside in a certain place, and Can 1337 (2) authorises an order to reside in a certain place, adding the corollary that the Bishop of that Diocese must approve "unless it is a question of a house designated for clerics doing penance or being rehabilitated even from outside the diocese". It is submitted that this is a reference to treatment houses
for paedophiles. The fact that this was included in 1983 indicates that treatment houses for child abusers were in operation at the time and that the intention was to keep them in operation. This method of dealing with child abusers by the church has proved to be unsuccessful in preventing further child abuse in other jurisdictions. Testimony to the Royal Commission may have confirmed this in Australia.

The relevant canons relating to penalties include:

Can. 190(1) "A transfer can be made only by a person who has the right of providing for the office, which is lost as well as for the office, which is conferred.
(2) If a transfer is made when the officeholder is unwilling, a grave cause is required and the manner of proceeding prescribed by law is to be observed, always without prejudice to the right of proposing contrary arguments.
(3) To take effect a transfer must be communicated in writing."

Can. 1336 (1) "In addition to other penalties, which the law may have established, the following are expiatory penalties, which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time:

(1) a prohibition or an order concerning residence in a certain place or territory;
(2) privation of a power, office, function, right, privilege, faculty, favour, title, or insignia, even merely honorary;
(3) a prohibition against exercising those things listed under n. 2, or a prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity;
(4) a penal transfer to another office;
(5) dismissal from the clerical state."
(2) Only those expiatory penalties listed in §1, n. 3 can be latae sententiae”.

Can. 1337 (1) “A prohibition against residing in a certain place or territory can affect both clerics and religious; however, the order to reside in a certain place or territory can affect secular clerics and, within the limits of the constitutions, religious.

(2) To impose an order to reside in a certain place or territory requires the consent of the ordinary of that place unless it is a question of a house designated for clerics doing penance or being rehabilitated even from outside the diocese.”

Can. 1338 (1) “The privations and prohibitions listed in can. 1336, (1) nn. 2 and 3, never affect powers, offices, functions, rights, privileges, faculties, favours, titles, or insignia, which are not subject to the power of the superior who establishes the penalty.

(2) Privation of the power of orders is not possible but only a prohibition against exercising it or some of its acts; likewise, privation of academic degrees is not possible.

(3) The norm given in can. 1335 for censures must be observed for the prohibitions listed in can. 1336, §1, n. 3.”

Can. 1397 “A person who commits a homicide or who kidnaps, detains, mutilates, or gravely wounds a person by force or fraud is to be punished with the privations and prohibitions mentioned in can. 1336 according to the gravity of the delict. Homicide against the persons mentioned in can. 1370, however, is to be punished by the penalties established there.”

Can. 1398 “A person who procures a completed abortion incurs a latae sententiae excommunication.”

The focus on preventing and repairing scandals, as opposed to protecting victims is clearly articulated in Can. 1399
Can. 1399 “In addition to the cases established here or in other laws, the external violation of a divine or canonical law can be punished by a just penalty only when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals” (emphasis added).

The secrecy provisions provided by the 1983 Code are set out in a separate section hereunder.

Notwithstanding the fact that the 1983 Code included clear processes for child abuse cases the 1962 processes apparently remained in force until 2001. In the letter from the Congregation of the Faith explaining the 2001 norms it states that the “the Instruction Crimen Sollicitationis, issued by the Supreme Sacred Congregation of the Holy Office on March 16, 1962,” was “in force until now” and “was to be reviewed when the new canonical codes were promulgated.”

This means that the preliminary investigation (so called in the 1983 Code) was still undertaken according to the processes for the preliminary inquiry or “first notification” and the “investigation” as set out in the 1922 and 1962 process. A significant implication of this is that up to and including 2001 the Bishop was able to do nothing other than keep the documents in the secret archive unless there were at least three complaints from victims whose characters had been verified by two witnesses who knew both the witness and the accused abuser. Secondly the ability to hear complaints and settle damages claims all in one forum during the “Investigation” remained possible to Bishops.

It is submitted that the combined reading of the 1983 Code of Canon Law together with the processes set out in the 1962 Norms set the legislative

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framework for the establishment of quasi judicial fori such as the Melbourne Response. This framework remained in place until 2001 and was ratified in 2003 (2003 Norms – Art 13 as amended).
From 1922 until 1988 the Bishop had to report to the Sacred Congregation of the Holy Office "immediately upon receiving the denunciation (complaint)" (1962 (1922) Norms - Art 66) but continued with the process thereafter as discussed above.

In 1988, the same year as the Melbourne Response was initiated, Pope John Paul II enacted the Apostolic Constitution²⁹, established the Congregation of the Doctrine of the Faith (CDF) and other congregations and councils. The Congregation of the Holy Office was replaced by the CDF. This did not affect the application of the 1962 Norms in general however.

The CDF was given jurisdiction over "more serious" offences against faith and morals, which had been reported to it:

Art. 52 — "The Congregation examines offences against the faith and more serious ones both in behaviour (also translated as morals) or in the celebration of the sacraments which have been reported to it and, if need be, proceeds to the declaration or imposition of canonical sanctions in accordance with the norms of common or proper law"³⁰. (emphasis added)

The "more serious" offences referred to here are the "more grave delicts' previously covered under "crimen sollicitationis" and "crimen pessimum" including child sexual abuse cases.

http://w2.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf-jp-ii-apc_19880628_pastor-bonus-roman-curia.html#CONGREGATIONS
³⁰ Art 52 ASS 80 (1988) 874
Art 66 of the 1962 Norms provided that no Bishop was “ever to omit informing the Holy Office (the CDF after 1988) immediately upon receiving any denunciation of the crime of solicitation” (to be read to include child sexual abuse). The “Holy Office” (or subsequently the CDF) also had to be informed of any “process instituted” against an accused (Art 67).

The “processes” undertaken in accordance with the 1962 Norms which still applied by virtue of Can 1728 (1) post 1983 and read with the 1988 Apostolic Constitution can be summarised as follows:

a. The first notification of the crime was to be recorded according to a prescribed process and the CDF notified (1922(1962) Norms - Art 66).

b. The person tasked with taking the complaint was “expressly admonished that he is thereafter to forward everything immediately to the Ordinary or to the person who deputed him, keeping no copy or record of it himself” (Art 22).

c. The complainant had to be administered with “an oath to tell the truth” at the commencement of giving evidence and before being dismissed, the complainant had “to be administered an oath to maintain confidentiality” (Art 23).

d. Once the Bishop became aware of the complaint he had to “communicate it to the diocesan promoter of justice “who made the decision as to whether or not the complaint was sufficient to proceed. If not, and the Bishop agreed with him, nothing more was done other than filing the documents in the diocesan secret archive. If they disagreed, the case would be reported to the “Sacred Congregation of the Holy Office” (predecessor of the Congregation of the Doctrine of the Faith) (Art 27). If they agreed that the delict was “present” they moved to the investigation stage (Art 28).

e. The investigation process had three major areas, namely: “
a) precedents on the part of the accused;
b) the soundness of the denunciations;
c) other persons solicited by the same confessor, or in any event aware
of the crime, if these are brought forward by the accuser, as not
infrequently happens" (Art 29).

f. In order to establish precedents of previous alleged abuse by the
offender (Art 29(a)), the Bishop had to make enquiries and seek out any
archived records of previous complaints (Art 30).

g. The Congregation of the Doctrine of the Faith would be notified at this
stage if the Bishop did not know where the accused offender was
residing at the time (Art 31).

h. In establishing the "soundness of the denunciations (complaints)" (Art
29(b)) the Bishop had to follow a prescribed process and "carry out
diligences" (Art 32), that is, obtain the evidence (given under oath of
truth and secrecy) of two witnesses who knew both the accused and the
accuser, as to whether "accuser (was) worthy of credence, or on the other
hand capable of lying, slander or perjury; and whether they know of any
reason for hatred, spite or enmity between the accuser and the accused"
(Art 33 and 34). If there was a "danger of scandal or loss of good
repute" different witnesses could be used for the accuser and for the accused
(Art 35). If witnesses could "not be found, or for a just fear of scandal or
loss of good repute" the process could be done through "extra judicial
information" (Art 36).

i. In order to establish corroboration for what is usually a single witness
crime in accordance with Art 29(c), the Bishop had to question "other
persons ... named who may likewise have been solicited, or for some
other reason can offer testimony about this crime, these are all to be
questioned as well, separately" (Art 37), employing "the greatest
discretion" (Art 38).

j. If the diligences confirmed that there were corroborated incidents of
other similar crimes from the same offender the complaint was "found
to be true" (Art 39).

k. Following this process the Bishop had to report all the evidence to the
promoter of justice who would decide if everything had been done
correctly. If he determined the complaints not to be true the
investigation stage would be closed (Art 40 and 41).
I. Once the investigation was closed the Bishop had to:

   i. Destroy the documents if it was clear that the complaint was “completely unfounded” (Art 42(a)),

   ii. Archive the documents “if the evidence of a crime is vague and indeterminate, or uncertain” (Art 42(b)),

   iii. Give the offender a “warning” with the “explicit threat of a trial” if “the evidence of a crime is considered grave enough, but not yet sufficient to file a formal complaint”. That would be the case if there were “only one or two” verified complaints, “or even when there are several” complaints but not enough character witnesses (Art 42(c)). The warning had to be given “in a confidential manner” and the documents put in the diocesan secret archive (Art 43) and used if further complaints were made (Art 30 and 44).

   iv. Formally charge the offender if there were enough separate complainants (at least three) with character verification by two witnesses for each complainant (Art 42(d)).

m. Remedial penalties (Can 1341) could be imposed by extra judicial decree (Can 1342) or following a trial (Can 1717 cf), and damages apportioned (Can 1729 cf).

n. If the offender was given a warning, convicted, or transferred the Bishop who provided the penalty had to notify the Bishop to whose diocese the offender was transferred or was residing at the time (Art 66).

The extent to which the Melbourne Response was established in accordance with the 1983 Code, 1962 Norms, and Art 52 of the 1988 ASS as set out above may not have been clearly established in previous hearings in the Royal Commission. Whether or not it employed the 1962 requirement for corroboration by additional complainants and the affirmation of character witnesses before accepting the veracity of a complaint may also not have been
examined. Whether it followed the 1922(1962) Norms or acted as directed by the CDF is also not clear. Nonetheless the process employed and outcomes achieved by the Melbourne Response are consistent with the provisions of the 1983 Code read in conjunction with the 1962 Norms, which applied at the time. The combining of penal hearings with damages claims, the transfer of priests and the use of “treatment facilities”, and the blanket of secrecy are all consistent with the canon law as set out above.

The timing of the establishment of the Melbourne Response is interesting to note and the question could be asked whether or not the CDF in 1988 gave the Bishops of Australia or more specifically the Bishop of Melbourne a direction to proceed in this manner, delegating its jurisdiction in accordance with Art 52 of AAS 80(1988).

If the Canon Law was followed correctly by the Bishops in Australia, there should be a record of every complaint of child sexual abuse by clergy or religious in Australia from 1988 onwards in the secret archives of the CDF, as well as the records of any processes that were undertaken by Bishops following the first notification of the complaint.
Similarly the establishment of Towards Healing in 1997 coincides the enactment of the procedures for examination by the Congregation of the Doctrine of the Faith (CDF) of "writings and opinions which appear contrary to correct faith or dangerous".  

It is submitted that this did not affect the application of the 1962 Norms, read in conjunction with the 1983 Code of Canon Law and the 1988 Apostolic Constitution, but may have directed the CDF on how to examine the documents furnished to it by the Bishops following "processes" undertaken in terms of the 1962 Norms.

The apparent confusion between the processes that applied to matters relating to doctrinal issues and those relating to moral issues were referred to in the Introduction to the 2001 Norms and gave rise to the need for new norms being enacted in 2001.

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32 John Paul II, (2001) "Sacramentorum Sanctitas Tutela" Apostolic Letter given *Motu Proprio* which are promulgated Norms concerning the more grave delicts reserved to the Congregation for the Doctrine of the Faith",  
http://www.bishop-accountability.org/resources/resource-files/churcdocs/SacramentorumAndNormaeEnglish.htm
In 2001 new Norms for dealing with “more grave delicts” were enacted (ANNEXURE 2001/2003 B) replacing the 1922 (1962) Norms.

The letter from John Paul II accompanying the 2001 norms entitled “Apostolic Letter given Motu Proprio by which are promulgated Norms Concerning the More Grave Delicts Reserved to the Congregation for the Doctrine of the Faith”33 (ANNEXURE 2001/2003 A), explains that it “was necessary to define more precisely both “the more grave delicts whether against morals or committed in the celebration of the sacraments” for which the competence of the Congregation for the Doctrine of the Faith remains exclusive, and also the special procedural norms “for declaring or imposing canonical sanctions.” The norms provided substantive and procedural rules for the handling of “more grave delicts”.

Article 1 confirmed that the CDF “judges” child sexual abuse cases (Art 4) in accordance with Art 52 of the Apostolic Constitution (ASS 80(1988)) and Article 13 shifted the time when Bishop had to inform the CDF from “first notification of the crime” (1922(1962) Norms - Art 66) to “once the preliminary investigation has been completed” and only when the complaint had “at least a semblance of truth”.

Art 13 further provided that:

"the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch [how] to proceed further, with due regard, however, for the right to appeal against a sentence of the

first instance only to the Supreme Tribunal of the same Congregation”.

The CDF therefore had the discretion to direct the Bishop how “to proceed further” or to take the process over itself.

Article 4 (1) and (2) are directly relevant to this submission and read as follows:

Art 4(1). Reservation to the Congregation for the Doctrine of the Faith is also extended to a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years.

(2) One who has perpetrated the delict mentioned in § 1 is to be punished according to the gravity of the offense, not excluding dismissal or deposition.”

Article 4(1) amended the age of minority from pre-pubescence as per the 1917 Code of Canon Law, and the age of 16 as per the 1983 Code of Canon Law, to 18 years in 2001 and thereafter. The age had been increased to 18 years of age in the US and Ireland respectively in 1994 and 1996.

Article 4 (2) provided that:

Art 4(2) “One who has perpetrated the delict mentioned in § 1 is to be punished according to the gravity of the offense, not excluding dismissal or deposition.”

Article 5 set the prescription period (statute of limitations) for criminal action at 10 years for adults and 10 years after the eighteenth birthday of a victim who was a minor at the time.

Article 6 of the 2001 procedural norms provided that the members of the Congregation were competent judges in these cases, that their decisions did not require approval from the Pope. It is important to note that this is referring to
judgement of the trial stage of the process, if cases ever went as far as being referred to trial. If this is read in conjunction with Art 13 the Bishop still had jurisdiction over the preliminary inquiry (first notification) stage, and the investigation.

This means that after the first notification the Bishop still had jurisdiction to determine whether or not the complaint "had at least a semblance of truth". If he determined that it did, he had to report the complaint to the Congregation who would either take over the case or direct the Bishop how to proceed. As seen from the regulations operating until 1988 there was a great deal of scope for the Bishop not to initiate an investigation and the superior of a religious order to transfer the offender before an investigation got underway.

Article 14 provided that the Congregation could undertake the "steps preliminary to the process" which normally would have been undertaken by the Bishop, if the case was reported directly to the Congregation prior to the Bishop having taken these steps.

Article 15 confirms that the Bishop and the CDF were able to prevent the accused from certain actions in order to "prevent scandals, to protect the freedom of witnesses and to guard the course of justice" in accordance with Code 1722.

The procedural rules set out in Part III of the norms definitively provide that all these cases had to be heard by juridical trial.

If it had been the intention of the CDF to handle all trials of child sexual abuse complaints in 2001, the intention shifted by 2003 when Art 17 was amended as follows:

"Faculty to dispense

The faculty is granted to the CDF to dispense from art. 17 in those grave and clear cases which, according to the Particular Congress of the CDF:
a) may be referred directly to the Holy Father for an *ex officio* dismissal from the clerical state,

or

b) may be treated under the summary process of can. 1720 by the Ordinary who, in case he is of the opinion that the accused should be dismissed from the clerical state, will ask the CDF to impose dismissal by decree.

This amendment returned the powers of decision making to the Bishop who was entitled to enforce a penalty by decree, extra judicially, in accordance with Can 1720.

It is submitted that, if indeed it even occurred, the decision making in cases of child sexual abuse was only officially reserved to the CDF from 2001 until 2003. Furthermore decisions made by the Bishop extra judicially during that period could be sanctioned and condoned ("sanated") in accordance with the 2003 amendment to Art 17 if the procedural rules had not been followed, or if any of the officials were not priests.

There has not been any evidence to date regarding the involvement of the Congregation of the Doctrine of the Faith in decisions made during the Towards Healing process, or how these decisions were communicated and or sanctioned by the Congregation. It is submitted that if the Melbourne Response and Towards Healing processes did not comply with the norms, especially in that the "judges" were not priests and the procedural processes may have been different from those prescribed, the 2003 provision (Art 17 as amended) provided retrospective approval for these processes even though they may have been procedurally incorrect.

Articles 14 to 24 of the 2001 and 2003 Norms deal with the judicial process and do not have great significance to this submission.
Article 26 confirms that these norms apply in conjunction with the 1983 Code.

Art 25 deals with secrecy and confirms the secrecy provisions as established in the 1922 norms as follows:

Art 25(1) "Cases of this nature are subject to the pontifical secret.

Art 25 (2) Whoever has violated the secret, whether deliberately (ex dolo) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher Turnus at the request of the injured party or even ex officio."

The oath of secrecy, which was to be administered according to the 2001 and 2003 Norms is set out in a footnote to the norms as follows:

"I ... in the presence of ... laying my hand on the sacrosanct Gospels of God, promise faithfully to guard the pontifical secret in cases and matters that should be treated under such secrecy, so that any Thus, under any pretext, is of a greater good, is for very urgent and very serious cause me be lawful to violate this secret.

I promise to keep the secret, as has been said, even after the conclusion of the causes and issues for which it was expressly imposed such a secret. If I come to doubt the obligation of secrecy in some cases above, I will stick to interpretation in favour of it secret.

I am also aware that the transgressor of such secrecy commits a grave sin.

God help me help me and these Holy Gospels, which I touch with my hand."

This provided a blanket of secrecy over all cases regarding child sexual abuse in the church and prevented reporting of the crimes to the civil authorities. The Pontifical Secret and the other secrecy provisions arising from the Code of Canon Law are discussed in greater detail below.
It is submitted that the effect of the 2001 and 2003 Norms with regard to responses such as the Melbourne Response and Towards Healing was to ratify their decisions and to provide retrospective legitimacy for their operation.

Most importantly the 2003 norms clearly sanction the decisions by Bishops by extra judicial decree as per Can 1720. This left the handling of these matters squarely within the jurisdiction of the Bishops, who could decide whether or not a complaint was true, apply the standard of proof requiring two character witnesses for more than two complainants before the accused would receive more than a warning, and to decree the punishment, if any, and damages without recourse to any other body and under a blanket of secrecy.
2010

In 2010 the Congregation of the Doctrine of the Faith once again applied its mind to revising the norms applicable to child sexual abuse cases and the 2010 Norms were promulgated.

The norms were published on 21 May 2010 together with “A brief introduction to the modifications made in the Normae de gravioribus delictis, reserved to the Congregation for the Doctrine of the Faith” (ANNEXURE 2010 A) prepared by the Congregation of the Doctrine of the Faith, highlighting the amendments to the previous substantive and procedural norms promulgated originally in 2001 as Sacramentorum Sanctitatis Tutela (ANNEXURE 2001/2003 A and B).

The 2010 norms were also accompanied by an explanation, relating to their historical development, prepared by the Congregation of the Doctrine of the Faith entitled: “The Norms of the Motu Proprio “Sacramentorum Sanctitatis Tutela” (2001) (sic): Historical Introduction” (ANNEXURE 2010 A).

The Norms do not stand on their own (Art 31) and have to be read in conjunction with the 1983 Code and other laws in place.

Art 31 “In these cases, together with the prescripts of these norms, by which all Tribunals of the Latin Church and Eastern Catholic Churches are bound, the canons concerning delicts and

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penalties as well as the canons concerning the penal process of each Code also must be applied”.

As in 2001 and 2003 the judging of cases such as child sexual abuse were “reserved to the Congregation of the Faith” by article 1(1). In addition the jurisdiction of the CDF was extended to include cases against senior church authorities such as Bishops and Cardinals (Art 1(2)).

It is submitted that the CDF’s jurisdiction refers to the third or trial stage of the penal process as set out in the 1983 Code and does not remove the Bishops’ role during the investigation and development of the process phase as set out above. The norms make clear provision for the Bishop to appoint judges (Art 15) and to make the initial decisions in these cases. Article 15 dispenses with the need for judges appointed by the Bishop to be priests although article 14 provides that “in the other tribunals dealing with cases under these norms, only priests can validly carry out the functions of Judge, Promoter of Justice, Notary, and Patron [Procurator and Advocate]”.

The right of the Bishop to undertake the first stage of the process, namely the investigation stage is confirmed clearly in article 16, which reads as follows:

Art. 16 “Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the case warrants, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation”.

The means that after 2010, as had been the case before, the Bishop had jurisdiction for receiving the complaint, determining if there was “at least a
semblance of truth”, and deciding whether or not to undertake a preliminary investigation. As was the case from 1922 onwards, this leaves opportunity for the Superior of a religious order to transfer an offender before the investigation is started and for the Bishop to act by decree at the end of the investigation stage. It is only at the end of the investigation that the CDF will need to be advised. It is important to note that the investigation phase as prescribed by the 1983 Code includes decisions being made by the Bishop by decree regarding penalty and damages.

In case there is any doubt that the Bishop has jurisdiction as the ‘court of first instance” Art 20 confirms that the Supreme Tribunal of the CDF acts as the appeal court for “cases adjudicated in first instance by lower tribunals Art 20(1)”; and “cases decided by this same Supreme Apostolic Tribunal in first instance” Art 20(2). In light of this Article 8 which states that the CDF is the “Supreme Tribunal” must be understood as Supreme but not exclusive.

Article 17 confirms quite clearly that the Bishop has jurisdiction for the preliminary investigation referring to the “steps preliminary to the process, which fall by common law to the Ordinary”

Art 17 “If a case is referred directly to the Congregation without a preliminary investigation having been undertaken, the Congregation itself may carry out the steps preliminary to the process, which fall by common law to the Ordinary or Hierarch”.

Furthermore Article 18 ensures that decisions made extra judicially can be validated even if the procedural rules have not been followed. This would be the extra judicial decisions made by the Bishop during or before the investigation stage as discussed above.

Art 18 “With full respect for the right of defence, the Congregation for the Doctrine of the Faith may sanate acts in cases lawfully presented to it if merely procedural laws have been violated by lower Tribunals acting by mandate of the same Congregation or according to art. 16”.
The norms also provide that the Bishop retains the right to enforce temporary restrictions on an accused.

Art. 19 "With due regard for the right of the Ordinary to impose from the outset of the preliminary investigation those measures which are established in can. 1722 of the Code of Canon Law, or in can. 1473 of the Code of Canons of the Eastern Churches, the respective presiding judge may, at the request of the Promoter of Justice, exercise the same power under the same conditions determined in the canons themselves.

The measures referred to in Can 1722 are temporary restrictions on the accused such as preventing him from celebrating the sacraments in order to "(T)o prevent scandals, to protect the freedom of witnesses, and to guard the course of justice...".

Article 27 provides for appeals against decisions made by decree by the CDF or approved by it. This means that decisions by decree by the Bishop during the investigation stage are still possible.

With regard to the substantive provisions of the 2010 Norms, Article 2 added the delicts of heresy and apostasy as grave delicts. These are distinguished from "more grave delicts" such as abuse of children.

Art 4(1) (1) provides that where a priest has provided absolution to a fellow priest who committed a sexual act under the pretext of confession, or who himself committed a sexual act under the pretext of confession Art 4(1)(4); violated the seal of the confessional (Art (1) (5), or recorded confession by artificial means (Art 4(2)).

Article 5 deals with the "more grave" delict of attempting to ordain a woman.
With specific reference to child sexual abuse article 6 provides:

Art 6(1) The more grave delicts against morals, which are reserved to the Congregation for the Doctrine of the Faith, are:
1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.
2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;
(2) A cleric who commits the delicts mentioned above in § 1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition”.

The prescription period (statute of limitations) provided for in Art 7 is for “criminal action” regarding child sexual abuse was increased to twenty years which started to run after the child’s eighteenth birthday (Art 7(1) and (2)). It is important to note that this provision does not refer directly to claims for damages, although the 1983 Code provisions on “action to repair damages” (Can 1729 to 1731) states that action for damages have to be lodged at the time of the investigation and cannot be lodged after the accused has been found guilty. It may be assumed that the prescription period for damages is simultaneous with “criminal action” but this is not stated by the provision.

The 2010 Norms introduced a new provision relating to the privacy of the victim as follows:
Art. 24 (1) “In cases concerning the delicts mentioned of in art. 4(1), the Tribunal cannot indicate the name of the accuser to either the accused or his patron unless the accuser has expressly consented.”
(2) This same Tribunal must consider the particular importance of the question concerning the credibility of the accuser.

(3) Nevertheless, it must always be observed that any danger of violating the sacramental seal be altogether avoided".

Whereas this may seem protective of victims at face value, its result may be extremely detrimental. The question arises as to how the veracity of the complaint is assessed if the accused does not have the identity of his accuser and is not given an opportunity to respond to the charge. This may suggest that the original standard of proof as set out in 1922 Norms, reinforced in 1962, and remaining in force until at least 2001, must still be the standard of proof in operation to the present day. This standard of proof, used to counteract the problem of single witness testimony, requires the Bishop to determine if there were any previous or contemporary complaints, obtain the testimony of two witnesses who could verify the good character of each the complainants, and obtain testimony from others who may also have been abused or who could corroborate the single witness testimony (Art 29 of the 1962 Norms). The 2001 Norms and the 2010 Norms are silent on the standard of proof to be used by the Bishop in determining the veracity or otherwise of the complaint.

As in 1922, 1962, 2001 and 2003 Article 30 reinforces the application of the Pontifical Secret over these cases as follows:

Art 30 (1) “Cases of this nature are subject to the pontifical secret (2) Whoever has violated the secret, whether deliberately (ex dolo) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher turnus at the insistence of the injured party or even ex officio”.

The full implication of this is discussed below together with the other secrecy provisions.
THE PONTIFICAL SECRET AND OTHER SECRECY PROVISIONS

Secrecy has been applied to matters relating to child sexual abuse through a series of Canon Law provisions. The need to maintain complete secrecy and protect the veil of the confessional as well as in cases external to the confessional by the was provided for in Instruction by the Sacred Congregation of the Holy Office in 1866 that related to the 1741 "Constitutio Sacramentam Poenitentiae" discussed above.

The 1866 Instruction provided as follows:

Art 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 who is called 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".

The 1922 (1962) Norms provided for the Pontifical Secret to apply and provided further for the application of oaths of secrecy to all participants including the complainant.

Articles 11, 12, 13 and 23 deal with secrecy and confidentiality and provide that the cases "are covered by permanent silence" and require all concerned to be sworn to an oath of permanent secrecy.

"11. Since, however, in dealing with these causes, more than usual care and concern must be shown that they be treated with the utmost confidentiality, and that, once decided and the decision...

executed, they are covered by permanent silence (Instruction of the Holy Office, 20 February 1867, No. 14), all those persons in any way associated with the tribunal, or knowledgeable of these matters by reason of their office, are bound to observe inviolably the strictest confidentiality, commonly known as the secret of the Holy Office, in all things and with all persons, under pain of incurring automatic excommunication, ipso facto and undeclared, reserved to the sole person of the Supreme Pontiff, excluding even the Sacred Penitentiary. Ordinaries are bound by this same law, that is, in virtue of their own office; other personnel are bound in virtue of the oath which they are always to swear before assuming their duties; and, finally, those delegated, questioned or informed [outside the tribunal], are bound in virtue of the precept to be imposed on them in the letters of delegation, inquiry or information, with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The oath mentioned above, whose formula is found in the Appendix of this Instruction (Form A), is to be taken – once for all by those who are appointed habitually, but each and every time by those who are deputed only for a single item of business or cause – in the presence of the Ordinary or his delegate, on the Holy Gospels of God (including priests) and not in any other way, together with an additional promise faithfully to carry out their duties; the aforementioned excommunication does not, however, extend to the latter. Care must be taken by those presiding over these causes that no one, including the tribunal personnel, comes to knowledge of matters except to the extent that their role or task necessarily demands it.

13. The oath to maintain confidentiality must always be taken in these causes, also by the accusers or complainants and the witnesses. These persons, however, are subject to no censure, unless they were expressly warned of this in the proceedings of
accusation, deposition or questioning. The Defendant is to be most gravely admonished that he too must maintain confidentiality with respect to all persons, apart from his advocate, under the penalty of suspension a divinis, to be incurred ipso facto in the event of a violation."

"23. In receiving denunciations" (to be read as 'complaints' in cases other than in the context of the confessional as per Art 72), "this order is normally to be followed: First, an oath to tell the truth is to be administered to the one making the denunciation; ... Before the one making the denunciation is dismissed, he is to be administered the oath to maintain confidentiality, as above, if necessary under pain of excommunication reserved to the local Ordinary or to the Holy See (cf. No. 13)" (emphasis added).

The formula for the oath appeared in the 1962 typewritten version (ANNEXURE 1962 A) as follows:

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The complete and permanent secrecy, known as the "Pontifical Secret", was reiterated by successive Popes thereafter and the current version is provided for in the 1974 "Instruction Secreta Continere"\(^{39}\) and applied to all employees of the Roman Curia in 1992\(^ {40}\) and 1999\(^ {41}\).

The 1974 Instruction applies directly to child sexual abuse cases in that it refers to "Crimen Sollicitationis" which includes "Crimen Pessimum" as discussed in full above.

Art. I. "Included under the pontifical secret are:

Art I (4) Extrajudicial denunciations received regarding delicts against faith and against morals, and regarding delicts perpetrated against the sacrament of Penance; likewise the trial and decision which pertain to those denunciations, with due regard for the right of the one who has been reported to the authorities to know of the denunciation, if such knowledge is necessary for his own defense. However, it will be permissible to make known the name of the denouncer only when it seems opportune to the authorities that the denounced person and the denouncer appear together in the trial; ...


\(^{41}\) Secretariat of State, Rescript from an Audience of the Holy Father II 4 febbraio, by which the *Regolamento Generale della Curia Romana* is made public, April 30, 1999, 91 (1999) 646: "With particular care, the pontifical secret will be observed, according the norm of the Instruction *Secreta continere* of February 4", art. 36 § 2 1974."
Art III (2) is highly significant. The Latin version reads:

"Art III (2) Si violatio ad forum externum delata fuerit, qui accusatur violationis secreti iudicabitur a peculiari quadam Commissione, quae constituetur e Cardinali Dicasterio competenti Praeposito, vel, si is desit, ex 92 Acta Apostolicae Sedis - Commentarium Officiale Officii moderatore ad quem spectat; haec Commissio congruas poenas irrogabit, pro gravitate delicti eiusve damni." 42

This can be translated as:

"If the violation relates to the making of a report to an external forum, the one who is accused of violating the secret will be judged by a special Commission, which will be constituted by the cardinal president of the competent dicastery, and in his absence, by the chairman of the competent office as per Art 92 of the Apostolic Constitution; this commission will inflict punishment proportionate to the gravity of the offense and the damage caused".

This provision expressly refers to "making a report to an external forum". It is submitted that the reporting of child sexual abuse to civil authorities would fall under this provision and could attract punishment for violation of the Pontifical Secret.

This provision has not been repealed and remains in force today preventing the reporting of child sexual abuse to external authorities. Although there have been statements from the Vatican alluding to the need to co-operate with authorities, no provision exists for reporting of child sexual abuse to civil authorities in Canon Law. In 2011, the United States Conference of Catholic

Bishops enacted a "Charter for the Protection of Children and Young People"\(^{43}\), which specifically provides for reporting of child sexual abuse to the civil authorities and for the determination of damages by an external forum. The full text of the Charter is attached as ANNEXURE 2011 A.

The General Regulations of the Roman Curia provide for an "Oath of Fidelity and Secrecy" (Appendix II) sworn to by all members of the Roman Curia.

The General Regulations also provide for a "Promise of Secrecy" (Appendix III) sworn to by anyone delegated by members of the Roman Curia (Art 6(2)) as follows:

"I...promise before God to be faithful to the Supreme Pontiff and his legitimate successors and strictly observe the professional secrecy: I promise to diligently fulfil all my duties and observe the orders that I will be given by my superiors" Appendix III of the General Regulations

In addition the General Regulations refer to the "Duties of Staff" in Title VI and in reference to both clergy and lay employees Art 38 provides that they are "obliged to strictly observe professional secrecy. They cannot therefore give to those who do not have the right, information about acts or reports of which they have knowledge by reason of their work."

Art 38(2) provides that "The pontifical secret will be observed with special care in accordance with the Instruction Secreta Continere of 4 February 1974 (cf AAS LXVI (1974) pp 89-92.

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The penalty for "violation of professional secrecy" is "suspension from office" in accordance with Art 69 of the General Regulations.

Art 38(2). Secrecy in matters of "gravity" binding anyone who provides Counsel" in the performance of a juridical act. Can 127 s3 "All whose consent or counsel is required (to a juridical act) are obliged to offer their opinion sincerely and, if the gravity of the affair requires it, to observe secrecy diligently; moreover, the superior can insist upon this obligation."

As similar provision for secrecy in matters of "gravity" is included in the Code of Canon Law, for those who "consent" to a juridical act or provide counsel:

Can 127(3) "All whose consent or counsel is required (to a juridical act) are obliged to offer their opinion sincerely and, if the gravity of the affair requires it, to observe secrecy diligently; moreover, the superior can insist upon this obligation."

A juridical act in this context is a decision by decree of the Bishop or by a judge in the administration of justice. This would include a punishment imposed on an accused as well as an agreement for payment of damages. This means anyone who accepted payment of settlement for damages in "matters of gravity" would be sworn to secrecy as would their advisers.

Secrecy provisions extend to those employed in dioceses by virtue of Can 471 binding anyone who holds office in the diocesan curia. All those who are admitted to offices in the diocesan curia must:

"Can 471 (1) promise to fulfil their function faithfully according to the manner determined by law or by the bishop;

(2) observe secrecy within the limits and according to the manner determined by law or by the bishop."
There are specific secrecy provisions in the Code of Canon Law pertaining to delicts, "so that the good name of anyone is not endangered" during the investigation stage of the process.

Can. 1717(1). Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

(2). Care must be taken so that the good name of anyone is not endangered from this investigation.

(3). The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later."

It is submitted that this direction for secrecy would reduce the chances of additional victims being identified and thereby contributed to the occurrence of child sexual abuse.

The Code provides that "the special norms for cases which pertain to the public good" need to be followed in addition to the Code (Can1728 (1)). Thus the Norms that applied the Pontifical Secret in 2001 (Art 25 and 2003 and again in 2010 (Art 30) are specifically applied.

Can. 1728 (1): "Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

Judges in penal cases are bound by secrecy (Can 1455(1)).
Can. 1455 (1) Judges and tribunal personnel are always bound to observe secrecy of office in a penal trial, as well as in a contentious trial if the revelation of some procedural act could bring disadvantage to the parties.

(2) They are also always bound to observe secrecy concerning the discussion among the judges in a collegiate tribunal before the sentence is passed and concerning the various votes and opinions expressed there, without prejudice to the prescript of can. 1609, §4.

Witnesses, their representatives and others associated with a trial are also bound by secrecy in terms of Can 1455(3).

Can 1455 (3). Whenever the nature of the case or the proofs is such that disclosure of the acts or proofs will endanger the reputation of others, provide opportunity for discord, or give rise to scandal or some other disadvantage, the judge can bind the witnesses, the experts, the parties, and their advocates or procurators by oath to observe secrecy.

Secrecy provided for by “the special norms for cases which pertain to the public good” Can1728 (1)

Can. 1728 (1) “Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.”

Secrecy in cases that “will endanger the reputation of others” Can 1455(3)

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in a contentious trial if the revelation of some procedural act could bring disadvantage to the parties.

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§3. Whenever the nature of the case or the proofs is such that disclosure of the acts or proofs will endanger the reputation of others, provide opportunity for discord, or give rise to scandal or some other disadvantage, the judge can bind the witnesses, the experts, the parties, and their advocates or procurators by oath to observe secrecy”.

Secrecy for those who “fear that from their own testimony ill repute...will befall them” Can1548 s1 (2)

Exemption from telling the truth:

Can. 1548(1). “When the judge questions witnesses legitimately, they must tell the truth.

§2. Without prejudice to the prescript of Can. 1550 (2), n. 2, the following are exempted from the obligation to respond:

1/ clerics regarding what has been made known to them by reason of sacred ministry; civil officials, physicians, midwives, advocates, notaries, and others bound by professional secrecy even by reason of having given advice, regarding those matters subject to this secrecy;

2/ those who fear that from their own testimony ill repute, dangerous hardships, or other grave evils will befall them, their spouses, or persons related to them by consanguinity or affinity".
SECRET ARCHIVES

As discussed above the 1922(1962) Norms provided all documents relating to these cases had to be kept in the diocesan secret archives. This provision was repeated throughout and remains in the current 2010 Norms. The secret archives were provided for in the 1917 Code of Canon Law and in again in the revised 1983 Code of Canon Law. In 1917 the secret archive was to be kept by the Bishop, locked with two different keys one held by the Bishop and the other by the Vicar General (Can 379(3)). The 1983 Code also provides for the secret archive but only the Bishop keeps the key (Can 489(3)).

The 1983 provisions are as follows:

Can 489 s1 “In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.

Can 489 s2 Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.

Can 490 s1 Only the Bishop is to have the key to the secret archive.”

The 1983 Code of Canon Law also provides that the documents relating to these matters should be kept in these secret archives. This is as follows:

Can 1719 “The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.”
2016

On 4 June 2016 Pope Francis issued a Decree (ANNEURE 2016 A and B hereto) which aims to punish Bishops who negligently cause serious "physical, moral or spiritual" harm to people or the community.

Art 1 provides as follows (Google translation from Latin Text):

Art 1(1) "The Diocesan Bishop or Eparch, or who, even if on a temporary basis, has the responsibility of a particular Church, or another of the faithful community equivalent to it in accordance with can. 368 CIC and can. 313 CCEO, can be legitimately removed from office, if have, through negligence, place or omitted acts have caused serious harm to others, whether it be individuals, whether it is of a community as a whole. The damage may be physical, moral, or spiritual balance"

Although the media announcements at the time gave reason to believe that this would relate to all cases where Bishops had failed to act to protect children and where they had negligently acted or failed to act to punish offenders, it sadly does not seem to be the case.

As has been seen in the analysis of previous Canon Law, this Decree qualifies and limits the punishment it purports to decree.

Article 2 states:

(2)"The Diocesan Bishop or Eparch can be removed only if objectively he has missed in a very serious diligence that is required by his pastoral office, even without serious moral fault of his own.(emphasis added)

It is not possible to predict how this will be interpreted, save that it qualifies the nature of the act or omission.

Furthermore, any act or omission by the Bishop which complies with the Canon Law as discussed above could not be seen as negligent. There is nothing “required in his pastoral office” that would expect a Bishop to report the matter to the police or act any differently than the Bishops have done in the past.

Similarly the translation of Art 3 is confusing:

(3) In the case of abuse of minors or vulnerable adults it is sufficient that the lack of care is serious”.

The official English translation of the explanation accompanying the Decree written by the Congregation of the Congregation of the Faith (CDF) (ANNEXURE 2016 A) states:

“The diocesan bishop or eparch, or he who even on a temporary basis is responsible for a particular Church, or another community of faithful, may legitimately be removed from office for acts committed or omitted by negligence, resulting in the provocation of grave damage to others, either physical persons or a community as a whole. The damage may be physical, moral, spiritual or patrimonial. The diocesan bishop or eparch may be removed from office only if he may be shown objectively to have lacked the diligence required for his pastoral office, even without grave moral culpability on his part. In the case of abuse of minors or vulnerable adults, it is sufficient for the lack of diligence to be grave. Major superiors of religious institutes and societies of apostolic life of Pontifical right are to be considered equivalent to the diocesan bishop or eparch”. (emphasis added)

It is submitted that a grave “lack of diligence” will only be found if it can be proved that the Bishop had failed the test for negligence or “culpa”. The test for negligence in Roman Law is that the person acted or failed to act with the duty of care expected of “diligens paterfamilias” (diligent father of a family). That the person foresaw the possibility of harm but failed to act in a manner that would prevent the harm. Pope Francis in the preamble to the Decree refers to the duty of care of “a loving mother” as standard of care for the church over
children. This may be the standard provided for in future but it certainly was not the standard set by the past or current Canon Law.

It is submitted that the intention in the preamble of the 2016 Decree will not translate into strong action against Bishops who will be able to show that they acted within the provisions of the Canon Law and were therefore “diligent” in the execution of their “pastoral office”, even if subsequent harm was caused.

There is also no provision in the Decree for it to have retrospective effect. It is submitted that, despite the hype, no real action will be taken against Bishops who failed children in the past.
CONCLUSION

It is submitted that new Caon Law needs to enacted. This must provide a universal standard for the protection for children from sexual abuse by clergy and religious. The Canon Law that is required need to follow the provisions set by Art 4 of the United States Conference of Catholic Bishops' Charter adopted in 2011\(^{45}\), namely:

**ARTICLE 4.**

"Dioceses/eparchies are to report an allegation of sexual abuse of a person who is a minor to the public authorities. Dioceses/eparchies are to comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and cooperate in their investigation in accord with the law of the jurisdiction in question. Dioceses/eparchies are to cooperate with public authorities about reporting cases even when the person is no longer a minor. In every instance, dioceses/eparchies are to advise victims of their right to make a report to public authorities and support this right."

It is essential that the Catholic Church enacts a similar provision which must be universally applicable and which must override all and any of the Norms and Canon Laws which contradict it, including the secrecy provisions.

Until this is done any response by the Catholic Church, such as the 2016 Decree\(^{46}\) to dismiss "negligent Bishops" will be ineffectual and hypocritical.


ANNEXURE 1962 A: INSTRUCTION FROM 1962 – COPY OF ORIGINAL DOCUMENT CIRCULATED AT VATICAN II

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE
FOR ALL PATRIARCHS, ARCHBISHOPS, BISHOPS AND OTHER DIOCESAN ORDINARIES “EVEN OF THE ORIENTAL RITE”

INSTRUCTION
ON THE MANNER OF PROCEEDING IN CASES OF SOLICITATION

The Vatican Press, 1962

CONFIDENTIAL

On the manner of proceeding in cases of the crime of solicitation.

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacrum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; it is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type, that they, as soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunals. However, because of particular and serious reasons, according to the norm of Canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore be able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (Cfr. Canon 1561).
3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignitaries), those who succeed them in power in the meanwhile by the prescription of law or from approved constitutions (Canon 198, § 1)] [This norm does not apply], however, to the vicar general, except from his [having been] specially delegated.

4. The Ordinary of the place in these cases is the judge even for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, even having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age. But [they may not] commit such cases on an habitual basis or for the entire group of these cases, but must delegate as often as needed (tortia quoties) for cases taken singly and through writing, saving the prescription of Canon 1613, § 1.

6. Although, as a rule, a single judge, by reason of its secrecy, is prescribed for cases of this type, it is not forbidden, however, for the Ordinary in the more difficult cases to approve one or two assessors and counsellors, selected from the synodal judges (Canon 1575); or even to three judges, likewise chosen from the synodal judges, to hand over the case to the judges to be handled with the mandate of proceeding collegially according to the norm of Canon 1577.

7. The promoter of justice, the defender of the accused and the notary, priests who are fittingly serious, of mature age, of integrity, doctors in canon law or otherwise skilled [in canon law] and worthy because of their zeal for justice (Canon 1589), and not found to be at any disadvantage toward the accused, which Canon 1611 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) [can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case (tortia quoties). Nor is the accused prohibited from proposing a defender seen as favorabili to him (Canon 1555), who, however, is to be a priest and approved by the Ordinary.

8. Sometimes (this refers to his own location), the intervention [of the promoter of justice] is required, and, in the case where he has not been cited, unless by chance even if not cited he is still present [at the process], the acts must be considered [totally] invalid. But, if, however,
avoidance, moreover, by those who are set over those involved in these cases, lest anyone be admitted to a knowledge of the matters from helpers, unless in some way a party or an office to be performed by that person necessarily requires a knowledge of these matters.

13. The oath of keeping the secret must be given in these cases also by the accusers or those denouncing [the priest] and the witnesses. To none of these, however, is there subject to a censure, unless by chance toward these same persons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excussionis) [of such] by act. The accused, however, should be most seriously warned that even he, with all [the others], especially when he observes the secret with his defender, is under the penalty of suspension a divinis in case of a transgression to be incurred ipso facto.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-80-82 and 1680 respectively.

**Title Number One**

**The First Knowledge of the Crime**

15. Since the crime of solicitation takes place in rather rare decisions, lest it remain occult and unpunished and always with inestimable detriment to souls, it was necessary for the one person, as for many persons, conscious of that [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16. "According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV Sacramentum Poenitentiae of June 1, 1941, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office, and the confessor must, burdened seriously in conscience, to warn the penitent of this duty." (Canon 904)

17. Moreover, according to the mind of Canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation urges as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18. "The faithful, however, who knowingly have disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved latae sententiae, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would so" (Can. 2368, § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then either by
he has been legitimately cited and is not present at some parts of the Acts, the Acts indeed are valid, but afterwards [those Acts] will be totally subject to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1586, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense from the presence of the notary, though because of a reasonable excuse in the acceptance, as will be noted in its own place, of the denunciations and also in the expenditure of the degrees of attention or care expected of a notary in a given situation, as they say, in pursuing and in examining the witnesses induced [into the case].

10. Minor helpers are to be used for nothing unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; always, however, they are to be of proved faithfulness and mature without exception. But it must be noted that, if, when necessity demands it, they can be nominated to accept certain acts, even if they are non-subjects living in another territory or the Ordinary of that territory [can] be interrogated (Can. 1570, § 2), observing, of course, all of the cautions treated as above and in Canon 1413.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication laesa sententiae, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound ipso jure or by the force of their own proper duty. The other helpers from the power of their oath which they must always take before they undertake their duties. And these, then, are delegated, are interpolated, and are informed in their absence by means of the precept in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforesaid causation.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be used (by those, obviously, who will use it habitually, once for all; by those, however, who are deputed only for some determined place of business or case, as often as required (noties quoting), in the presence of the ordinary or his delegate done upon the Gospels of God (also by priests) and not otherwise and with the added promise of fulfilling faithfully their duty, to which, however, the excommunication, mentioned above, is not extended. There must be an
Letter or by another person favorable to him should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

20. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable (Cfr. Can. 1942, § 2).

21. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

22. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however, is it to be extracted from him whether he had consented to the solicitation. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire instrument [of the testimony] should be read in a clear and distinct voice to the one denouncing [the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with his still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cfr. n. 9), of the notary. And before he is dismissed, there should be presented to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommuniation reserved to the Ordinary or to the Holy See (Cfr. n. 13).

24. Even if, sometimes, for grave obstructing reasons always to be expressed in the acts, this ordinary practice cannot be observed, it is permitted that one or the other form from the prescribed forms, saving however the substance. If the oath cannot be taken upon the Holy Gospels, it can be given with some notion and also with words only. If the instrument of denunciation cannot be put into writing in an uninterrupted fashion, it can be written down at a more opportune time and place by the interviewer (the recipient of the denunciation) and then...
confirmed and signed by the person who is denouncing in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denouncer, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal seemingly be violated, and on a day convenient to each party and in the confessional itself, it is to be read or given to read, and is confirmed with an oath and with one's proper signature or the sign of the cross (unless to do this is in every way impossible). Concerning all of these things, as has been said in the number above, an express mention must always be made in the Acts.

26. Still, if an entirely serious case also that is also clearly extraordinary urges, then the denunciation can also be done through a written account by the one denouncing, as long as, however, it is before the Ordinary of the place or his delegate and notary, if he is present (cfr. n. 9), and afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Any denunciation once accepted, the Ordinary is bound most gravely to communicate this as soon as possible to the promoter of justice who must declare in writing, whether the specific crime of solicitation in the first sense is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promoter of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should use his right and duty according to the nature and gravity of the things that have been denounced. If, however, he believed that they were present, then he should proceed to the inquisition (Cfr. Can. 1942, § 1).
Chapter I - The Inquisition

29. When the knowledge concerning the crime of solicitation is known first through the denunciations, a special inquisition must be pursued "so that it may become clear whether and on what foundation the accusation rests" (Canon 1939, § 1); and this by the fact or even more so, since a crime of this type, as has already been stated above, is usually done in secret, and direct testimonies concerning solicitation, especially from the hurt party, can only rarely be obtained.

Once the inquisition is open, and if the denounced priest is a religious, the Ordinary can prevent him from being transferred before the conclusion of the process.

For the most part, there are three areas which such an inquisition must cover, and they are:

- a) the past history of the denounced person;
- b) the consistency of the denunciation;
- c) other persons solicited by the same confessor or, however conscious of the crime, whether any of them, as not rarely happens, have been persuaded [to make the denunciation] by those denouncing.

30. Therefore, as to what pertains to the first letter (a), the Ordinary at the same time as he has accepted some denunciation of the crime of solicitation, if the one denounced, whether from the secular clergy or is a regular (cfr. n. 4), with residence in his territory, should try to find out from the archives whether other accusations against him are on record, even of a different type; and, if by chance he had previously been living in other territories, he should seek, even from the respective Ordinarys, and, if he is a religious, also from the regular superiors, whether they have anything which can aggravate the situation in any way. But he will accept these documents, referring to them in the Acts as accumulated together whether for a judgment, by reason of pertinent (continentiae) or association of causes (connexio) (cfr. Canon 1567), and thus all the matters will be brought forward together; or for the establishment and consideration of an aggravating circumstance of recidivism according to the sense of Canon 2138.

31. If the whole matter concerns a denounced person who does not have residence in his territory, the Ordinary should transmit all the acts to the Ordinary of the one who has been denounced, or, if he does not know who this might be, he will transmit all the acts to the Supreme Holy Congregation of the Holy Office, reserving the right, in the meanwhile, to deny to the denounced priest the faculty of exercising the ecclesiastical ministries in his own diocese or of revoking then already by chance conceded to him, in the event that he approaches [the Ordinary for these faculties] or returns (to the diocese of the Ordinary).
32. As to what pertains to the second letter (b), the importance of each denunciation, of their qualities and of the circumstances must be weighed seriously and accurately so that it is evident how they themselves merit belief. It is not sufficient that [this be done] in any way whatsoever, but it is necessary that this become known by means of an established and a judicial form; this customarily is signified in the Tribunal of the Holy Office by the phrase "diligentiae parasae" [to undertake all the required formalities].

33. In order to arrive at this purpose [of undertaking all the required formalities], as soon as the Ordinary shall have accepted any denunciation of the crime of solicitation, either personally or through a priest, he will summon, either personally or through a priest specially delegated to do so, two witnesses (he summons them separately and with appropriate circumspection) and with appropriate circumspection) two witnesses, in so far as it is possible, from the ranks of the ecclesiastics. But it is far better, above any exception, to summon persons, who are familiar with both the one denounced and the one denouncing. These persons, with the notary present (cfr. n. 9), who is to put the interrogations and responses in writing, [are put] under the sanctity of an oath to tell the truth and to observe its secret nature, accompanied by the threat, if it seems necessary, of excommunication reserved to the Ordinary of the place or to the Holy Sea (cfr. n. 13). He will interrogate them (Formula G), concerning the life, morals and public reputation both of the one denounced and of the one denouncing. [They will be asked] whether they think that the one denouncing is worthy of credence; or whether, on the other hand, that person is capable of lying, of calumniating and of perjuring himself; and whether these persons know whether there has ever been any case of hatred, grudge or reason for enmity between the one denouncing and the denounced person.

34. If the denunciations are many in number, there is nothing to prevent the same [character] witnesses to be used for all or [to use different] witnesses, always being careful to have a double testimony as to the denounced and any denunciator.

35. If two witnesses cannot be found where each individual knows both the denounced and the denunciator, or if they cannot be interrogated at the same time without the danger of scandal or without detriment to the good name concerning him, then arrangements to be made, so that two persons, by means of a divided [dimidiatae] [testimony], namely, interrogate two witnesses only about the denounced and another two only about the individual denouncers. In this case, however, it will be necessary to inquire elsewhere as to whether hatred, enmity or any other human disaffection against the denounced [priest] was the case.

36. If not even the divided efforts cannot be pursued, or because capable witnesses cannot be found or because scandal or detriment has to be feared and rightly so, there is the possibility of substituting, cautiously, however, and prudently, [for the witnesses] with extrajudicial information about the denounced and the ones denouncing and their mutual personal relationships, with [all of this] put into writing; or [the same results can] come about also through supportive proofs which corroborate or weaken the accusation.
37. This [article], then, pertains to the third letter (c). If in the 
denunciations, which happens not rarely, some persons are influenced, 
perhaps also solicited, or others who can [simply] bring forward testimony 
concerning for some type of reason. All of these people must be examined 
severally (that is, separately) according to the judiciary formula (below.) 
(Formula 1). First of all, they must be interrogated through general 
matters, and then, by degrees, as the matter evolves, arriving at the 
particular, whether and how they had really been solicited, or did they 
know or hear that other persons had been solicited (Instruction of the Holy 
Office, February 20, 1567, n. 9).

38. The greatest circumspection must be used in inviting these persons to 
this interview; for it will not always be opportune to bring them to a 
public place such as the chancery, especially if these are girls who are 
being subjected to the examination, married women, or those who are 
domestics. If those to be examined live either in monasteries, in hospitals 
or in pious homes for girls, then, the particular [persons] should be 
summoned with great diligence and on different days according to 
circumstances (Instruction of the Holy Office, July 20, 1890).

39. What was said above about the way to receive the denunciations, will 
also be applied, changing what has to be changed (mutatis mutandis), to the 
examination of persons who have been brought forward.

40. [If the examination of these persons, who corroborate each other by 
positive evidence, and because of which examinations there exists 
therefore] either an arraigned priest or another person weighed down [with 
some accusations], then the denunciations that are true and strictly 
speaking denunciations and all the rest of the information about these 
[denunciations] are pursued regarding the qualification of the crime, 
regarding the resumption of the preceding acts and of the remission of the 
efforts to be taken in accordance with what is prescribed above.

41. Once, however, all these matters are taken care of, the Ordinary is 
to communicate the Acts to the promoter of justice, who will see now whether 
all the procedures [actions] have been performed correctly or not. And, if he 
thinks that there is nothing against their acceptance, he should declare the 
Inquisitorial process closed.

Chapter II: Canonical Directives and the Admonition of the Accused.

42. When the inquisitorial process has been closed, the Ordinary, having 
heard the promoter of justice, should proceed as follows, namely:

a) if it is evident that the denunciation totally lacks a foundation, he 
should order this to be declared in the Acts, and the documents of the 
accusation should be destroyed;

b) if the indications of the crime are vague and indeterminate or 
uncertain, he should order that the Acts be put into the archives, to be 
taken up again if something else happens in the future;

c) if, however, there are indications of a crime serious enough but not 
yet sufficient to institute an accusatorial process, as especially in the
case where only one or two denunciations are had, where, indeed, [the regular process was followed] with diligence but were not corroborated by any or insufficient proofs (cfr. n. 36), or even many [proofs] but with uncertain procedures or procedures that are deficient, he should order that the accused be admonished according to the different [types of] cases (Formula M) the first or second [time?], paternally, seriously or most seriously according to the norm of Canon 2307, adding, if necessary, an explicit threat of the trial process, should some other new accusation is laid upon [the accused]; the Acts, as above, should be kept in the archives and in meanwhile a check should be kept on the morals of the accused (Canon 1946, § 2, n. 2):

d) If then certain or at last probable arguments to institute the accusation are present, he should order the accused to be cited and be subjected to the matters [which are prescribed for this trial].

43. The admonition, concerning which treatment is made in the preceding number with the letter (c), is always to be given secretly; it can be done, however, through a letter or by an intermediary, but in each case, it must be clear from some document to be kept in the secret archives of the Curia (cfr. Canon 2309, § 1 and 5), adding the information about the manner in which the accused accepted it.

44. If, after the first admonition, other accusations against the same accused take place concerning solicitations, preceding the admonition itself, the Ordinary should see, according to his own choice and conscience, whether the first admonition should be considered sufficient or whether he should proceed to a new admonition or even to further measures (Ibidem, § 6).

45. It is the right of the Promoter of Justice to appeal and to have recourse for a accused against the canonical prescriptions of this kind it to the Holy Congregation of the Holy Office within ten ten days from the dissemination or intimation. In this case, the Acts of the case will have to be transmitted to the same Holy Congregation according to the pre-prescription of Canon 1890.

46. These actions, however, even if put into effect, do not extinguish the penal action and therefore, when other accusations by chance take place, a method will be followed concerning those matters which also have given cause to the said canonical instructions.

Chapter III - The decrees for the accused persons

47. When once there is a sufficiency to institute an accusation, as was said above in number 42 (d), arguments should be made openly, and the Ordinary, having heard the promoter of justice and having observed everything, in so far as the peculiar nature of these cases allows, which is stated concerning the citation and denunciation of judicial acts in Book IV, Title VI, Chapter II, of the code, shall issue a decree (Formula O) concerning the accused in the presence of the Ordinary or before a judge delegated by himself (cfr. n. 5), citing [him] for crimes introduced and brought against him, which in the forum of the Holy Office are said in
case where only one or two denunciations are had, where, indeed, [the regular process was followed] with diligence but were not corroborated by any or insufficient proofs (cfr. n. 36), or even many [proofs] but with uncertain procedures or procedures that are deficient, he should order that the accused be admonished according to the different [types of] cases (Formula I) the first or second [time?], paternaly, seriously or most seriously according to the norm of Canon 2307, adding, if necessary, an explicit threat of the trial process, should some other new accusation is laid upon [the accused]; the Acts, as above, should be kept in the archives and in meanwhile a check should be kept on the morals of the accused (Canon 1946, § 2, n. 2):

d) If then certain or at last probable arguments to institute the accusation are present, he should order the accused to be cited and be subjected to the matters (which are prescribed for this trial).

43. The admonition, concerning which treatment is made in the preceding number with the latter (c), is always to be given secretly; it can be done, however, through a letter or by an intermediary, but in each case, it must be clear from some document to be kept in the secret archives of the Curia (cfr. Canon 2309, § 1 and 5), adding the information about the manner in which the accused accepted it.

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45. It is the right of the Promoter of Justice to appeal and to have recourse for a accused against the canonical prescriptions of this kind to the Holy Congregation of the Holy Office within ten days from the dissemination or information. In this case, the Acts of the case with have to be transmitted to the same Holy Congregation according to the pre-prescription of Canon 1896.

46. These actions, however, even if put into effect, do not extinguish the penal action, and therefore, when other accusations by chance take place, a method will be followed concerning those matters which also have given cause to the said canonical instructions.

Chapter III - The decrees for the accused persons

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The judge should paternally and gently exhort the accused, who has now been cited, when he appears, and before the indictments are formally begun, to confession, and, when he has consented to these exhortations, the judge, having summoned the notary or even, if he has found it more opportune (cfr. n. 9) without his intervention, can receive the confession.

49. In this case, if the confession is found corroborated by the Acts and substantially complete, a vow first having been taken, the Promoter of Justice puts the case in writing, omitting the other formalities (See below, in Chapter IV), and he will be able to conclude [all of this] with a definitive decision, having given, however, to the accused the option of accepting the decision itself or of petitioning to have the regular and complete process carried out to the end.

50. If, however, on the other hand, the accused has denied the crime, or has made a confession that is not substantially integral, or even has summarily refused the decision in view of his confession, the judge, with the notary present, should read him the decree by which he declares, concerning which paragraph 47 speaks, and the deliberations are then opened.

51. The trial opened, the judge can, having heard the Promoter of Justice according to the mind of Canon 1956, suspend the accused respondent either from exercising any sacred ministry at all or only from hearing the sacramental confessions of the faithful up until the time of the judgment. If, however, by chance he thinks that [the accused] can impose fear upon the witnesses or secretly instigate them [to thwart the trial] or in any way impede the course of justice, he can also, having also heard the promoter of justice, order that he go to a predefined location and remain there under special vigilance (Canon 1958). And, on the other hand, [however], each decree of this type is not given a remedy in law (Canon 1958).

52. These things having been taken care of, there should be a procedure to present the accusation to the person accused, according to formula P, having cautiously and most diligently made sure that the persons of the accused and especially of those denouncing him be not revealed, and, on the part of the accused, that he in no way violate the sacramental seal. Now if something in the surge of speech slips out which seems to favor of either a direct or indirect violation of the seal, the judge should not permit this to be referred to in the Acts by the notary; and if, by chance, it has been inconsiderately [put into the Acts], he should order, as soon as he notices it, to be completely deleted. In every way the judge is to remember that it is never right for him to bind the accused by an oath to tell the truth (Cfr. Canon 1744).

53. The indictment of the accused having been completed in all matters and the Acts having been seen and approved by the Promoter of Justice, the judge is to issue a decree concerning the conclusion of the case (Canon 1869), and, if by chance he is a delegated judge, he should transmit all the papers of the proceedings to the Ordinary.
54. If it happens, however, that the accused remains conscious, or, for some grave reasons the indictments cannot be pursued in the diocesan Curia, the Ordinary, saving to himself the right of suspending the accused a divinis, should defer the entire case to the Holy Office.

Chapter IV - The Discussion of the Case, the Definitive Decision, and the Appeal

55. The Ordinary, having received the Acts, unless he wishes himself to proceed to the definitive decision, should delegate the judge (cfr. n. 5), another one, in so far as it can be done, different from the one who conducted the inquisition or the indictment (cfr. Canon 1941, § 1). The judge, however, whoever he is, whether the Ordinary or his delegate, should designate, according to his prudent decision a space of time for the defender to prepare a defense and to tender this in a double copy, one copy to be given to the judge himself and the other copy to the Promoter of Justice (cfr. Canons 1862-63-64). However, the promoter of justice, within a time period likewise previously established by the judge, should tender in writing his own inquiry (requistorium), as they now call it.

56. Still, a congruent time having been interposed (Canon 1870), the judge, according to his conscience informed from the Acts and from the proofs (Canon 1869), will pronounce a definitive decision, either a condemnatory decision, if he is certain of the crime, an acquittal, if he is certain of his innocence; or an abandonment of the charges, if he is invincibly doubtful because of the lack of proofs.

57. The decision is rendered according to the respective formulas connected to this Instruction and will have been put in writing, with the addition of an executory decree (Canon 1918). First of all, the Promoter of Justice having been notified beforehand, the decision must be solemnly made known to the accused, who has been cited for this by the judge who is presiding at the Tribunal, with the notary present. If, however, the accused, rejecting the citation, has not appeared, the intimation of the decision should be made through letter, having obtained exact testimony of its reception through the public post office.

58. Both the accused, if he thinks that he has been [wrongly treated], and the promoter of justice have the right of appealing from this decision to the Supreme Tribunal of the Holy Office, according to the prescription of Canon 1872 and following within ten days from the solemn notification of the same; and the appeal of this type has the effect of suspending the decision [suspensive], but not so, if it is given (Cfr. n. 51) for a suspension from the hearing ++19++of sacramental confessions or from exercising a sacred ministry.

59. The appeal having been made, the judge must transmit an authentic copy or the original itself of all the Acts of the case to the Holy Office, as quickly as it can be done, adding information as necessary or as he has judged to be opportune (Canon 1890).

60. As for the complaint, then, of nullity, as sometimes might occur, let those details prescribed by Canons 1892-97 be observed to the last detail.
However, what pertains to the execution of the decision, those prescriptions should also be observed, according to the nature of these cases, as is found in Canons 1920-74.

TITLE NUMBER THREE

PENALTIES

61. "He who has committed the crime of solicitation..., should be suspended from the celebration of Mass and from the hearing of sacramental confessions or even, according to the gravity of the delict, should be declared incapable of accepting them. He should be deprived of all benefices and dignities, of his active and passive voice, and be declared incapable for all these [honors and capacities], and in the more grievous cases also be subjected to reduction [to the lay state]. Thus states the Code in Canon 2368, § 1.

62. For a correct and practical application of this canon, in penalties decreed against priests convicted of the crime of solicitation with an equal regard for the mind of Canon 2218, § 1, these matters, especially for estimating the gravity of the crime, should be kept before one's eyes, namely: the number of persons solicited and their condition, as, for example, if they are minors in age or especially consecrated through religious vows to God; the form of solicitation, if perhaps, especially, it is joined with false teaching or false mysticism; the turpitude of the acts not only formal but also material and especially the connection of solicitation with other delicts; the length of the obscene conversation [between the parties involved]; the repetition of the crime, the recidivism after his admonition, and the obstinate malice of the solicitor.

63. To the greatest penalty of degradation, there can be added for a religious who is accused the reduction to the status of a lay-brother. This is only then imposed when, having weighed everything, it evidently appears that the accused, immersed in the depths of malice in the abuse of his sacred ministry, combined with the grave scandal that is harmful to the faithful and their souls, exists to such a degree of foolhardiness and habit, so that there is no hope, humanly speaking, or almost no hope, of his amendment that is evident any more.

64. On top of the penalties properly imposed, in order to obtain the effect of these penalties more fully and securely, there will be supplementary sanctions in cases of this type, namely:

a) Upon all accused persons judicially convicted there should be interposed congruous, to the degree of the faults, and salutary penances, not in substitution for the penalties properly speaking in the sense of Canon 2312, § 1, but as a complement [to them], and among these (cfr: Canon § 31) especially spiritual exercises for some days in some religious house to be performed with a suspension, during these times, from the celebration of Mass.
However, what pertains to the execution of the decision, those prescriptions should also be observed, according to the nature of these cases, as is found in Canons 1920-24.

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62. For a correct and practical application of this canon, in penalties decreed against priests convicted of the crime of solicitation with an equal regard for the mind of Canon 7218, § 1, these matters, especially for estimating the gravity of the crime, should be kept before one's eyes, namely: the number of persons solicited and their condition, as, for example, if they are minors in age or especially consecrated through religious vows to God; the form of solicitation, if perhaps, especially, it is joined with false teaching or false mysticism; the turpitude of the acts not only formal but also material and especially the connection of solicitation with other delicts; the length of the obscene conversation [between the parties involved]; the repetition of the crime, the recidivism after his admonition, and the obstinate malice of the solicitor.

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a) Upon all accused persons judicially convicted there should be interposed congruous, to the degree of the faults, and salutary penances, not in substitution for the penalties properly speaking in the sense of Canon 2312, § 1, but as a complement [to them], and among these (cfr. Canon 313) especially spiritual exercises for some days in some religious house to be performed with a suspension, during these times, from the celebration of Mass.
66. Whenever an Ordinary immediately accepts a denunciation of the crime of solicitation, he should not omit telling this to the Holy Office. And if by chance he treats of a priest whether secular or religious having residence in another territory, he should transmit at the same time (as already has been stated above, n. 31) to the Ordinary of the place, where the denounced actually is staying, or, if the address is not known, he should send to the Holy Office an authentic copy of the denunciation itself with the procedures, in the best manner possible, and with opportune information and declarations.

67. Any Ordinary who has proceeded correctly against some priest who is soliciting, should not omit informing the Holy Congregation of the Holy Office, and, if it is a matter in which a religious is involved, also the General Superior concerning the outcome of the case.

If any priests condemned of the crime of solicitation, or even only admonished, should transfer his residence to another territory, the Ordinary a quo should immediately warn the Ordinary ad quem of the things that preceded that person and of his juridical status.

69. If any priest suspended in a case of solicitation from hearing sacramental confessions but not from sacred preaching happens to go to another territory to preach, the Ordinary of this territory should be reminded by the prelate of the accused, whether secular or religious, that he cannot be utilized for hearing sacramental confessions.

70. All these official communications shall always be made under the secret of the Holy Office; and, since they concern the common good of the church to the greatest degree, the precept of doing these things obliges under serious sin [sub gravi].

++23++

TITLE V

THE WORST CRIME

71. By the name of the worst crime is understood at this point a signification of any obscene external deed, gravely sinful, in any perpetrator by a cleric or attempt with a person of his own sex.

72. Those things that have been stated concerning the crime of solicitation up to this point are also valid, changing only those things necessary to be changed by their very nature, for the worst crime, if someone by chance in the presence of the Ordinary of the place, concerning which (which may God prevent) happens to be accused, having accepted the obligation of the denunciation from the positive law of the Church, unless
perhaps it has been joined with the crime of solicitation in sacramental confession. In decreeing penalties, however, against delinquents of this type, besides those which are found spoken of above, they should also be kept before one's eyes (Canon 2359, § 2).

73. To have the worst crime, for the penal effects, one must do the equivalent of the following: any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex or with brute animals (bestiality).

74. Against accused clerics for these crimes, if they are exempt religious, and unless there takes place at the same time the crime of solicitation, even the regular superior can proceed, according to the holy canons and their proper constitutions, either in an administrative or a judicial manner. However, they must communicate the judicial decision pronounced as well as the administrative decision in the more serious cases to the Supreme Congregation of the Holy Office.

++24++

FROM THE AUDIENCE OF THE HOLY FATHER, MARCH 16, 1962

Our Most Holy Father John XXIII, in an audience granted to the most eminent Cardinal Secretary of the Holy Office on March 16, 1962, desired to approve and confirm this instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail.


Place of the seal A. Cardinal Ottaviani
++25++

APPENDIX

FORMULAS TO BE USED ACCORDING TO THE CIRCUMSTANCE
(omitting other matters which are found in various places among the authors)

++27++

FORMULA A

THE FORMULA FOR TAKING AN OATH TO EXERCISE ONE'S OFFICE FAITHFULLY AND TO OBSERVE THE SECRET OF THE HOLY OFFICE

In the name of the Lord.

I, appearing before... and touching the most holy Gospels of God placed before me, swear and promise to exercise my duty faithfully... Likewise, under the pain of excommunication later sentences into facts and to be incurred without any declaration, from which outside of the moment of death, I can be absolved by no one except by the Holy Father, excluding even the Cardinal of the Penitentiary, and, under other most serious penalties, at the disposition of the Supreme Pontiff to be inflicted upon me in the case of transgression, I promise sacredly, vow and swear, to observe inviolably the secret in all matters and details which will take place in exercising the aforesaid duty, excepting precisely those matters at the end and at the completion of this negotiation [or of these negotiations] which can be legitimately published. Further, I shall observe this secret absolutely and in every way with all who have no legitimate part in the treatment of this same matter [or, who are not constrained by the same sworn bond]; nor [will I ever], directly or indirectly, by means of a nod, or of a word, by writing, or in any other way and under whatever type of pretext, even for the most urgent and most serious cause [even] for the purpose of a greater good, commit anything against this fidelity to the secret, unless a particular faculty or dispensation has been expressly given to me by the Supreme Pontiff.

++28++

FORMULA B

Formula of Renunciation (Abjuration)

I, (name, family name, etc., of the one abjuring, which, if he is a religious, he should add his name, etc., which he used in the world), the son of (name of the father), being... years of age, and personally brought to trial [arrested], and, having genuflected before you (name, family name, qualites, etc., of the person who is to receive the abjuration), and having before me and touching with my hand the most holy Gospels and knowing that no one can be saved unless he believes what the Holy Catholic and Apostolic Roman Church holds, believes, preaches, professes and teaches, I confess and I am sorry that I have erred seriously against [that church] through the abuse and profanation of the sacrament of penance [and through the profession and doctrine of false dogma].
Now, sorrowful and penitent for the aforesaid [errors and heresies, persuaded about their falsity and of the truth of the Holy Catholic faith], I abjure all the same [errors I made] with a sincere heart and a real faith and I deceit [in the same way in general all other errors and heresies contrary to the Holy Catholic and Apostolic Roman Church] and at the same time humbly accept and promise faithfully to implement all the penances given to me by R.P.D. [The reverend dignitary]...that have already been imposed or will be disposed: and if I have not stood firmly in some matter despite these promises and oaths of mine (May God prevent this) I subject myself to all the penalties and castigations which have been stated and promulgated by the sacred canons and other general constitutions against delinquents [who have acted] in this way. Thus, may God help me and these Holy Gospels of His, which I touch with my hands.

..., the aforesaid have abjured, sworn, promised and obligated myself as above, and in testimony [of my good faith] in this matter I have signed with my hand this written promise of my abjuration ++29++which I have related orally with words [here is noted the place in which the abjuration has been made].

On this ...day of the month of... in the year...

Signature

After the absolution has been imparted, the one who received the abjuration and gave the absolution will put his signature here in the way it is noted in Formula C, which follows.

++30++

FORMULA C

The Formula of Absolution

Once the penitent, kneeling on both knees and having first touched the Holy Gospels of God, has read and signed the formula of abjuration, [the bishop or his delegate] absolves him, wearing at least the purple stole, and, while sitting, will recite the psalm Miserere or De Profundis with the Gloria Patri.

Then, standing, he will say:

Kyrie, eleison, Christe eleison, Kyrie, eleison.

Pater noster, secretly up to
And lead us not into temptation.
But deliver us from evil.
Save your people, Lord.
My God, they are hoping in you.
Lord, hear my prayer.
And let my cry come unto you.
The Lord be with you.
And with your spirit.
Let us pray

God, of whom it is proper always to have mercy and to treat with forbearance, we supplicantly beseech you, that the compassion of your holiness absolve with clemency this servant of yours whom the shackles of excommunication binds. Through Christ our Lord. Amen.

Then, again sitting down, he should absolve the penitent still kneeling before him with these words:

By the Apostolic authority which I exercise in this matter, I absolve you from the bond of excommunication, which you [perhaps] have incurred, and I restore you to the holy sacraments of the church, to the communion and unity of the faithful, in the Name of the Father and of the Son, and of the Holy Spirit. Amen.

With these acts, the one who has imparted the absolution should impose the salutary penances (for the most part a penance) of reciting determined prayers, of performing some pious pilgrimage, of accomplishing other works of piety, of observing a particular fast, or of dispensing alms in pious causes, etc.), and finally, then, the formula of abjuration and he signs below in this way:

[In the execution of the orders of R.P.D. (the reverend superior) (the name, etc. of the one delegating his) the aforesaid (name, etc., of the penitent) was administered by myself (the delegate) the abjuration concerning (e.g. formal, or grave or light) ... and the salutary penances in the usual form of the church, these on the day and year given above.

So be it. I (the signature of the person absolving the other)

[The delegate will transmit the formula (evidently this means the document itself) directly to him from whom he has received his delegation together with the instruction, and other letters also received, if he has any, keeping nothing at all for himself].

+++9+++

The Formula of Delegation to Receive a Denunciation

The day of the month of... in the year...

We...delegates with these letters...to receive [without the intervention of the notary], under the secret of the Holy Office and according to the attached instruction, the denunciation which the named person intends to make.

L. S. The signature of the Ordinary of the place who is delegating

(Formula 5 is connected to the letter).
The Manner of Receiving the Denunciation Pertaining Particularly to

[Note 1. Whatever words are included within the brackets are valid in the case in which the denunciation is received by the delegate, or, respectively, without the intervention of a notary.]

If the the delegate, however, having signified a serious reason, cannot observe this manner of receiving the denunciation, he should make recourse for some instruction from whom he has received the delegation.

The notary, if he is present, or he who is to receive the denunciation will begin with these words or in words similar to these:

On the... day of the month of... in the year...

On my own accord I personally appeared before the undersigned... [here should be written the name, the family name, etc. of that person who is to receive the denunciation]. Who, if the notary is not present, should write: before me the undersigned) taking place in... (here there are noted the place and the date where the person who is to receive the action (that is, the denunciation) lives) [Delegated specially only for this action by R.F.D. [the mother person delegating]... as [will be seen] from his letter directed [to me] and given under the date [let there be expressed on what day the letter itself was written] applying to the present situation] R.F.D. [here should be written the name, family name, the name of the father, the country of origin, that is, nativity], age, situation [no doubt the type of work the person does] and the house address of the person denouncing; and if this person is a religious, also the name the person was called by in the world) to whom, having made an oath to speak the truth, which he also having touched the Holy Gospels of God (of which he must touch with his hand, even a priest) it was explained as below, that is:

This person denouncing in ordinary language the must declare that he knows that this faculty was obtained from the ordinary of the place to receive without the intervention of the notary what he is about to relate to concrete his experience, and therefore because he cannot present himself to the Most Reverend Bishop concerning the just causes; then he must continue to narrate. In words, however, discreet and contracted (brief) what pertains to the solicitations made to him or what were the words, the writings, or the acts, accurately describing the place, time, occasion, times and singular circumstances, and whether in the act of confession either before or after the sacramental absolution these things took place. He must identify the confessional seat and the soliciting confessors himself, and it so far as he either does not know his name and family name or has forgotten it, he shall describe accurately the person of that man, noting distinctly all his characteristics, so that he might be recognized. As should here who receives the denunciation, that he should avoid interrogating the denouncing person whether he says consent to the objects deep in any way or refused. Since the witness is not bound to manifest his defense; that the one denouncing is expressly advised that he is not bound to manifest consent if perhaps he save it. With these words written as they as they are...
narrated, and, in so far as possible, in the same words of the one denouncing, what follows here, nor is anything more required.

The Interrogation: Whether he knows or has heard it said, that said N.N. (naming the person), the confessor, solicited other penitents to obscene things?

He responds: (If the response was affirmative, he will seek the same and family name of the persons and the source (cause) of the knowledge).

The Interrogation: Concerning the good name of the aforesaid confessor N.N. with you yourself as with others?

He responds:...

The Interrogation: Whether he made the declarations from hate or from love, and from envy or other general reasons, etc.

He responds: Correct (if he will say that he had denounced in order to exonerate his own conscience.)

If more than one month had passed since the solicitation, moreover, there should be added:

The Interrogation: Why then did you delay the denouncing of the aforesaid matters to your Ordinary and the exoneration of your conscience?

He responds: All of these matters having been absolved, there should read to the denouncing person everything which was given in writing, or, having given a just reason in writing, a just cause in writing, the instrument should be given to him so that he may read it in the presence of him who receives the denunciation; all of these matters proved and accepted, together with the corrections, additions and ensures, if there are some. He is invited to write his signature below, and, having given an account of his taking an oath to observe the secret, he should be dismissed.

All of these matters will be described in these words:

Having these matters and having accepted them, the one denouncing having been dismissed has sworn to observe the secret, again touching the Holy Gospels of God (he swears an oath upon the Gospel again); and in confirmation of what has been testified by word he writes his signature (or, if he cannot write, since he cannot write, as he asserted, (let the cause be noted), he adds the sign of the cross).

After the one denouncing here has signed or made the sign of the cross, the notary should sign, if he be present, in this way:

These are the Acts signed by myself, the notary (and if he has been assumed only for this act) assumed only for this act).

Finally, he signs who receives the denunciation.

L. X S.

If, however, the notary was not present, then the one who receives the denunciation signs in this way:
These Acts are signed by myself, N.N. (specially delegated only for this act by R.P.D. (the reverend delegating person) N.N.).

[The delegate then delivers the entire act directly to him from whom he has received the delegation together with the instruction and the letters received, keeping nothing for himself].

+++ FORMULA F +++

Formula of Delegation to Undertake the Investigation

A) TO UNDERTAKE THE COMPLETE INVESTIGATION

The ... day... of the month of ... in the year ... .

We... ask you that you will take the customary diligence in pursuing [this investigation] according to the affixed instruction about a false denunciation made by (for example, a woman or women) ................. against the priest ................. by interrogating [them] separately, formally and under oath to tell the truth and observe the secret, two witnesses, in so far as is possible from the ecclesiastical body, but more important than anything else [to interview somebody], who knows well both the denounced person and the one denouncing (or, if the denouncing are many in number, one and all denouncers). If you cannot find only two witnesses who know together the one denounced and each and every one denouncing, you will call many, as many, namely, as it will be fitting so that there will be a double testimony as to the denounced and each one denouncing. An authentic copy of the Acts, however, you shall transmit to us directly and in a safe way, together with the instruction and these letters, retaining nothing for yourself.  
L.X S. The Signature of the Ordinary of the place, the one delegating
(Foroula G is joined to the letter)

B) TO UNDERTAKE A PARTIAL INVESTIGATION

On the ... day of the month of ... in the year ... .

We... ask you to undertake the investigation according to the affixed instruction ............... by interrogating [them] separately, formally and under an oath to speak the truth and of observing the secret, two witnesses, in so far as is possible, from the group of ecclesiastics, as greater than any exception, who [ask the woman or women] they know [them] more closely.

You will transmit an authentic copy, however, of the acts to us directly and in a safe way, together with the instruction and this letter, keeping nothing for yourself.

L.X S. Signature of the delegating Ordinary of the place
(To the letter is joined Formula H)
Way of Undertaking the Entire Investigation (Note 1)

[Note: Whatever is included between the brackets is valid in the case in which the work is done by a delegate.]

On the...day of the month of...in the year of....

Having been summoned, this person personally came into the presence of myself, the undersigned, (let there be written the place and diocese where he is located) [for this act only specially delegated by R.P.B.... as [is evident] from the letters of the same person delegating directed and given to me on this date...(there should be expressed on what day the letter was written) binding to the present position].

N...N... (the name, family name and qualities of the Respondent witness) who, having reported his taking his oath to tell the truth, which he gave (even if a priest), having touched the holy Gospels of God, was by myself:

1. The Interrogation: whether he knew the priest N., N... (name, family name and qualities of the person denominated). He responded:.....(let there be written the language that the witnesses use and his response).

2. The Interrogation: what is the lifestyle of this priest, what are his morals, what is the opinion of people [about him]? He responded:.....

3. The Interrogation: Whether he knew N..., N... (name, family name, and qualities of the one denouncing, or, if there are many, of each one of them). He responded:.....

4. The Interrogation: What is his (each one of them) life-style, morals, and his opinion among the people? He responded:.....

5. The Interrogation: Whether he thought that he or she is worthy of faith or capable, on the other hand, of lying, calumniating in court and even of perjury? He responded:.....

6. The Interrogation: Whether he knows whether perhaps between him and the aforesaid priest there ever existed any reason for hate or enmity? He responded:.....

Then, have duly read the work and brought him to take the oath of observing the secret, which he took as above, he is dismissed and, before he goes away, signs in confirmation of what has been stated (or, if he cannot write, when he asserted that he cannot write (let the reason be noted), he makes the sign of the cross).
After the witness has signed here or made the sign of the cross, he says that he has received the testimony in this way:

These acts are signed by myself, S.N., (specifically delegated only for this act).

(The delegate then directly transmits the act to him from whom he has received delegation together with the instruction and the letter he received, keeping nothing at all with himself).

FORMULA R

The Way of Undertaking Partial Investigations (Note 1)
(Note 1. Anything included in brackets is valid in the case where the Investigation is done by a delegate).

On the...day of the month of...in the year...

Having been called personally there appeared before me the undersigned

(If there be written the name, family name, etc., of the person who is to do the activity) taking place in (If there be noted the place and date where he is to be found) (specifically delegated only for this act by S.P.B., as [can be seen] in the letter of that same person directed and given to me on this date (If there be expressed or what exact day the letter was written) attached to the present document. S...S...[name, family name and qualities of the respondent witness] who, having been brought to take the oath to tell the truth, which he does (even a priest) having touched God's holy Gospels, performed this for me.

1. Interrogation: Whether he knew (for example, the woman) S...? (name, family name and qualities of the indicated person).

He responded: ... (This should be written in the same language as the witnesses uses for his response).

2. The Interrogation: What is his lifestyle, what are his morals, what is his reputation among the people?

He responded:...

3. Interrogation: Whether he thinks that he [or she] is worthy of creedence or on the other hand thinks that he or she is capable of lying, calumneting in court and even of committing perjury?

He responded:...

4. The Interrogation: Whether he knows whether perhaps between him or her and the priest there exists or has existed a cause for hate or enmity?

He responded:...

Then, the act duly read to the witness, having signified his taking an oath to observe the secret, which he does as above, the witness will be dismissed, ++++ and before he leaves, signs as a confirmation of what has preceded (or, if he cannot write, when he cannot write, as he asserted (let the cause be cited) he makes the sign of the cross).
After the witness signed here or made the sign of the cross he who received the testimony signed himself in this way:

These are acts done through me N...N... [especially delegated only for this act].
L.K.S.
[Then the delegate will transmit the act directly to him from whom he received the delegation together with the instruction and letter keeping nothing for himself].
FORMULA I

Way of Conducting an Examination Through Generalities

Note: Whatever appears within the brackets is valid in the case where the examination is by the delegate, or respectively, without the intervention of a notary.

If the delegate, however, having given a grave reason, cannot observe this way of administering an examination, he should recur to him from whom he received the delegation for [further] instructions.

The notary, if he is present, otherwise, he who is to undertake the examination will begin the procedures in these or in similar words:

On the ... day of the month of ... in the year ...

By force of the decree of R.P.D. [The Most Reverend Bishop] (let there be written the name, etc., of the Ordinary of the place) given on the date of ... having been summoned there appeared before the undersigned (let there be written down the name, the family name, etc., of the person who is to receive the act, and who, if the notary is not present, will write: in the presence of myself the undersigned), taking place in (let there be noted the place and diocese where he is to bound who is to receive the act) (especially delegated only for this action by R.P.D. ...), as appears from his letter directed to me and given to me on the date (let there be expressed on what precise day the letter was written), this person, N.N. (here there should be written the name, family name, father's name, homelands, age, condition, and address of the person summoned; and, if he is a religious, also the name by which this person is known in the world), having been brought to take an oath to tell the truth, which he does touching God's holy Gospels (which he must touch with his hand), was:

Asked: Whether he knows or imagines the reason for his being called for the present examination?
He responded: ... (let there be written his response in that language which the summoned person uses).

Asked: ... For how many years have you been approaching the sacrament of penance?
He responded: ...

Asked: Whether he always went to receive the sacrament of penance from the one and same confessor ... or whether from many priests; moreover, whether he always went to receive the sacrament of penance in the one and same church?
He responded: ...

Asked: Whether from each of the priests to whom this person confessed he received holy admonitions and opportune instructions, which gave edification to the person being examined, and kept him from evil?
He responded: ...
If the response was affirmative, that is, if he says that he had always been dressed well, then he will be interrogated in the following manner:

**Asked:** Whether he knows or remembers if at any time it was said or heard that a certain confessor had not acted in such a holy and honest manner toward penitents, so that murmurs or even contemptible words against the confessor had been preferred: for example, had the person being examined heard similar things from one or from many penitents, and over the past year or over four or three months? He responded:

If after this interrogation and commentary the person being examined continues to deny, let the action be concluded with the usual formula, which appears at the bottom of this instruction.

But if there had appeared to be something against any confessor, according to those things concerning which he is being asked, then he will be interrogated further as follows:

**Asked:** That he tell the name, family name, office, and age of the confessor, and the place or seat of his confession; or whether he was a secular or a religious priest, etc.

He responded:

**Asked:** That he tell, in order, sincerely and clearly, using, however, discrete and constricted words, all of those things less than honorable which he had heard in the sacramental confession either before or after or on the occasion of confession; whether there had been something performed with him less than honest by nods, touches or action, etc., by the priest.

He responded:

At this point, the judge solicitously will take care that the description is in the same words which the confessor used, the obscene words, the seductions, the invitations to meet in some place for an immoral purpose, and all the other things which constitute the crime of solicitation using the vernacular language for the answers which are to be audibly and truthfully recorded—list and, in so far as possible, with the same words in which they were offered; he should add the temperament of the person examined, if he notices that he seems insured by too much fear or bashfulness from telling the truth, assuring him that everything will be kept under an inviolable secret. Then he should ask him the time from which the solicitations began, how long they endured, how often they were repeated, in what words or acts smacking of an immoral purpose they had been expressed. He will further avoid asking about the consent of the person himself being examined with regard to the solicitation, and, even more, he should advise him expressly that he is not bound to manifest whether by chance he gave consent. Likewise, he will avoid any interrogation which he gives evidence of a desire to know the sins of that person.

**Asked:** Whether he knows or heard it said that the aforesaid confessor had solicited other penitents toward obscenities; and if affirmative, he should name them (and he will help give the name, family name, etc., or at least the better indications by which the other solicited persons can be detected).
He responded:...

Asking whether the aforesaid person being examined, had given testimony out of a love for justice and truth, or rather from another motive of enmity or of hate, etc.?

He responded:...

With all of this taken care of, there should be read to the person being examined everything that has been put down in writing, or, for a just cause expressed in the notes, the instrument (that is, the document upon which the notary has written the answers) should be given to him so that this person may read it to himself in the presence of the one who accepted the examination; then, everything that has been approved and accepted by that person, together with the corrections, additions and measures, if there are any, he should be invited to sign and led to take an oath to observe the secret, and then he should be dismissed. All of these matters shall be described in this words:

The accused, having received and accepted all these matters, was dismissed, having sworn to observe the secret, once again touching God’s holy gospels (He will swear again or the Gospel book) and, in attestation of what he had stated, he signed it (or, if he cannot write; when he asserted that he could not write (let the cause be noted), he made the sign of the cross).

After the person being examined has signed here or has made the sign of the cross (on the document), the notary will sign, if he is present, in this way:

These acts are signed by myself, N.N., Notary (and if he has been authorized only for this action: authorized only for this action). L.X.S.

Finally, he who been administered the examination will sign it. If, however, the notary was not present, then the one who accepted the examination will sign in this way:

These acts are signed by myself, N.H., [specialy delegated for this act only by R.P.D., N.N.].

(The delegate will then transmit the action [documentation for the lawsuit] directly to him from whom he received his delegation together with the instruction and the accepted letter, keeping nothing at all for himself).

FORMULA OF THE PROPOSAL TO BE MADE BY THE PROMOTER OF JUSTICE.
THE COMPLETE INQUISSION

Having made a brief summary and inquiry about the reasons of law and fact, the conclusion comes about through the promoter of justice, for example, as followed, however, according to the circumstances.
Having considered everything, I think it must be decided that the priest ... be warned (simply or correctly) - or - let the case be constituted in the Curia, that is, the diocesan Curia, and let the case be undertaken according to law (casuistry, however... and here there are added the canonical opportunite provisions, if there are some that seem to need to be proposed to the promoter).

On the ... day of the month ... in the year ....
The signature of the Promoter of Justice
++47++

FORMULA OF THE DECREE TO CONSTITUTE A PENAL REMEDY

We (name, and so on, qualities, etc., of the Ordinary of the place), having weighed the actions against the priest, N. N. (our diocese, abbacy, presidium, etc.) about whom there is reported the crime of solicitation, we decree that the aforesaid priest, N. N. be admonished (paternally, gravely, etc. according to the diversity of cases) under the secret of the Holy Office.

If some resolution has to be added, and there is added:
And according to the resolution, the resolution is that...

These are the acts of... (the address of the Ordinary of the place) on the... day of the month... of the year...
E. H. S.

Signature of the Ordinary of the Place
Signature of the Notary
++48++

FORMULA N

The Method For Warning About the Crime of Solicitation

Concerning those who have been denounced once or twice concerning the horrible crime of solicitation for the most part, having taken the opportune efforts, it is decided that: They should be warned (simply or correctly) under the secret of the Holy Office. The person to whom belongs or is assigned the duty of imparting an admonition of this type, will summon the denounced priest, with the proper circumspection, and he is to impress upon him with serious words, more or less according to the circumstances and the tenor of the decision, but in a paternal and fatherly way, avoiding last in any way, whether directly or indirectly, he reveal the ones denouncing him, in these words: "It has come to the ears of the Ecclesiastical authority that he, within the sacred tribunal of peneance, not always acted as was befitting prudence and apativeness, so that not without merit it must be feared lest he, with a rash effort, attempted to convert the sacrament itself of reconciliation into the rule of souls: It is therefore great to his interest that he carefully avoid these things in the future, lest the ecclesiastical authority be compelled to proceed to more serious matters".
Let there be observed, moreover, the secret of the Holy Office regarding all
the matter and with everyone to the greatest extent.

If the admonition is done through letter, the method of admonishing
should be done in this way.

[The delegate, however, is to give this admonition, at an opportune
time, informs him from whom he receives his delegation of the results, at
the same time transmitting to him all documents, if he has any, and not
keeping anything for himself.]

The Form of the Decree for the Arraignment

The formulas proposed here are not, as is evident, definitive; they can
and must be varied according to the different circumstances. They are
proposed therefore as an example.

A) TO INDICT SIMPLY

The Reverend... to be indicted in the diocesan Curia about all the
matters deduced against him and there should be a case according to law.

These are the Acts [signed at] (the address of the Ordinary of the
place)
On the... day of the month of... in the year of....

Signature of the Ordinary of the place
Signature of the notary

B) TO INDICT, HAVING ADDED CANONICAL PROVIDES

The Reverend... is to be indicted in the diocesan Curia about all the
matters brought up against him and let there be a trial according to law.
Meanwhile, however (for example, let him remain suspended from the
celebration of Mass, or of exercising the sacred ministries and spiritual
offices; he should leave this place...and go to that place...where he should
remain under special vigilance, etc.).

These acts are signed (as above) on the... day of the month of... in
the year...

...N. S.

Signature of the Ordinary of the place
Signature of the notary

Way of Indicting

N.B., according to the norm of article 51 he is not to bind the accused
to take an oath to tell the truth.

The notary will begin the action:
"On the ... day of the month of ... in the year ...

Having been summoned, the Reverand R.H. personally appeared before the undersigned (let there be written the name, family name, etc. of that person who is doing the inquiring) (especially delegated for this action), the vast Interrogated about his name, family name, parents, homeland, etc., condition, etc.

He answered:... (The Notary will write in the native language, and, in so far as he can, in the same words which the accused uses, his answers.)

Interrogated: Whether he knows or perhaps imagined the reason of his having been summoned?

He answered:...(and it will be continued in this way up until the end, noting down the single questions and his answers to them)."

If the answer according to this interrogation has been affirmative, the judge will invite the accused to explain everything separately and sincerely; otherwise, he will admonish him gravely, in order that, having been stricken by his own conscience, he would say whether perhaps he felt that he was burdened by any crime. And, if he then should respond affirmatively that he, as above, will invite him to confess his own fault with appropriate humility and sincerity, expressing the names of those who were delinquent with him and the words or facts and other circumstances of the matters which constitute the matter and individuality of the perpetrated crimes.

And because it is difficult for him to be able to remember everything from the beginning, the judge will be able to put aside the space of two or three days, during which the accused person can diligently examine in prayer and tears his own conscience, giving him the option of giving his confession in writing as well, which in the following indictment -55- the judge will formally receive, or, if it is given in writing, he will accept from his hands the notebook in which it is contained and will give it to the notary who will make a note of the matter, for example, in this way: The accused gave [me] a notebook [containing] his confession, as he asserted, having done it in writing, which he began... (he will note the first words of the document), and finished with... (he will note the last words), and which I, accepting it, sign with the letter A (he marks the page with this or another letter of the alphabet) and I have put it into the Acts." This method must be observed always as often as any document of any type received from the accused has to be inserted into the Acts.

After these, the directing judge will compare the confession that has been made either verbally or in writing with the denunciations existing in the Acts, and, if he shall find in it nothing that is omitted or left out, having omitted the affirmations, he shall proceed to the last questions; if, however, he finds anything in these which the accused either did not confess at all or lacked integrity in his confession, he will only make mention of it, as will be stated below.

If, however, the matter still remains negative against the accused, the judge will interrogate him further whether he knows against what delicts the supreme tribunal is proceeding; if he does not know, he will enumerate the crimes of this type (heresy, solicitation to grave matter, the worst crime [of
Having premised these general questions, the judge, before he addresses
the single denunciations with the summoned accused, he will ask him about
the particulars of the persons, places, and circumstances of the crimes
brought out in the denunciation and what can demonstrate its probable truth
or falsity: For example, where the place of the confessional is in the
church or the rooms in the home of the priest; whether he receives the
penitents before or after confession at home so that ++32++ he may impart
counsel; whether he put books at their disposal, etc.; whether this took
place that he would speak a long time with a woman at home or in the
sacristy after confession and this with closed doors, whether it took place
on such and such a day and in such a town or city, etc.

Then the judge will state to the accused -- always keeping secret the
name of the one denouncing him -- each denunciation. But he will not,
indeed, do so in a global or combined manner. He will bring up each and
every denunciation distinctly in pieces by reading them to the accused so
that he first presents the whole denunciation before the accused and then
singly in sections such as has been revealed in each denunciation.

The judge will begin from the less serious words and deeds and slowly
proceed to the more serious; nor will he omit proving also some saying or
deal that is not criminal, if there is something borne out by the
denouncers, so that, once the accused has admitted that, if perhaps then the
accused is tainted, he can be shown that the criminal words or deeds have
been so joined that the public authority of the church cannot consider some
of these criminal words or deeds as true and others as false. These words
and deeds will be brought forth to confirm each of the denunciations, and,
should there be any, those the earnest efforts [diligentes], "favorable to the
one denouncing and not favorable to the one being denounced; "information" that is not favorable to him should not be thrown up against
him. "information," which is not held to be favorable to him.

By reason of association [opposita] or context [continentis], the judge
will also bring up to the accused the crimes not pertaining to the Holy
Office, for which the accused has been denounced and for which he has not
yet gone into judgment.

Simultaneously, the counter arguments upon which the accused perhaps has
relied, whether [based] upon subterfuges, evasions and meaningless
responses, must be proved.

The declarations of all the denunciations having been completed, if
there are indeed more denunciations and the accused remains negative, the
judge should not omit to declare to the same accused that, not in conformity with his denials there stand more denunciations in number, distinct in time and reported by different persons, who, from reliable testimony, are of good name, in every way worthy of credence; they are incapable of calumniating or of committing perjury; they are indeed unknown to each other, and hence conspiracy is impossible. Nor has eminence or any other human pathological state been adduced as the reason to accuse [this priest]. It is only in order to satisfy the ineluctable obligation that they have taken the counsel of their own conscience.


These things having been brought up, the judge will interrogate the accused as to what he himself feels about the sixth precept of the decalogue and the sacrament of penance; whether he thinks it is licit for the confessor to act in such a way with penitents, so that, from certain documents (or, if he has confessed, from his own confession) it was proved that he had himself acted [in this way], whether he perhaps thinks that all [his actions were] in no way sinful; whether he was familiar with the Apostolic Constitution of s.m. Benedict XIV, which begins "The sacrament of penance", and with the penalties which this Constitution and the holy canons threaten against the confessors in the sacred ministry who have abused their sacred ministry to the ruin of souls; and finally whether he can offer anything to exonerate himself.

After this, the judge will ask him whether he should continue this process here and now as being legitimate or on the other hand does the accused have an exception to make against it; whether he would be content to be assisted by a defensor ex officio [from the tribunal] or whether he would wish to name his own defensor for himself and, if he insists on some exception, whether he wants perhaps to have the examination of the denouncing persons repeated.

If he gives an affirmative answer to this last question, or, if in some way he has some [fact] to offer in his own defence because of which the witnesses must be heard (as, moreover, if a serious and sometimes unexpected difficulty comes up), the arraignment should be suspended. It should be reconvened after the denouncing persons have been examined once more or the witnesses have been heard. From these persons the judge will elicit new depositions, and, having formally made the [second] inquisition, formerly begins anew the arraignment.

The attestations of the denunciations having been taken care of, the text of the denunciations must be given to the promoter of justice, who will scrutinize it and declare whether he has any notes to make about it or whether there are new statements or new steps that ought to be taken.

The arraignment will not be concluded by the judge, unless there has first been an express consent by the promoter of justice.

At the end of each session there shall be read to the accused everything that has been presented and in written form is read to the accused by the notary, and, once the accused has approved and accepted these statements, together with any corrections, additions and erasures, if there are any, he will be invited to write his signature; and, having been gravely warned
about keeping the secret, the accused will be dismissed. The notary will
describe all of this in these words: "After having received and accepted all
of this, the accused, before being dismissed, was warned about keeping the
secret and before he was to leave, he was to sign in confirmation of what
had been stated."

After the accused respondent has signed, the notary will sign in this
way: "These Acts are signed by myself, R.M., notary (and if he has been
authorized solely for this act: authorized only for this act)." Then the
indicting judge will sign.

Since, however, there is a need for not only one single arraignment
session to bring the many matters to their successful completion, but for
many sessions, each one of these sessions should be opened and closed in the
same way. At each session, at the bottom of every page, there should be the
signatures of the accused, the notary and the judge, and, at the end of each
session the judge will cite the accused, indicating the date for the
following session which the notary will note in this way: "Having been
informed of and having accepted all of these matters, the accused has now
been cited for the ... day of the month of ... to appear again, and he was
dismissed after having been admonished, etc." as above. However, in the
following session, the first question will be: Whether to those things which
were treated in the preceding sessions the accused has anything to add, remove or correct on his own", and, after his answer has been transcribed, the
sessions will then be continued, from that point at which the previous
interrogation ended.

N.B. -- It would be superfluous to note that the judge, before he comes
to the indictment, must accurately subject the whole informative process to
his examination. -- Obviously all the denunciations both informal and formal
and also of the material not pertaining to the Holy Office; his examinations
about the morals and the veracity of the ones denouncing, and the
investigations and information about the life, morals and good name of the
one denounced; plus love letters perhaps written by him, etc. -- so that the
same judge has at hand all the elements with which to weaken the denials of
the accused, and with which to rebut his arbitrary affirmations. From the
partial concessions of the accused he can force him to admit more matters.

+++5+++  

PCINLA Q

The Formula for a Petition by the Promoter of Justice

A) IN THE CASE OF PROPOSING AN ADJOURNMENT

Once there is pressed a brief summary and inquiry about the reasons of
law and fact, there is this conclusion; for example

Having taken everything into consideration, I think it should be decided
that the Reverend .... be dismissed with a grave admonition, the process
remaining in force. And for the same reason and purpose. The purpose is (for
example) that he be watched most diligently: that he be kept from any
familiarity with women, also using ecclesiastical censures, and, if anything
obscene (or, if anything not in keeping with the sacerdotal state, etc.) is observed in his life-style, then he will be brought to the tribunal immediately.

On the...day of the month of...in the year...

Signature of the Promoter of Justice

B) IN THE CASE OF PROPOSING A CONDEMNATION

What has been premised above, etc.

...I think that it should be decreed that, having imposed congruent (or grave) and salutary penances, among which there would be spiritual exercises for ...days to be done in a religious house, during which he will remain suspended from the celebration of the Mass, the Reverend... should be dismissed with (here there should be expressed according to the prescription of Canon 2368 § 1 and also the supplementary sanctions which seem to need to be inflicted). If he has by chance absolved his accomplice, he should heal his conscience by a recourse to the Sacred Penitentiary.

On the ... day of the month of ... in the year ...

Signature of the Promoter of Justice

C) IN THE CASE OF PROPOSING ABSOLUTION

...I think it should be decreed: that the innocence of the charged person is evident from the Acts; and therefore the Reverend... should be dismissed once he has been absolved.

+++56++

FORMULA R

The Manner of Rendering a Condemnatory Sentence in Cases where the Accused Remains Negative

We (There should be noted the name, family name, qualities, etc., of the Judge-Ordinary or the one delegated).

Since...(the name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, there should also be added the name he used in the world) was not afraid to abuse the sacrement of penance by words and acts concerning which there is treatment in the Pontifical Constitutions and especially in the Constitution of Benedict XIV, which first words are Sacramentum Poesitintiae, by saying and doing these things...(here, summarily, and in prudent and discrete words, there should be told how, how often, etc. the accused committed the fault);

And, since, because of all these matters he has been denounced to our tribunal, he has been duly cited on this day (let there be noted the day and month of citation), with a proper process having been constituted against him, he has now been indicted on these days (state on which days); however, he remains negative. Nevertheless he has been convicted of the matter.
Therefore, although he has affirmed that he feels that he has acted correctly concerning the faith and Catholic doctrine (having supposed, evidently that the matter was truly so), and the defender for the court action was not remiss in his duty of promoting and sustaining the proper defenses for the accused;

Nevertheless, having correctly and seriously weighed everything, we the Judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given), from the acts and proofs, believe and are convinced that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blessed and ever virgin Mary the Mother of God and of our Lord Jesus Christ, we issue this our definitive sentence which we, seated for the tribunal, issue, with these pages, in the cause which has been brought before us between D......(name, family name, etc. of the Promoter of Justice) the promoter ++57++ of justice at this tribunal and ...(name, family name, etc. of the accused, as above), we say, decree and declare and hold that....(the name, family name, etc. of the accused is repeated), because of those matters of which he has been convicted, has been judged guilty of the crime of solicitation toward obscene matters (and of false dogma) and therefore has merited the censures and penalties which have been stated, legislated and promulgated against such delinquents.

Lest, therefore, the above mentioned errors and faults remain unpunished, and in order that the accused will hasten to live in the future more cautiously and be an example to others, we will therefore condemn him...(there should be added the dispositive part of the decision.)

Likewise we impose upon him these salutary penances...(and let it be said what penances are imposed).

And thus we say, discern, declare and order and definitively believe and we do intend and wish to order its execution, as we order concerning the fact in this way and with that form which by law we can and must [decree], at the same time mandating for this purpose with the present letter that the accused on this date.... will be cited to hear the reading and conveyance of this our decision.

Thus we pronounce (and the act should be closed with an indication of the place and day in which it is to be published).

L.X S.

Signature of the Judge the Ordinary or of his delegate

Signature of the notary

++58++

Manner of Delivering a Condemnatory Sentence in Cases Where the Accused has Confessed His Crimes
In this tribunal (let there be noted the name, family name, qualities, etc., of the judge-Ordinary or his delegate).

Since... (name, family name, father's name, age, condition, etc., of the accused, and, if he is a religious, let there be added also the name by which he is known in the world) was not afraid to abuse the sacrament of penance by words and actions concerning which treatment was given in Pontifical Constitutions and especially in the Constitution of Benedict XIV, whose opening words are SACRAMENTUM PENITENTIAE, saying and doing these things... (here in a summary fashion and with prudent and discreet words, it should be indicated how, how often, etc., the accused has been at fault).

Since, because he has been denounced for all these matters to our tribunal, and a regular process has been set up at this tribunal against him and he was duly cited on this date (here should be noted the day, and the month of the citation), he was arraigned on these days (let it be said on what days); he confessed this and this (here should be summarized his confession).

Although, therefore, he has affirmed that he was correct in matters of faith and Catholic doctrine (and with the supposition, evidently, that this is truly the case), and his defending advocate, in keeping with his duty, was not remiss in his promotion and sustaining the due defenses.

Nevertheless, having weighed everything correctly and seriously, we, the judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given) from the acts and proofs think and retain that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blessed and ever virgin Mary, the Mother of God and of our Lord Jesus Christ, with this definitive sentence which we publish seated here for the tribunal on this public record in the case which was processed in our presence between D... (name, family name, etc., of the Promoter of Justice) the Promoter of Justice and... (name, family name, etc., of the accused, as above), we say, decide, declare and believe that... (name, family name, etc., of the accused is repeated), because of those things which he has confessed, has been judged guilty of the crime of solicitation to obscene matters (and of false dogma), and, moreover, that he has marred the censures and penalties which have been put forth, stated and promulgated against such delinquents by the holy canons.

Last the aforesaid errors and faults remain without penalty, and in order that the accused should hasten to live more cautiously in the future, and be an example to others, we condemn him in this way... (here there should be added the dispositive part of the sentence).

Likewise for salutary penances, we impose... (here are indicated the penances which are imposed).

Because, however, the accused has spontaneously confessed the aforesaid errors and faults and he humbly asked forgiveness for them, we wish, moreover, to absolve him from any excommunication he perhaps incurred, as long as he first given evidence that, with a sincere heart and faith that
are real he first abjures those errors and detests his faults; thus we ordain by this our sentence that he act in accordance with the manner and form stated by us.

And thus we say, decree, declare, order and definitively believe and intend and wish to command to execution, as concerning the fact, we order in a better way and according to that form which we can and must use by law, at the same time ordaining with the present letter that the accused on this day...will be cited to hear the reading and being informed of this our sentence.

Thus we pronounce (and the act should be closed with an indication of the place and day on which it was made known).

L. X S.

Signature of the Judge—Ordinary or his Delegate

Signature of the Notary

++60++

FORMULA T

Manner of Declaring Solemnly about the Promulagation and Intimation of the Sentence in the Cases of Solicitation

The notary should begin the act with these words:

By force of the decree of this date (let the day be noted on which the sentence was given) given by... (name, family name, etc. of the judge), in the presence of the same person at (the locarion ought to be noted), with the notary present, N.N. appeared personally (name, family name, father’s name, etc. condition etc. of the accused, and, he was a religious, there should also be added the name which he used in the world), to whom the aforesaid judge seated for the tribunal there were read the following matters:

Here the document is read completely word for word by which the sentence has been given.

Then there is added:

On the...day of the month of... in the year... with these writings there has been promulgated the aforesaid sentence through the above mentioned person (name, etc. of the judge) seated for the tribunal (let there be said in what place), and by his reading in a high and intelligible Voice, to the present person (the name, etc. of the accused) listening to him and not contradicting; (if he had confessed, there should be added; being willing, genuflecting before the judge, touching the holy Gospels of God placed before him, he abjured the aforesaid errors [and heresies and generally all the other errors and heresies contrary to the Holy, Catholic and Apostolic Roman Church], as in the schedule of his abjuration, by which he undertook his abjuration, still kneeling, was absolved in the customary form of the church from the sentence of excommunication and was reconciled to the Holy docher the Church, having undertaken prayers and usual and customary penances) -- and there having been enjoined upon him salutary penances
contained in said sentence. Having received all these things, he was dismissed, sworn to observe the secrecy at the touch of the holy Gospels and previously, in confirmation of what was presented before, of his and my signature.

Signature of the Accused

These Acts have been signed by myself, N.M. the notary (and if he has been authorized only for this act: authorized only for this Act).

Finally, the judge signs.
ANNEXURE 1962 B: 1962 INSTRUCTION VATICAN ONLINE VERSION

INSTRUCTION On the Manner of Proceeding in Causes involving the Crime of Solicitation

http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html

Vatican Polyglot Press, 1962

INSTRUCTION OF THE SUPREME SACRED CONGREGATION OF THE HOLY OFFICE ADDRESSED TO ALL PATRIARCHS, ARCHBISHOPS, BISHOPS AND OTHER LOCAL ORDINARIES “ALSO OF THE ORIENTAL RITE” ON THE MANNER OF PROCEEDING IN CAUSES OF SOLICITATION

TO BE KEPT CAREFULLY IN THE SECRET ARCHIVE OF THE CURIA FOR INTERNAL USE.

NOT TO BE PUBLISHED OR AUGMENTED WITH COMMENTARIES

PRELIMINARY MATTERS

1. The crime of solicitation occurs whenever a priest - whether in the act itself of sacramental confession, or before or immediately after confession, on the occasion or under the pretext of confession, or even apart from confession [but] in a confessional or another place assigned or chosen for the hearing of confessions and with the semblance of hearing confessions there - has attempted to solicit or provoke a penitent, whosoever he or she may be, to immoral or indecent acts, whether by words, signs, nods, touch or a written message, to be read either at that time or afterwards, or he has impudently dared to have improper and indecent conversations or interactions with that person (Constitution Sacramentum Poenitentiae, §1).

2. Bringing this unspeakable crime to trial in first instance pertains to the local Ordinaries in whose territory the Defendant has residence (see below, Nos. 30 and 31), not only by proper right but also by special delegation of the Apostolic See;

and it is enjoined upon them, by an obligation gravely binding in conscience, to ensure that causes of this sort henceforth be introduced, treated and concluded as quickly as possible before their own tribunal. Nevertheless, for particular and grave reasons, in accordance with the norm of Canon 247, §2, these causes can
also be deferred directly to the Sacred Congregation of the Holy Office, or called to itself by the same Sacred Congregation. The Defendants retain the right in any grade of trial to have recourse to the Holy Office; but such recourse does not, except in the case of an appeal, suspend the exercise of jurisdiction by a judge who has already begun to hear the cause. The judge can therefore continue to hear the cause up to the definitive sentence, unless he has ascertained that the Apostolic See has called the cause to itself (cf. Canon 1569).

3. The term "local Ordinaries" here means, each for his own territory: residential Bishops, Abbots or Prelates nullius, Administrators, Vicars and Prefects Apostolic, as well as all those who, in their absence, temporarily take their place in governance by prescription of law or by approved constitutions (Can. 198, §1). The term does not, however, include Vicars General, except by special delegation.

4. The local Ordinary is judge in these causes for Religious as well, including exempt Religious. Their Superiors are in fact strictly prohibited from involving themselves in causes pertaining to the Holy Office (Canon 501, §2). Nonetheless, without prejudice to the right of the Ordinary, this does not prevent Superiors themselves, should they discover that one of their subjects has committed a crime in the administration of the Sacrament of Penance, from being able and obliged to exercise vigilance over him; to admonish and correct him, also by means of salutary penances; and, if need be, to remove him from any ministry whatsoever. They will also be able to transfer him to another place, unless the local Ordinary has forbidden it inasmuch as a complaint has already been received and an investigation begun.

5. The local Ordinary can either preside over these causes himself or commit them to be heard by another person, namely, a prudent ecclesiastic of mature age. But he may not do so habitually, that is, for all such causes; instead, a separate written delegation is needed for each individual cause, with due regard for the prescription of Canon 1613, §1.
6. Although, for reasons of confidentiality, a single judge is ordinarily prescribed for causes of this sort, in more difficult cases the Ordinary is not prohibited from appointing one or two consulting assessors, to be selected from among the synodal judges (Canon 1575), or even from committing a cause to be heard by three judges, likewise to be chosen from among the synodal judges, with a mandate to proceed collegially in accordance with the norm of Canon 1577.

7. The promoter of justice, the advocate of the Defendant and the notary — who are to be prudent priests, of mature age and good repute, doctors in canon law or otherwise expert, of proven zeal for justice (Canon 1589) and unrelated to the Defendant in any of the ways set forth in Canon 1613 — are appointed in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia), can be appointed for all causes of this kind, but the advocate of the Defendant and the notary are to be appointed for each individual case. The Defendant is not prohibited from proposing an advocate acceptable to him (Canon 1655); the latter, however, must be a priest, and is to be approved by the Ordinary.

8. On those occasions (to be specified below) when the intervention of the promoter of justice is required, if he was not cited, the acts are to be considered invalid unless, albeit not cited, he was in fact present. If, however, the promoter of justice was legitimately cited, yet was not present for part of the proceedings, the acts will be valid, but they are later to be subject to his full examination, so that he can observe and propose, either orally or in writing, whatever he judges necessary or appropriate (Canon 1587).

9. On the other hand it is required, under pain of nullity, that the notary be present for the proceedings in their entirety, and record them in his own hand or at least sign them (Canon 1585,§ 1). Due to the particular nature of these procedures, however, the Ordinary has the right, for a reasonable cause, to dispense from the presence of the notary in receiving denunciations, as will be specified below; in carrying out the so-called "diligences"; and in questioning the witnesses who have been called.
10. No lesser personnel are to be employed save those absolutely necessary; these are to be chosen, insofar as possible, from the order of priests, and in any case they are to be of proven fidelity and above all exception. It should be noted, though, that, when needed, non-subjects living in another territory can also be appointed to receive certain acts, or the Ordinary of that territory can be asked to do so (Can. 1570, §2), always duly observing the precautions mentioned above and in Canon 1613.

11. Since, however, in dealing with these causes, more than usual care and concern must be shown that they be treated with the utmost confidentiality, and that, once decided and the decision executed, they are covered by permanent silence (Instruction of the Holy Office, 20 February 1867, No. 14), all those persons in any way associated with the tribunal, or knowledgeable of these matters by reason of their office, are bound to observe inviolably the strictest confidentiality, commonly known as the secret of the Holy Office, in all things and with all persons, under pain of incurring automatic excommunication, ipso facto and undeclared, reserved to the sole person of the Supreme Pontiff, excluding even the Sacred Penitentiary. Ordinaries are bound by this same law, that is, in virtue of their own office; other personnel are bound in virtue of the oath which they are always to swear before assuming their duties; and, finally, those delegated, questioned or informed [outside the tribunal], are bound in virtue of the precept to be imposed on them in the letters of delegation, inquiry or information, with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The oath mentioned above, whose formula is found in the Appendix of this Instruction (Form A), is to be taken — once for all by those who are appointed habitually, but each and every time by those who are deputed only for a single item of business or cause — in the presence of the Ordinary or his delegate, on the Holy Gospels of God (including priests) and not in any other way, together with an additional promise faithfully to carry out their duties; the aforementioned excommunication does not, however, extend to the latter. Care must be taken by those presiding over these causes that no one, including the
tribunal personnel, come to knowledge of matters except to the extent that their role or task necessarily demands it.

13. The oath to maintain confidentiality must always be taken in these causes, also by the accusers or complainants and the witnesses. These persons, however, are subject to no censure, unless they were expressly warned of this in the proceedings of accusation, deposition or questioning. The Defendant is to be most gravely admonished that he too must maintain confidentiality with respect to all persons, apart from his advocate, under the penalty of suspension a divinis, to be incurred ipso facto in the event of a violation.

14. Finally, as to the drawing up of the acts, the language used, and their confirmation, safekeeping and possible nullity, the respective prescriptions of Canons 1642-43, 379-80-81-82 and 1680 are to be fully followed.

TITLE ONE

THE FIRST NOTIFICATION OF THE CRIME

15. The crime of solicitation is ordinarily committed in the absence of any witnesses; consequently, lest it remain almost always hidden and unpunished with inestimable detriment to souls, it has been necessary to compel the one person usually aware of the crime, namely the penitent solicited, to reveal it by a denunciation imposed by positive law. Therefore:

16. "In accordance with the Apostolic Constitutions and specifically the Constitution of Benedict XIV Sacramentum Poenitentiae of 1 June 1741, the penitent must denounce a priest guilty of the crime of solicitation in confession to the local Ordinary or to the Sacred Congregation of the Holy Office within one month; and the confessor must, by an obligation gravely binding in conscience, warn the penitent of this duty." (Canon 904).

17. Moreover, in the light of Canon 1935, any member of the faithful can always denounce a crime of solicitation of which he or she has certain knowledge; indeed, there is an urgent duty to make such a denunciation whenever one is
compelled to do so by the natural law itself, on account of danger to faith or religion, or some other impending public evil.

18. “A member of the faithful who, in violation of the (aforementioned) prescription of Canon 904, knowingly disregards the obligation to denounce within a month the person by whom he or she was solicited, incurs an excommunication *latae sententiae* reserved to no one, which is not to be lifted until he or she has satisfied the obligation, or has promised seriously to do so” (Can. 2368, § 2)

19. The responsibility for making the denunciation is a personal one, and it is normally to be discharged by the person himself who has been solicited. But if he is prevented by very grave difficulties from doing so himself, then he is to approach the Ordinary or the Sacred Congregation of the Holy Office or the Sacred Penitentiary, either by letter or through another person whom he has chosen, describing all the circumstances (Instruction of the Holy Office, 20 February 1867, No. 7).

20. Anonymous denunciations are generally to be disregarded; they may however have some corroborative value, or provide an occasion for further investigations, if particular circumstances make the accusation plausible (cf. Can. 1942, §2).

21. The obligation on the part of the penitent who has been solicited to make a denunciation does not cease as a result of a possible spontaneous confession by the soliciting confessor, or his transfer, promotion, condemnation, presumed amendment or other such reasons; it does cease, however, upon the death of the latter.

22. Whenever it happens that a confessor or another churchman is deputed to receive some denunciation, together with instructions about the proceedings to be carried out in judicial form, he is to be expressly admonished that he is thereafter to forward everything immediately to the Ordinary or to the person who deputed him, keeping no copy or record of it himself.
23. In receiving denunciations, this order is normally to be followed: First, an oath to tell the truth is to be administered to the one making the denunciation; the oath is to be taken while touching the Holy Gospels. The person is then to be questioned according to the formula (Formula E), taking care that he relates, briefly and fittingly, yet clearly and in detail, everything whatsoever pertaining to the solicitations he has experienced. In no way, however, is he to be asked if he consented to the solicitation; indeed, he should be expressly advised that he is not bound to make known any consent which may have been given. The responses, not only with regard to their substance but also the very wording of the testimony (Canon 1778), should immediately be put in writing. The entire transcript is then to be read back in a clear and distinct voice to the one making the denunciation, giving him the option to add, suppress, correct or change anything. His signature is then to be demanded or else, if he is unable or does not know how to write, an “x”. While he is still present, the one receiving the testimony, as well as the notary, if present, are to add their signatures (cf. No. 9). Before the one making the denunciation is dismissed, he is to be administered the oath to maintain confidentiality, as above, if necessary under pain of excommunication reserved to the local Ordinary or to the Holy See (cf. No. 13).

24. If, on occasion, this ordinary procedure cannot be followed for grave reasons always to be expressly indicated in the acts, it is permitted for one or another of the prescribed forms to be omitted, but without detriment to the substance. Thus, if the oath cannot be taken on the Holy Gospels, it can be taken in another way, and even only verbally. If the text of the denunciation cannot be written down immediately, it can be set down at a more suitable time and place by the recipient or the one making the denunciation, and later confirmed and signed by the accuser in the presence of the recipient. If the text itself cannot be read back to the accuser, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation – with the prior permission of the accuser, lest the sacramental seal appear to be violated – to be received by a confessor in the places of confession itself. In this case, if the denunciation cannot be made immediately, it is to be written down
at home by the confessor or the accuser himself, and on another date, when the
two meet again in the place of confession, it is to be read back or handed over
to be read, and then confirmed by the accuser with the oath and his own
signature or the mark of a cross (unless it is completely impossible to affix
these). Express mention of all of these things must always be made in the acts,
as was stated in the previous number.

26. Finally, if a most grave and absolutely extraordinary reason demands it, the
denunciation can also be made through a report written by the accuser,
provided, however, that it is later confirmed by oath and signed in the presence
of the local Ordinary or his delegate and the notary, if the latter is present (cf.
No. 9). The same must be said for an informal denunciation, made by letter, for
example, or orally in an extrajudicial manner.

27. Once any denunciation has been received, the Ordinary is bound by a grave
obligation to communicate it as soon as possible to the promoter of justice, who
must declare in writing whether or not the specific crime of solicitation, as set
forth in No. 1 above, is present in the particular case, and, if the Ordinary
disagrees with this, the promoter of justice must defer the matter to the Holy
Office within ten days.

28. If, on the other hand, the Ordinary and the promoter of justice are in
agreement, or, in any event, if the promoter of justice does not make recourse
to the Holy Office, then the Ordinary, if he has determined that the specific
delict of solicitation was not present, is to order the acts to be put into the
secret archive, or to exercise his right and duty in accordance with the nature
and gravity of the matters reported. If, on the other hand, he has come to the
conclusion that [the crime] was present, he is immediately to proceed to the
investigation (cf. Can. 1942, §1).

TITLE TWO

THE PROCESS

Chapter I - The Investigation
29. When, as a result of denunciations, notice of the crime of solicitation is had, a special investigation is to be carried out, "so that it may be determined whether the accusation has any basis and what that may be" (Canon 1939, §1); this is all the more necessary since a crime of this type, as was already stated above, is usually committed in private, and direct testimony regarding it can only rarely be obtained, other than from the aggrieved party.

Once the investigation has been opened, if the accused priest is a religious, the Ordinary can prevent him from being transferred elsewhere before the conclusion of the process.

There are three major areas which such an investigation must cover, namely:

a) precedents on the part of the accused;

b) the soundness of the denunciations;

c) other persons solicited by the same confessor, or in any event aware of the crime, if these are brought forward by the accuser, as not infrequently happens.

30. With regard to the first area (a), then, the Ordinary, immediately upon receiving a denunciation of the crime of solicitation, must – if the accused, whether a member of the secular clergy or a religious (cf. No. 4), has residence in his territory – inquire if the archives contain any other accusations against him, even regarding other matters, and to retrieve them; if the accused had previously lived in other territories, the Ordinary is also to inquire of the respective Ordinaries and, if the accused is a religious, also of his religious superiors, whether they have anything in any way prejudicial to him. If he receives any such documents, he is to add them to the acts, either in order to make a single judgment thereupon, by reason of common content or the connection of causes (cf. Canon 1567), or else to establish and evaluate the aggravating circumstance of recidivism, according to the sense of Canon 2208.

31. In the case of an accused priest who does not have residence in his territory, the Ordinary is to transmit all the acts to the Ordinary of the accused, or, if he does not know who that might be, to the Supreme Sacred Congregation of the Holy Office, without prejudice to his right in the meantime to deny the accused
priest the faculty of exercising ecclesiastical ministries in his diocese, or to
revoke any faculty already granted, if and when the priest should enter or
return to the diocese.

32. With regard to the second area (b), the weight of each denunciation, its
particulars and circumstances must be pondered gravely and attentively, in
order to clarify if and how much credence they merit. It is not sufficient that
this be done in any way whatsoever; rather it must be carried out in a certain
and judicial form, as is customarily signified in the Tribunal of the Holy Office
by the phrase "carry out the diligences" (diligentias peragere).

33. To this end, once the Ordinary has received any denunciation of the crime of
solicitation, he will – either personally or through a specially delegated priest –
summon two witnesses (separately and with due discretion), to be selected
insofar as possible from among the clergy, yet above any exception, who know
well both the accused and the accuser. In the presence of the notary (cf. No. 9),
who is to record the questions and answers in writing, he is to place them
under a solemn oath to tell the truth and to maintain confidentiality, under
threat, if necessary, of excommunication reserved to the local Ordinary or to
the Holy See (cf. No. 13). He is then to question them (Formula G) concerning
the life, conduct and public reputation of both the accused and the accuser;
whether they consider the accuser worthy of credence, or on the other hand
capable of lying, slander or perjury; and whether they know of any reason for
hatred, spite or enmity between the accuser and the accused.

34. If the denunciations are several in number, there is nothing to prevent
employing the same witnesses for all of them, or from using different witnesses
for each, yet care must always be taken to have the testimony of two witnesses
with regard to the accused priest and each accuser.

35. If two witnesses cannot be found, each of whom knows both the accused
and the accuser, or if they cannot be questioned about the two at the same time
without danger of scandal or loss of good repute, then the so-called divided
diligences (Formula H) are to be carried out: in other words, questioning two
persons about the accused alone, and another two about each individual accuser. In this case, however, prudent inquiries will have to be made from other sources as to whether the accusers are affected by hatred, enmity or any other sentiments against the accused.

36. If not even divided diligences can be carried out, either because suitable witnesses cannot be found, or for a just fear of scandal or loss of good repute, this [lack] can be supplied, albeit cautiously and prudently, through extrajudicial information, set down in writing, concerning the accused and the accusers and their personal relationships, or even through subsidiary evidence which may corroborate or weaken the accusation.

37. Finally, with regard to the third area (c), if in the denunciations, as not infrequently happens, other persons are named who may likewise have been solicited, or for some other reason can offer testimony about this crime, these are all to be questioned as well, separately, in judicial form (Formula I). They are to be questioned first with regard to generalities, then gradually, as the matter develops, descending to particulars, whether and in what way they themselves were in fact solicited, or came to know or hear that other persons had been solicited (Instruction of the Holy Office, 20 February 1867, No. 9).

38. The greatest discretion is to be employed in inviting these persons to the interview; it will not always be appropriate to summon them to the public setting of the chancery, especially if those to be questioned are young girls, married women, or domestics. In such cases it will be more advisable to summon them discreetly for questioning in sacristies or elsewhere (e.g. in the place for confessions), according to the prudent estimation of the Ordinary or judge. If those to be examined live in monasteries or in hospitals or in religious homes for girls, then they are to be called with great care and on different days, according to particular circumstances (Instruction of the Holy Office, 20 July 1890).
39. Whatever was stated above regarding the way of receiving denunciations is also to be applied, with due adaptations, to the questioning of other persons [whose names were] brought forward.

40. If the questioning of these persons produces positive results, namely that the priest under investigation or another turns out to be implicated, the accusations are to be considered true denunciations in the proper sense of the word, and all else prescribed above with regard to the definition of the crime, the bringing up of precedents, and the diligences to be performed, is to be carried out.

41. When all these things have been done, the Ordinary is to communicate the acts to the promoter of justice, who is to review whether everything was carried out correctly or not. And if [the latter] concludes that there is nothing against accepting them, [the Ordinary] is to declare the investigative process closed.

Chapter II – Canonical Measures and the Admonition of the Accused

42. Once the investigative process has been closed, the Ordinary, after hearing the promoter of justice, is to proceed as follows, namely:

a) if it is clear that the denunciation is completely unfounded, he is to order this fact to be declared in the acts, and the documents of accusation are to be destroyed;

b) if the evidence of a crime is vague and indeterminate, or uncertain, he is to order the acts to be archived, to be brought up again should anything else happen in the future;

c) if, however, the evidence of a crime is considered grave enough, but not yet sufficient to file a formal complaint – as is the case especially when there are only one or two denunciations with regular diligences but lacking or containing insufficiently solid subsidiary proofs (cf. No. 36), or even when there are several [denunciations] but with uncertain diligences or none at all – he is to
order that the accused be admonished, according to the different types of cases (Formula M), by a first or a second warning, paternally, gravely or most gravely according to the norm of Canon 2307, adding, if necessary, the explicit threat of a trial should some other new accusation be brought against him. The acts, as stated above, are to be kept in the archives, and vigilance is to be exercised for a period with regard to the conduct of the accused (Canon 1946, §2, No. 2);

d) finally, if certain or at least probable arguments exist for bringing the accusation to trial, he should order the Defendant to be cited and formally charged.

43. The warning mentioned in the preceding number (c) is always to be given in a confidential manner; nevertheless it can also be given by letter or by a personal intermediary, but in each case this must be proved by a document to be kept in the secret archives of the Curia (cf. Canon 2309, §§ 1 and 5), together with information about the manner in which the Defendant accepted it.

44. If, following the first warning, other accusations are made against the same Defendant regarding acts of solicitation which occurred prior to that warning, the Ordinary is to determine, in conscience and according to his own judgment, whether the first warning is to be considered sufficient or whether he should instead proceed to a new warning, or even to the next stage (Ibidem, §6).

45. The promoter of justice has the right to appeal these canonical measures, and the accused has the right to have recourse to the Sacred Congregation of the Holy Office within ten days from their issuance or notification. In this case, the acts of the cause are to be sent to the same Sacred Congregation, in accordance with the prescription of Canon 1890.

46. These measures, however, even if they have been put into effect, do not extinguish a penal action. Consequently, if any other accusations are received thereafter, the matters which prompted the aforementioned canonical measures will also need to be taken into account.
Chapter III - The Arraignment of the Accused

47. Once sufficient evidence is at hand for instituting a formal accusation, as was mentioned above in number 42 (d), the Ordinary – after having heard the promoter of justice and observed, to the extent that the particular nature of these causes allows, everything laid down in Book IV, Title VI, Chapter II, of the Code [of Canon Law] concerning the citation and intimation of judicial acts – shall issue a decree (Formula 0) citing the Defendant to appear before himself or before a judge whom he has delegated (cf. No. 5), in order to be charged with the crimes of which he has been accused; in the tribunal of the Holy Office this is commonly referred to as “subjecting the Defendant to the charges” [Reum constitutis subiciere]. He is to see to it that the decree is communicated to the Defendant in the manner prescribed by law.

48. When the Defendant, having been cited, has appeared, before the charges are formally brought, the judge is to exhort him in a paternal and gentle way to make a confession; if he accepts these exhortations, the judge, having summoned the notary or even, if he considers it more appropriate (cf. No. 9), without the presence of the latter, is to receive the confession.

49. In such a case, if the confession is found, in light of the proceedings, to be substantially complete, once the Promoter of Justice has submitted a written opinion, the cause can be concluded by a definitive sentence, all other formalities being omitted (see below, Chapter IV). The Defendant however is to be given the option of accepting that sentence, or requesting the normal course of a trial.

50. If on the other hand the Defendant has denied the crime, or has made a confession which is not substantially complete, or even rejected a sentence summarily issued on the basis of his confession, the judge, in the presence of the notary, is to read him the decree mentioned above in No. 47, and to declare the arraignment opened.

51. Once the arraignment has been opened, the judge, in keeping with Canon 1956, having heard the promoter of justice, can suspend the Defendant either
completely from the exercise of sacred ministry or solely from hearing sacramental confessions of the faithful, until the conclusion of the trial. If he suspects, however, that the Defendant is capable of intimidating or suborning the witnesses, or otherwise hindering the course of justice, he can also, having again heard the promoter of justice, order him to retire to a specific place and to remain there under special supervision (Canon 1957). There is no legal remedy given against either such decree (Canon 1958).

52. After this, the questioning of the Defendant takes place in accordance with Formula P, with the greatest care being taken on the part of the judge lest the identity of the accusers and especially of the denouncers be revealed, and on the part of the Defendant lest the sacramental seal be violated in any way. If the Defendant, speaking heatedly, lets slip something which might suggest either a direct or indirect violation of the seal, the judge is not to allow it to be recorded by the notary in the acts; and if, by chance, some such thing has been unwittingly related, he is to order it, as soon as it comes to his attention, to be deleted completely. The judge must always remember that it is never permissible for him to compel the Defendant to take an oath to tell the truth (cf. Canon 1744).

53. When the questioning of the Defendant has been completed in every detail and the acts have been reviewed and approved by the Promoter of Justice, the judge is to issue the decree concluding this phase of the cause (Can. 1860); if he is a delegated judge, he is to forward all the acts to the Ordinary.

54. Should, however, the Defendant prove contumacious, or, for very grave reasons the Charges cannot be brought in the diocesan Curia, the Ordinary, without prejudice to his right to suspend the Defendant a divinis, is to defer the entire cause to the Holy Office.

Chapter IV - The Discussion of the Cause, the Definitive Sentence, and the Appeal

55. The Ordinary, upon receiving the acts, unless he wishes to proceed himself to the definitive sentence, is to delegate a judge (cf. No. 5), different, insofar as possible, from the one who conducted the investigation or the arraignment (cf.
Canon 1941, §3). The judge, however, whether he be the Ordinary or his delegate, is to give the Defendant's advocate, according to his prudent judgment, a suitable period of time in which to prepare the defence and to file it in duplicate, with one copy to be given to the judge himself and the other to the promoter of justice (cf. Canons 1862-63-64). The promoter of justice, too, within a time period likewise established by the judge, should present in writing his prosecutory brief (requisitoriam) as it is now called (Formula Q).

56. Finally, after a suitable interval (Canon 1870), the judge, following his conscience as formed by the acts and the proofs (Canon 1869), shall pronounce the definitive decision, either of condemnation [sententia condemnatoria], if he is certain of the crime, or of acquittal [sententia absolutoria], if he is certain of [the Defendant's] innocence; or of release [sententia dimissoria], if he is invincibly doubtful due to lack of proof.

57. The written sentence is to be drawn up in accordance with the respective formulas appended to this Instruction, with the addition of an executory decree (Canon 1918), and communicated beforehand to the Promoter of Justice. It is then to be officially communicated in the presence of a notary to the Defendant, summoned to appear for this reason before the judge in session. If, however, the Defendant, refusing the summons, does not appear, the communication of the sentence is to be done by a letter whose receipt is certified by the public postal service.

58. Both the Defendant, if he considers himself aggrieved, and the promoter of justice have the right to appeal [this sentence] to the Supreme Tribunal of the Holy Office, in accordance with the prescription of Canons 1879ff., within ten days of its official communication; such an appeal has a suspensive effect, whereas the suspension of the Defendant from the hearing of sacramental confessions or from exercising sacred ministry (cf. No. 51), if one was imposed, remains in force.

59. Once an appeal has been properly made, the judge is to transmit to the Holy Office as quickly as possible an authentic copy, or even the original itself, of all
the acts of the cause, adding whatever information he judges necessary or appropriate (Canon 1890).

60. Finally, with regard to a complaint of nullity, should one be lodged, the prescriptions of Canons 1892-97 are to be scrupulously observed; as to the execution of the sentence, the prescriptions of Canons 1920-24 are to be observed, in accordance with the nature of these causes.

**TITLE THREE**

**PENALTIES**

61. "One who has committed the crime of solicitation... is to be suspended from the celebration of Mass and from the hearing of sacramental confessions and even, in view of the gravity of the crime, declared incapable from hearing them. He is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable for all these, and in more grievous cases he is even to be subjected to reduction to the lay state [degradatio]." Thus states Canon 2368, §1 of the Code [of Canon Law].

62. For a correct practical application of this canon, when determining, in the light of Canon 2218, §1, fair and proportionate penalties against priests convicted of the crime of solicitation, the following things should be taken into particular account in evaluating the gravity of the crime, namely: the number of persons solicited and their condition – for example, if they are minors or specially consecrated to God by religious vows; the form of solicitation, especially if it might be connected with false doctrine or false mysticism; not only the formal but also the material turpitude of the acts committed, and above all the connection of the solicitation with other crimes; the duration of the immoral conduct; the repetition of the crime; recidivism following an admonition, and the obdurate malice of the solicitor.

63. Resort is to be had to the extreme penalty of reduction to the lay state – which for accused religious can be commuted to reduction to the status of a lay brother [conversus] – only when, all things considered, it appears evident that
the Defendant, in the depth of his malice, has, in his abuse of the sacred ministry, with grave scandal to the faithful and harm to souls, attained such a degree of temerity and habitude, that there seems to be no hope, humanly speaking, or almost no hope, of his amendment.

64. In these cases, the following supplementary sanctions are to be added to the penalties proper, to ensure that their effect is achieved more fully and securely, namely:

a) Upon all Defendants who have been judicially convicted there are to be imposed salutary penances, befitting the kind of faults committed, not as a substitute for penalties proper in the sense of Canon 2312, §1, but as a complement to them, and among these (cf. Can. 2313) chiefly spiritual exercises, to be made for a certain number of days in some religious house, with suspension from the celebration of Mass during that period.

b) Upon Defendants who have been convicted and have confessed, moreover, there should be imposed an abjuration, according to the variety of cases, of the slight or strong suspicion of heresy which soliciting priests incur due to the very nature of the crime, or even of formal heresy, if by chance the crime of solicitation was connected to false teaching.

c) Those in danger of relapsing and, even more, recidivists, are to be subjected to special supervision (Canon 2311).

d) As often as, in the prudent judgment of the Ordinary, it seems necessary either for the amendment of the delinquent, the removal of a near occasion [of sin], or the prevention or repair of scandal, there is to be added an order to live in a certain place or a prohibition from the same (Canon 2302).

e) Finally, since, by reason of the sacramental seal, there can never be any account taken in the external forum of the crime of absolving an accomplice, as this is described in the Constitution Sacramentum Poenitentiae, at the end of the sentence of condemnation there is to be added an admonition to the Defendant
that, if he has absolved an accomplice, he should provide for his conscience by recourse to the Sacred Penitentiary.

65. In accordance with the norm of Canon 2236, §3, all of these penalties, inasmuch as imposed by law, cannot, once they have been applied by the judge ex officio, be remitted except by the Holy See, through the Supreme Sacred Congregation of the Holy Office.

**TITLE FOUR**

**OFFICIAL COMMUNICATIONS**

66. No Ordinary is ever to omit informing the Holy Office immediately upon receiving any denunciation of the crime of solicitation. If it happens to concern a priest, whether secular or religious, having residence in another territory, he is at the same time to send (as already stated above, No. 31) to the Ordinary of the place where the denounced priest currently lives or, if this is unknown, to the Holy Office, an authentic copy of the denunciation itself with the diligences carried out as fully as possible, along with appropriate information and declarations.

67. Any Ordinary who has instituted a process against any soliciting priest should not fail to inform the Sacred Congregation of the Holy Office, and, if the matter concerns a religious, the priest's General Superior as well, regarding the outcome of the cause.

68. If a priest convicted of the crime of solicitation, or even merely admonished, should transfer his residence to another territory, the Ordinary a quo should immediately warn the Ordinary ad quern of the priest's record and his legal status.

69. If a priest who has been suspended in a cause of solicitation from hearing sacramental confessions, but not from sacred preaching, should go to another territory to preach, the Ordinary of that territory should be informed by his
Superior, whether secular or religious, that he cannot be employed for the hearing of sacramental confessions.

70. All these official communications shall always be made under the secret of the Holy Office; and, since they are of the utmost importance for the common good of the Church, the precept to make them is binding under pain of grave [sin].

TITLE FIVE

CRIMEN PESSIMUM

71. The term crimen pessimum ["the foulest crime"] is here understood to mean any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way whatsoever with a person of his own sex.

72. Everything laid down up to this point concerning the crime of solicitation is also valid, with the change only of those things which the nature of the matter necessarily requires, for the crimen pessimum, should some cleric (God forbid) happen to be accused of it before the local Ordinary, except that the obligation of denunciation [imposed] by the positive law of the Church [does not apply] unless perhaps it was joined with the crime of solicitation in sacramental confession. In determining penalties against delinquents of this type, in addition to what has been stated above, Canon 2359, §2 is also to be taken into consideration.

73. Equated with the crimen pessimum, with regard to penal effects, is any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with pre-adolescent children [impuberes] of either sex or with brute animals (bestialitas).

74. Against clerics guilty of these crimes, if they are exempt religious – and unless the crime of solicitation takes place at the same time – Religious Superiors also can proceed, according to the sacred Canons and their proper Constitutions, either administratively or judicially. However, they must always
communicate a sentence rendered, or an administrative decision in those cases which are more grave, to the Supreme Congregation of the Holy Office. The Superiors of a non-exempt religious can proceed only administratively. In the case where the guilty party has been expelled from religious life, the expulsion has no effect until it has been approved by the Holy Office.

FROM AN AUDIENCE WITH THE HOLY FATHER, 16 MARCH 1962

His Holiness Pope John XXIII, in an audience granted to the Most Eminent Cardinal Secretary of the Holy Office on 16 March 1962, graciously approved and confirmed this Instruction, ordering those responsible to observe it and to ensure that it is observed in every detail.

Given in Rome, from the Office of the Sacred Congregation, 16 March 1962.

L. + S. A. CARD. OTTAVIANI
RESCRIPTUM EX AUDIENTIA INSTRUCTIO de secreto pontificio Secreta continere quantum hominum naturae congruat, ex eo imprimis patet quod, etsi multae res exteriæ agendæ sunt, earum tamen ortus et meditatio in intimo corde conduntur et non nisi post maturam cogitationem prudenter eae efferuntur. Silere igitur, res quidem perdifficilis, perinde ac palam consideratoque loqui ad perfectum hominem pertinent: tempus est enim tacendi et tempus loquendi (cf. Ecole. 3, 7) et ille perfectus est vir, qui linguam suam refrenare noverit (cf. lae. 3, 2). Quod in ipsa contingit Ecclesia, quae est communias credentium, qui cum iis mandatum sit munus praedicandi et testificandi Evangelium Christi (cf. Me. 16, 15; Act. 10, 42), tamen officio tenentur sacramentum abscondendi verbaque conferendi in corde, ut opera Dei recte lateque manifestentur, eiusque sermo currat et clarificentur (cf. i7 Thes. 3, 1). Merito igitur iis, qui Populi Dei servitio destinantur, quaeram secreto tegenda conceruntur, ea scilicet, quae revelata aut suo non tempore modove revelata, Ecclesiae aedificationi obsunt vel publicum bonum pessundant vel" denique privatorum et communitatum inviolabilia iura offendunt (cf. Instr. Communio et progressio, 121). Haec omnia conscientiam semper obligant, et imprimis secretum ob Paenitentiae sacramenti disciplinam severe servandum, ac deinde secretum officii, vel secretum comissum, quod dicitur, praeter secretum pontificium, de quo in hac Instructione est sermo. Etenim patet, cum in publica re versemur, quae totius communitatis bonum tangit, non a quovis privato, iuxta propriae conscientiae dictamen, sed ab eo, qui curam communitatis legitime habet, statuendum esse quando vel qua ratione et gravitate huiusmodi secretum imponendum sit. Il vero, qui tali secreto devinciduntur, non quasi exteriore lege se strictos esse censeant, sed potius propriae humanæ dignitatis imperio: honoris mempe sibi ducant debita in publicum bonum servare secreta. Quod autem ad Curiam Romanam attinet, negotia, quae ab ea Acta Apostolicae Sedis - Commentarium Officiale in universalis Ecclesiae servitium tractantur, communi secreto ex officio obteguntur, cuius moralis obligatio vel ex superioris praescripto vel ex rei natura et momento dimetienda est. At in quibusdam rebus gravioris momenti peculiare urgetur secretum, quod pontificium nuncupatur et gravi semper obligatione servandum est. De secreto pontificio Instructio edidit Secretaria Status die XXIV mensis iunii anno MDCCCCLXVIII; postquam vero quaestio considerata est penes coetum Cardinallium moderatorum Dicaestorian Curiae Romanæ, eiusdem Instructiois normas quasdam immutare visum est, ut, materia et obligatione huius secreti accuratius definita, eius observatio congruentius urgetur. Normae igitur sunt, quæ sequuntur.

ART. I Secreto pontificio comprehenduntur: 1) Praeparatio et compositio Documentorum Pontificiorum, pro quibus eiusmodi secretum expressis verbis requiratur; 2) Notitiae ratione officii cognitae, respicientes res quae a Secretaria Status vel a Consilio pro publicis Ecclesiae Negotiis aguntur, quæque sub secreto pontificio tractanda sunt; 3) Significationes et denuntiationes doctrinarum scriptorumque typis editorum factae S. Congregationi pro...
Doctrina Fidei, nec non earum examen, iussu eiusdem Dicasterii institutum; 4) Denuntiationes extra iudicium acceptae circa delicta contra fidem et contra mores, et circa delicta contra Paenitentiae sacramentum patrata, nec non processus et decisis, quae ad hasce denuntiationes pertinent, salvo semper iure eius, qui ad auctoritatem delatus est, cognoscendae denuntiationis, si id necessarium ad propriam defensionem fuerit. Denuntiantis autem nomen tunc tantum patefieri licebit, cum auctoritati opportum videatur ut denuntiatus et is, qui eum denuntiaverit, simul compareant; 5) Relationes a Legatis Sanctae Sedis confectae circa res pertinentes ad secretum pontificium; 6) Notitiae ratione officii cognitae, quae attinent ad nominationem Episcoporum, Administrorum Apostolorum ceterorumque Ordinariorum episcopali dignitate praeditorum, Vicariorum et Praefectorum Apostolorum, ac Legatorum Pontificiorum, itemque inquisitiones ad has causas spectantes; 8) Notitiae ratione officii cognitae, quae respiciunt ad nominationem Praevalorum Superiorum et Officialium maiorum Curiae Romanae; 9) Quidquid attinet ad arcanas notas (vulgo: Cifrari) et ad scripta arcanis notis exarata; 10) Negotia vel causae, quae a Summo Pontifice, a Cardinali alcuic Dicasterio praeposito, et a Legatis Sanctae Sedis tam gravis esse momenti censentur, ut secreti pontificii tutelam postulent.

ART. II Obligatione servandi secreti pontificii tenentur: 1) Cardinales, Episcopi, Praetati Superiori, Officiale maiore et minore, Consultores, Periti et ministri inferioris ordinis, ad quos spectat pertractatio quaestionum, quae secreto pontificio subiciuntur; 2) Legati Sanctae Sedis eorumque ministri, qui praedictas quaestiones tractant, nec non ii omnes, qui ab iisdem ad consulendum de his causis vocantur; 3) li omnes, qui culpabiler notitiam acceperint documentorum et rerum, quae secreto pontificio subiciuntur, vel etiam, accepta sine culpa huilsmodi notitia, certo sciant ea secreto pontificio adhuc conteggi.

ART. III 1) Qui secreto pontificio adstringitur, ad illud servandum gravi semper obligatione tenetur. 2) Si violatio ad forum externum delata fuerit, qui accusatur violationis secreti iudicabitur a peculiari quadam Commissione, quae constituitur e Cardinali Dicasterio competenti Praeposito, vel, si is desit, ex Acta Apostolicae Sedis Commentarium Officiale Officii moderator ad quem spectat; haec Commissio congresus poenas irrogabit, pro gravitate delicti eiusve damni. 3) Si is, qui secretum violavit, Romanae Curiae operam praestat, in poenas incurrit in Ordinatione Generali statutas. 1 ART. I V Qui ad secretum pontificii ratione munere admittuntur, iusiurandum dare debent iuxta formulam, quae sequitur: Ego . . . constitutus coram . . . tactis per me sacerosanctis Dei Evangelii, promitto me fideliter ((secretum pontificii)) servaturum esse in causis et in negotiis quae sub eodem secreto sunt tractanda, adeo ut nullo modo, sub quos praetextu, sive maioris bonis, sive urgentissimae et gravissimae causae, secretum praefatum mihi violare liceat. Secretum, ut supra, me servaturum esse promitto etiam causis et negotiis finitis, pro quibus tale secretum expresse imponatur. Quod si in aliquo casu me dubitare contingat de praefati secreti obligatione, in favorem eiusdem secreti interpretator. Item scio huilsmodi secreti transgressorem peccatum grave committere. Sic me Deus adiuvet, et haec Sancta eius Evangelia, quae propriis
manibus tango. Hanc Instructionem PAULUS VI, Summus Pontifex, in Audientia infrascripto concessa die iv mensis Februarii, anno MDCCCCLXXIV, approbavit et publici iuris fieri iussit, ea lege ut a die xiv mensis Martii eiusdem anni vigeret, contrariis quibuslibet non obstantibus. IOANNES Card. VILLOT Secretarius Status 1 Cf. Ibid. art. 39, § 2, art. 61, n. 5 et art. 65, § 1, n. 3. 2 Pro iis, qui ad secretum pontificium ad
ANNEXURE 1974 B:


Ius Canonicum - Canon Law - Documents of the Roman Curia
Continere Secret Instruction on rules on the pontifical secret
Created: Sunday, February 3, 1974 23:00
Written by Secretary of State

It is evident how much the keeping of secrets is consistent with the nature of men, especially by virtue of the fact that many things although they relate to the external, are nonetheless meditated upon in the depths of the heart and are only exposed cautiously after mature reflection.

Therefore, silence and speaking publically after careful reflection, are really quite difficult, and are qualities of the perfect man: indeed there is a time to be silent and a time to speak (cf. Ecclus 3, 7) and is able to keep himself in check (cf. James 3: 2).

This also occurs in the Church, which is the community of believers, who, having received the mission of preaching and witnessing to the Gospel of Christ (cf. Mk 16: 15; Acts 10, 42), nevertheless have a duty to keep hidden the sacraments and ponder the words in the heart, so that the works of God might be glorified and His word spread and clarified. (cf. 2 Thes 3: 1). 

It is correct then that those who are called to serve the people of God have some things that they have to keep under wraps, and if these things are revealed or disseminated in time or inopportune way they may damage the church or adversely affect the public good or may offend the inviolable rights of individuals and the community (cf. Communio et progressi or 121).

All this requires constant awareness, and above all the secrets relating to the administration of the sacrament of penance must be closely guarded, and also the secrets arising from one’s official position, or from a specific commission, and especially the pontifical secret, the subject of this instruction. It is clear that in the case of sharing information in the public domain, it is in the interests of the good of the whole community, that no-one who legitimately cares for the community should rely on his own conscience to establish when and how to disclose a secret and what gravity to impose on a secret.

Those who are bound to keep such a secret should not consider themselves bound by an external law, but rather consider it an honour and a preservation of his human dignity to guard the secrets for the sake of the common good.

As it regards the Roman Curia, the matters discussed by it at the service of the universal Church, are covered automatically by the ordinary secret, whose
moral obligation must be established either by a superior prescription or by the nature and importance of the question. But in certain matters of greater importance a particular secret, which is called Pontifical Secret, it is required that such secrets must be guarded with grave obligation.

The Secretary of State has issued an instruction on the pontifical secret on 24 June 1968; but after a consideration of this matter by the assembly of presidents Cardinals dicasteries of the Roman Curia, it seemed appropriate to amend certain provisions of that instruction, so that, with a more careful definition of matter and the obligation to such a secret, you can get the same respect in more convenient way.

Here, therefore, the rules.

Article I
The following are covered by the pontifical secret:

1) The preparation and composition of papal documents for which such confidentiality is specifically requested.

2) The information obtained due to official occupation, which refer to matters which are addressed in the Secretary of State or the Council for Public Affairs of the Church, and they should be treated under the pontifical secret;

3) The notifications and reports relating to doctrines and publications made to the Congregation for the Doctrine of the Faith, as well as the consideration of these proposals, made by order of the same dicastery;

4) extra-judicial allegations of crimes against the faith and customs, and crimes against the sacrament of Penance, as well as the process and the decisions that relate to such complaints, always doing except the right one that has been denounced the authority to hear the complaint, is it necessary for his defense. The name of the complainant is lawful to make it known only when the authority seems appropriate that the accused and the complainant to appear together;

5) Reports produced by the legacies of the Holy See on matters covered by the pontifical secret;

6) The information taken due to the occupation, about the creation of cardinals;

7) The information taken due to the occupation, on the appointment of bishops, apostolic administrators and other ordinary covered with the episcopal dignity, papal legates, as well as the investigations;

8) The information obtained due to the occupation, which refers to the appointment of senior prelates and senior officials of the Roman Curia;

9) Everything that refers to the notes encrypted and transmitted in encrypted messages;
10) issues or causes that the Supreme Pontiff, the cardinal president of a pontifical council and the legacies of the Holy See deemed so serious as to call for respect for the pontifical secret importance.

Article II
The following are obligated to guard the pontifical secret:

1) The cardinals, bishops, prelates above, major and minor officials, consultants, experts and staff of lower rank, which compete address issues covered by the pontifical secret;

2) The legacies of the Holy See and his subordinates that address the above issues, as well as all those who are called by them to consult such causes;

3) All those to whom custody is imposed pontifical secret in private business;

4) Those who acquired knowledge of documents and matters covered by the Pontifical Secret inappropriately, or even having had such information without fault on his part, know with certainty that are covered by the pontifical secret.

Article III
1) Those who are bound by the pontifical secret have the serious obligation to respect it in perpetuity.

2) If the violation concerns the external forum, the one who is accused of violation of the pontifical secret it will be judged by a special commission, to be constituted by the cardinal president of the competent dicastery, and in his absence, by the chairman of the competent office; this commission will inflict punishment proportionate to the gravity of the offense and the damage caused.

3) If the one who has violated the secrecy serve to the Roman Curia, he incurs the penalties established in the General Regulations.

Article IV
Those who are admitted to the pontifical secret because of their office must take an oath to the following formula:

"I ... in the presence of ... laying my hand on the sacrosanct Gospels of God, promise faithfully to guard the pontifical secret in cases and matters that should be treated under such secrecy, so that any Thus, under any pretext, is of a greater good, is for very urgent and very serious cause me be lawful to violate this secret. I promise to keep the secret, as has been said, even after the conclusion of the causes and issues for which it was expressly imposed such a secret. If I come to doubt the obligation of secrecy in some cases above, I will stick to interpretation in favor of it secret. I am also aware that the transgressor of such secrecy commits a grave sin. God help me help me and these Holy Gospels which I touch with my hand. "
Pope Paul VI, in an audience granted on February 4, 1974 to the undersigned, approved this Instruction and ordered it to be published, ordering that comes into effect from March 14 of that year, notwithstanding any contrary provision.

Ioannes
Secretary of State

Card. Villot

Source: AAS 66 (1974), pp. 89-92 (original Latin, unofficial translation)

notes
1 Cf. Ibid. art. 39, § 2 art. 61, n. 5 art. 65, § 1, n. 3.
2 For those who are admitted to the pontifical secret in some peculiar reason: I should observe in the cause entrusted to me.
Can. 1717 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

Can. 1718 §1. When it seems that sufficient evidence has been collected, the ordinary is to decide:

1/ whether a process to inflict or declare a penalty can be initiated;

2/ whether, attentive to can. 1341, this is expedient;

3/ whether a judicial process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree.

§2. The ordinary is to revoke or change the decree mentioned in §1 whenever new evidence indicates to him that another decision is necessary.

§3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent.

§4. Before he makes a decision according to the norm of §1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages.

Can. 1719 The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.
CHAPTER II.
THE DEVELOPMENT OF THE PROCESS

Can. 1720 If the ordinary thinks that the matter must proceed by way of extrajudicial decree:

1/ he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned;

2/ he is to weigh carefully all the proofs and arguments with two assessors;

3/ if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of cann. 1342-1350, setting forth the reasons in law and in fact at least briefly.

Can. 1721 §1. If the ordinary has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge according to the norm of cann. ¶ 1502 and ¶ 1504.

§2. The promoter of justice appointed to the higher tribunal acts as the petitioner before that tribunal.

Can. 1722 To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

Can. 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of ¶ can. 1481, §1 within the time limit set by the judge.

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.

Can. 1724 §1. At any grade of the trial the promoter of justice can renounce the trial at the command of or with the consent of the ordinary whose deliberation initiated the process.
§2. For validity the accused must accept the renunciation unless the accused was declared absent from the trial.

Can. 1725 In the discussion of the case, whether done in written or oral form, the accused, either personally or through the advocate or procurator, always has the right to write or speak last.

Can. 1726 If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.

Can. 1727 §1. The accused can propose an appeal even if the sentence dismissed the accused only because the penalty was facultative or because the judge used the power mentioned in can. 1344 and 1345.

§2. The promoter of justice can appeal whenever the promoter judges that the repair of scandal or the restoration of justice has not been provided for sufficiently.

Can. 1728 §1. Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

§2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

CHAPTER III.
ACTION TO REPAIR DAMAGES
http://www.vatican.va/archive/ENG1104/P6X.HTM

Can. 1729 §1. In the penal trial itself an injured party can bring a contentious action to repair damages incurred personally from the delict, according to the norm of can. 1596.

§2. The intervention of the injured party mentioned in §1 is not admitted later if it was not made in the first grade of the penal trial.

§3. The appeal in a case for damages is made according to the norm of can. 1628-1640 even if an appeal cannot be made in the penal trial; if both appeals are proposed, although by different parties, there is to be a single appellate trial, without prejudice to the prescript of can. 1730.
Can. 1730 §1. To avoid excessive delays in the penal trial the judge can defer the judgment for damages until he has rendered the definitive sentence in the penal trial.

§2. After rendering the sentence in the penal trial, the judge who does this must adjudicate for damages even if the penal trial still is pending because of a proposed challenge or the accused has been absolved for a cause which does not remove the obligation to repair damages.

Can. 1731 Even if the sentence rendered in a penal trial has become a res judicata, it in no way establishes the right of the injured party unless this party has intervened according to the norm of Δ can. 1729.
In order to fulfill the ecclesiastical law, which states in Article 52 of the apostolic Constitution on the Roman Curia, "[The Congregation for the Doctrine of the Faith] examines delicts against faith and more grave delicts both against morals and committed in the celebration of the sacraments which have been reported to it and, if necessary, proceeds to declare or impose canonical sanctions according to the norm of common or proper law," it was necessary first to define the method of proceeding in delicts against the faith: This was accomplished through the norms titled Agendi Ratio in Doctrinarum Examine, ratified and confirmed by the Supreme Pontiff, Pope John Paul II, together with Articles 28-29 approved informa specifica.

At approximately the same time, the Congregation for the Doctrine of 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, in force until now, was to be reviewed when the new canonical codes were promulgated.

Having carefully considered opinions and having made the appropriate consultations, the work of the Commission finally was completed. The Fathers of the Congregation for the Doctrine of the Faith examined the Commission's work carefully and submitted to the Supreme Pontiff conclusions on the determination of more grave delicts and the manner of proceeding to declare or impose sanctions, with the exclusive competence in this of the apostolic tribunal of this Congregation remaining firm. At these things, approved by the Supreme Pontiff himself, were confirmed and promulgated by the apostolic
letter given *motu proprio* beginning with the words *Sacramentorum sanctitatis tutela*.

The more grave delicts both in the celebration of the sacraments and against morals reserved to the Congregation for the Doctrine of the Faith are:

— *Delicts against the sanctity of the most august eucharistic sacrifice and the sacraments*, namely:

1° Taking or retaining the consecrated species for a sacrilegious purpose or throwing them away.

2° Attempting the liturgical action of the eucharistic sacrifice or simulating the same.

3° Forbidden concelebration of the eucharistic sacrifice with ministers of ecclesial communities which do not have apostolic succession and do not recognize the sacramental dignity of priestly ordination.

4° Consecrating for a sacrilegious purpose one matter without the other in the eucharistic celebration or even both outside a eucharistic celebration.

— *Delicts against the sanctity of the sacrament of penance*, namely:

1° Absolution of an accomplice in sin against the Sixth Commandment of the Decalogue.

2° Solicitation in the act, on the occasion or under the pretext of confession, to sin against the Sixth Commandment of the Decalogue, if it is directed to sin with the confessor himself.

3° Direct violation of the sacramental seal.

— *A delict against morals*, namely: the delict committed by a cleric against the Sixth Commandment of the Decalogue with a minor below the age of 18 years.
Only these delicts, which are indicated above with their definition, are reserved to the apostolic tribunal of the Congregation for the Doctrine of the Faith.

As often as an ordinary or hierarch has at least probable knowledge of a reserved delict, after he has carried out the preliminary investigation he is to indicate it to the Congregation for the Doctrine of the Faith, which unless it calls the case to itself because of special circumstances of things, after transmitting appropriate norms, orders the ordinary or hierarch to proceed ahead through his own tribunal. The right of appealing against a sentence of the first instance, whether on the part of the party or the party’s legal representative, or on the part of the promoter of justice, solely remains valid only to the supreme tribunal of this Congregation.

It must be noted that the criminal action on delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by a prescription of 10 years. The prescription runs according to the universal and common law; however, in the delict perpetrated with a minor by a cleric, the prescription begins to run from the day when the minor has completed the 18th year of age.

In tribunals established by ordinaries, or hierarchs, the functions of judge, promoter of justice, notary and legal representative can validly be performed for these cases only by priests. When the trial in the tribunal is finished in any fashion, all the acts of the case are to be transmitted ex officio as soon as possible to the Congregation for the Doctrine of the Faith.

All tribunals of the Latin church and the Eastern Catholic churches are bound to observe the canons on delicts and penalties, and also on the penal process of both codes respectively, together with the special norms which are transmitted by the Congregation for the Doctrine of the Faith for an individual case and which are to be executed entirely.

Cases of this kind are subject to the pontifical secret.
Through this letter, sent by mandate of the Supreme Pontiff to all the bishops of the Catholic Church, to superiors general of clerical religious institutes of pontifical right and clerical societies of apostolic life of pontifical right, and to other interested ordinaries and hierarchs, it is hoped not only that more grave delicts will be entirely avoided, but especially that ordinaries and hierarchs have solicitous pastoral care to look after the holiness of the clergy and the faithful even through necessary sanctions.


Cardinal Joseph Ratzinger  
Prefect  

Archbishop Tarcisio Bertone, SDB  
Secretary  

Footnotes


5 Cf. Latin Canons 1378.2.1 and 1379; Eastern Canon 1443.

6 Cf. Latin Canons 908 and 1365; Eastern Canons 702 and 1440.

7 Cf. Latin Canon 927.

8 Cf. Latin Canon 1378.1; Eastern Canon 1457.

9 Cf. Latin Canon 1387; Eastern Canon 1458.

10 Cf. Latin Canon 1388.1; Eastern Canon 1456.1.

11 Cf. Latin Canon 1362.1.1; Eastern Canon 1152.2.1.

12 Cf. Latin Canon 1362.2; Eastern Canon 1152.3.
ANNEXURE 2001/2003 B: 2001 INSTRUCTION SACRAMENTORUM SANCTITATIS TUTELA WITH 2003 AMENDMENTS IN BOLD TYPE

http://www.bishop-accountability.org/resources/resource-files/churchdocs/SacramentorumAndNormaeEnglish.htm

POPE JOHN PAUL II
APostolic Letter
GIVEN MOTU PROPRIO

by which are promulgated Norms concerning the more grave delicts reserved to the Congregation for the Doctrine of the Faith

The Safeguarding of the Sanctity of the Sacraments, especially the Most Holy Eucharist and Penance, and the keeping of the faithful, called to communion with the Lord, in their observance of the sixth commandment of the Decalogue, demand that the Church itself, in her pastoral solicitude, intervene to avert dangers of violation, so as to provide for the salvation of souls “which must always be the supreme law in the Church” (Codex Iuris Canonici, can. 1752).

Indeed, Our Predecessors already provided for the sanctity of the sacraments, especially penance, through appropriate Apostolic Constitutions such as the Constitution Sacramentum Poenitentiae, of Pope Benedict XIV, issued June 1, 1741;[1] the same goal was likewise pursued by a number of canons of the Codex Iuris Canonici, promulgated in 1917 with their fontes by which canonical sanctions had been established against delicts of this kind.[2]

In more recent times, in order to avert these and connected delicts, the Supreme Sacred Congregation of the Holy Office, through the Instruction Crimen sollicitationis, addressed to all Patriarchs, Archbishops, Bishops, and other local Ordinaries “even of an Oriental Rite” on March 16, 1962, established a manner of proceeding in such cases, inasmuch as judicial competence had been attributed exclusively to it, which competence could be exercised either administratively or through a judicial process. It is to be kept in mind that an Instruction of this kind had the force of law since the Supreme Pontiff, according to the norm of can. 247, § 1 of the Codex Iuris Canonici promulgated in 1917, presided over the Congregation of the Holy Office, and the Instruction proceeded from his own authority, with the Cardinal at the time only performing the function of Secretary.

The Supreme Pontiff, Pope Paul VI, of happy memory, by the Apostolic Constitution on the Roman Curia, Regimini Ecclesiae Universae, issued on August 15, 1967,[3] confirmed the Congregation’s judicial and administrative competence in proceeding “according to its amended and approved norms”.

Finally, by the authority with which we are invested, in the Apostolic Constitution, Pastor Bonus, promulgated on June 28, 1988, we expressly established, “[The Congregation for the Doctrine of the Faith] examines delicts against the faith and more grave delicts whether against morals or committed in the celebration of the sacraments, which have been referred to it and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law,”[4] thereby further confirming and determining the judicial competence of the same
Congregation for the Doctrine of the Faith as an Apostolic Tribunal.

After we had approved the Agendi ratio in doctrinarum examine,[5] it was necessary to define more precisely both “the more grave delicts whether against morals or committed in the celebration of the sacraments” for which the competence of the Congregation for the Doctrine of the Faith remains exclusive, and also the special procedural norms “for declaring or imposing canonical sanctions.”

With this apostolic letter, issued motu proprio, we have completed this work and we hereby promulgate the Norms concerning the more grave delicts reserved to the Congregation for the Doctrine of the Faith, which Norms are divided in two distinct parts, of which the first contains Substantive Norms, and the second Procedural Norms. We therefore enjoin all those concerned to observe them diligently and faithfully. These Norms take effect on the very day when they are promulgated.

All things to the contrary, even those worthy of special mention, notwithstanding.

Give in Rome at St. Peter’s on April 30, 2001, the memorial of Pope St. Pius V, in the twenty-third year of Our Pontificate.

POPE JOHN PAUL II
AAS 93 (2001) 737-739

[Decisions of the Supreme Pontiff made on February 7 and 14, 2003, are indicated in bold type.]

PART ONE
SUBSTANTIVE NORMS

Art. 1

§ 1. The Congregation for the Doctrine of the Faith, according to the norm of art. 52 of the Apostolic Constitution Pastor Bonus,[6] judges more grave delicts whether against morals or committed in the celebration of the sacraments, and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law, without prejudice to the competence of the Apostolic Penitentiary[7] and with Agendi ratio in doctrinarum examine[8] remaining in force.

§ 2. The Congregation for the Doctrine of the Faith judges the delicts mentioned in § 1 according to the norms which follow.

Art. 2

§ 1. The delicts against the sanctity of the Most Holy Sacrifice and Sacrament of the Eucharist, reserved to the Congregation for the Doctrine of the Faith for judgement are:

1° the taking or retaining for a sacrilegious purpose, or the throwing away of the consecrated species[9] mentioned in can. 1367 of the Code of Canon Law[10] and in can. 1442 of the Code of Canons of the Eastern Churches[11]

2° the attempting of the liturgical offering of the Eucharistic Sacrifice mentioned in can. 1378, § 2, n. 1, of the Code of Canon Law[12] or the simulation of the same, mentioned in can. 1379 of the Code of Canon Law[13] and in can. 1443 of the Code of Canons of the Eastern Churches[14]

3° the concelebration of the Eucharistic Sacrifice prohibited in can. 908 of the Code of Canon Law[15] and in can. 702 of the Code of Canons of the
Eastern Churches, mentioned in can. 1365 of the Code of Canon Law and in can. 1440 of the Code of Canons of the Eastern Churches with ministers of ecclesial communities, which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination.

§ 2. Also reserved to the Congregation for the Doctrine of the Faith is the delict which consists in the consecration for a sacrilegious purpose of one matter without the other in a Eucharistic celebration, or even of both outside of the Eucharistic celebration. One who has perpetrated this delict is to be punished according to the gravity of the crime, not excluding dismissal or deposition. Art. 3

The delicts against the sanctity of the sacrament of Penance reserved to the Congregation for the Doctrine of the Faith for judgement are:

1° the absolution of an accomplice in a sin against the sixth commandment of the Decalogue, mentioned in can. 1378, § 1, of the Code of Canon Law and in can. 1457 of the Code of Canons of the Eastern Churches;

2° the solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, mentioned in can. 1387 of the Code of Canon Law and in can. 1458 of the Code of Canons of the Eastern Churches, if it is directed to sinning with the confessor himself.

3° the direct and indirect violation of the sacramental seal, mentioned in can. 1388, § 1, of the Code of Canon Law and in can. 1456, § 1, of the Code of Canons of the Eastern Churches.

4° the recording by any technical instrument and the broadcast/transmission by means of instruments of social communication of that which is said in sacramental confession by the confessor or the penitent (Decree of the CDF of 23 September 1988; AAS 70 [1988] 1367).

Art. 4

§ 1. Reservation to the Congregation for the Doctrine of the Faith is also extended to a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years.

§ 2. One who has perpetrated the delict mentioned in § 1 is to be punished according to the gravity of the offense, not excluding dismissal or deposition.

Art. 5

§ 1. Criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after ten years.

§ 2. Prescription runs according to the norm of can. 1362, § 2, of the Code of Canon Law and can. 1152, § 3, of the Code of Canons of the Eastern Churches. However, in the delict mentioned in art. 4, § 1, prescription begins to run from the day on which the minor completes the eleventh year of age.

PART TWO

PROCEDURAL NORMS

Title I
The Constitution and Competence of the Tribunal

Art. 6

§ 1. The Congregation for the Doctrine of the Faith is the Supreme Apostolic Tribunal for the Latin Church and for the Eastern Catholic Churches for the judgment of the delicts defined in the preceding articles.

§ 2. This Supreme Tribunal also judges other delicts of which a defendant is accused by the Promoter of Justice by reason of connection of person and complicity.

§ 3. The sentences of this Supreme Tribunal, rendered within the limits of its proper competence, do not need to be submitted for the approval of the Supreme Pontiff.

Art. 7

§ 1. The Members of the Congregation for the Doctrine of the Faith are by the law itself judges of this Supreme Tribunal.

§ 2. The Prefect of the Congregation presides as first among equals over the college of the Members, and if the office of Prefect is vacant or if the Prefect himself is impeded, the Secretary of the Congregation carries out those duties of the Prefect.

§ 3. It pertains to the Prefect of the Congregation to appoint [other] judges, whether permanent (stabiles) or delegated (deputatos).

Art. 8

It is necessary that such appointed judges be priests, of mature age, possessing a doctorate in canon law, outstanding in good morals, prudence and expertise in the law. Such priests may at the same time exercise a judicial or consultative function before another Dicastery of the Roman Curia.

Art. 9

To present or sustain an accusation a Promoter of Justice is to be appointed, who is to be a priest, possessing a doctorate in canon law, outstanding in good morals, prudence and expertise in the law. He is to carry out his office in all grades of judgment.

Art. 10

For the functions of Notary and Chancellor, priests are appointed, whether or not they are Officials of this Congregation.

Art. 11

The role of Advocate and Procurator is carried out by a priest, possessing a doctorate in canon law. He is to be approved by the Presiding Judge of the college.

Art. 12

Indeed, in the other Tribunals dealing with cases under these Norms, only priests can validly carry out the functions of Judge, Promoter of Justice, Notary, and Patron [Procurator and Advocate].

Faculty to dispense

The CDF may dispense from the requirement of priesthood and the requirement of a doctorate in canon law mentioned in artt. 8 (judges), 9 (Promoter of Justice, 10 (Notaries and Chancellors), 11 (Advocates and Procurators), 12 (Judges, Promoters of Justice, Notaries, Patrons in other Tribunals)
case of dispensation from the doctorate in canon law, this dispensation will only be granted to persons who hold a licentiate in canon law and
who have worked in ecclesiastical tribunals for a reasonable time. [$ as on source Web site]
ing judges (artt. 8 and 12) the provisions of can. 1421 shall apply. [$ as on source Web site]

Art. 13
Whenever the Ordinary or Hierarch receives a report of a reserved delict which has at least a semblance of truth [notitiam saltem verisimilem], once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch [how] to proceed further, with due regard, however, for the right to appeal against a sentence of the first instance only to the Supreme Tribunal of the same Congregation.

Extraordinary Faculty to sanate acts
The faculty, in cases legitimately brought to the Congregation of the Doctrine for the Faith, to sanate acts, if procedural laws have been violated by inferior tribunals acting on the mandate of the same Congregation or under art. 13 of the Motu Proprio Sacramentorum sanctitatis tutela.

Special Procedure in case of recourse against administrative acts of the CDF concerning delicta graviola cases
In delicta graviola cases, the request for revocation of administrative acts of the CDF and all other recourse against the said acts made in accordance to art. 135 of the Regolamento Generale della Curia Romana, shall be referred to the Feria IV [of the CDF] which will decide on the merits and on questions of lawfulness. Any other recourse under art. 123 of the Apostolic Constitution Pastor Bonus is excluded.

Art. 14
If a case is referred directly to the Congregation without a preliminary investigation having been undertaken, the steps preliminary to the process, which fall by common law to the Ordinary or Hierarch, are carried out by the Congregation itself.

Art. 15
With due regard for the right of the Ordinary to impose those measures which are established in can. 1722 of the Code of Canon Law[259] or in can. 1473 of the Code of Canons of the Eastern Churches,[260] the respective Presiding Judge, may, at the request of the Promoter of Justice, exercise the same power under the same conditions determined in the canons themselves.

Art. 16
The Supreme Tribunal of the Congregation for the Doctrine of the Faith judges in second instance:
1° cases adjudicated in first instance by lower tribunals;
2° cases decided by the same Supreme Apostolic Tribunal in first instance.

Title II
The Procedure to be followed in the Judicial Trial

Art. 17
The more grave delicts reserved to the Congregation for the Doctrine of the Faith may only be tried in a judicial process.
Faculty to dispense

The faculty is granted to the CDF to dispense from art. 17 in those grave and clear cases which, according to the Particular Congress of the CDF:

a) may be referred directly to the Holy Father for an *ex officio* dismissal from the clerical state,

or

b) may be treated under the summary process of can. 1720 by the Ordinary who, in case he is of the opinion that the accused should be dismissed from the clerical state, will ask the CDF to impose dismissal by decree.

Art. 18

The Prefect is to constitute a Turnus of three or five judges to try the case.

Art. 19

If in the appellate stage the Promoter of Justice brings forward a specifically different accusation, this Supreme Tribunal can admit it and judge it as if at first instance.

Art. 20

§ 1. In cases concerning the delicts mentioned in art. 3, the Tribunal cannot indicate the name of the accuser to either the accused or his Patron unless the accuser has expressly consented.

§ 2. The same Tribunal must consider the particular importance of the question concerning the credibility of the accuser.

§ 3. Nevertheless, it is to be observed that any danger of violating the sacramental seal must be completely avoided.

Art. 21

If an incidental question arises, the College is to decide the matter by decree as promptly as possible [*expeditissime* - cf. cann. 1629, n. 5° CIC; 1310, n. 5° CCEO].

Art. 22

§ 1. With due regard for the right to appeal to this Supreme Tribunal, once an instance has finished in any manner before another Tribunal, all of the acts of the case are to be transmitted *ex officio* as soon as possible to the Congregation for the Doctrine of the Faith.

§ 2. The right of the Promoter of Justice of the Congregation to challenge a sentence runs from the day on which the sentence of first instance is made known to this same Promoter.

Art. 23

A *res iudicata* occurs:

1° if a sentence has been rendered in second instance;

2° if an appeal against a sentence has not been proposed within a month;

3° if, in the appellate stage, the instance is abated or is renounced;

4° if the sentence has been rendered in accord with the norm of art. 16.

Art. 24

§ 1. Judicial expenses are to be paid as the sentence has determined.

§ 2. If the defendant is not able to pay the expenses, they are to be paid by the Ordinary or Hierarch of the case.

Art. 25
§ 1. Cases of this nature are subject to the pontifical secret.\[31\]

§ 2. Whoever has violated the secret, whether deliberately (ex dolo) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher Turnus at the request of the injured party or even ex officio.

Art. 26

In these cases, together with the prescripts of these Norms, by which all Tribunals of the Latin Church and Eastern Catholic Churches are bound, also the canons concerning delicts and penalties as well as the canons concerning the penal process of each Code must be applied.

This unofficial translation is based on a translation of the Motu Proprio by the USCCB and a translation of the Norms by Gregory Ingels, both revised by Joseph R. Penderson and Charles J. Scicluna. The translations of the canons of the CIC and the CCEO are from the translations published by the Canon Law Society of America in 1999 and 2001 respectively.

[The translation is reproduced here as it was posted at http://www.opusbonosacerdotii.org/sacramentorum_sanctitatis_tutela_english.htm.]

\[1\] BENEDICT XIV. Constitution Sacramentum Poenitentiae, June 1, 1741, in Codex Iuris Canonici, prepared at the order of Pius X, Supreme Pontiff, promulgated by the authority of Pope Benedict XV, Documenta, Document V in AAS 9 (1917), Part II, 505-508.

\[2\] Cf. Codex Iuris Canonici anno 1917 promulgatus, cann. 817, 2316, 2320, 2322, 2368 § 1, 2369 § 1.


\[6\] POPE JOHN PAUL II, Apostolic Constitution Pastor Bonus, On the Roman Curia, June 28, 1988, art. 52, in AAS 80 (1988) 874: "[The Congregation for the Doctrine of the Faith] examines delicts against the faith and more grave delicts whether against morals or committed in the celebration of the sacraments, which have been referred to it and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law."

\[7\] POPE JOHN PAUL II, Apostolic Constitution Pastor Bonus, On the Roman Curia, June 28, 1988, art. 118, in AAS 80 (1988) 890: "For the internal forum, whether sacramental or non-sacramental, it grants absolutions, dispensations, commutations, sanations, condonations and other favors."


\[9\] PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, Response to a proposed doubt, June 4, 1999, in AAS 91 (1999) 918:

D. Whether or not the word "abicere" in canons 1367 CIC and 1442 CCEO should be understood only as the act of throwing away.
R. Negative and ad mentem.

The "mens" is that the word "abicere" should be considered to include any voluntarily and gravely contemptuous action towards the Sacred Species.

[10] Code of Canon Law, can. 1367 - A person who throws away the consecrated species or takes or retains them for a sacrilegious purpose incurs a latae sententiae excommunication reserved to the Apostolic See; moreover, a cleric can be punished with another penalty, not excluding dismissal from the clerical state.

[11] Code of Canons of the Eastern Churches, can. 1442 - A person who has thrown away the Divine Eucharist or has taken or retained it for a sacrilegious purpose is to be punished with a major excommunication and, if a cleric, also with other penalties not excluding deposition.

[12] Code of Canon Law, can. 1378 - § 2. The following incur a latae sententiae penalty of interdict or, if a cleric, alatae sententiae penalty of suspension:

- A person who attempts the liturgical action of the Eucharistic sacrifice though not promoted to the sacerdotal order.

[13] Code of Canon Law, can. 1379 - In addition to the cases mentioned in can. 1378, a person who simulates the administration of a sacrament is to be punished with a just penalty.

[14] Code of Canons of the Eastern Churches, can. 1443 - A person who has simulated the celebration of the Divine Liturgy or other sacraments is to be punished with an appropriate penalty, not excluding a major excommunication.

[15] Code of Canon Law, can. 908 - Catholic priests are forbidden to concelebrate the Eucharist with priests or ministers of Churches or ecclesial communities which do not have full communion with the Catholic Church.

[16] Code of Canons of the Eastern Churches, can. 702 - Catholic priests are forbidden to concelebrate the Divine Liturgy with non-Catholic priests or ministers.

[17] Code of Canon Law, can. 1365 - A person guilty of prohibited participation in sacred rites (communicatio in sacris) is to be punished with a just penalty.

[18] Code of Canons of the Eastern Churches, can. 1440 - A person who violates the norms of law concerning participation in sacred rites (communicatio in sacris) can be punished with an appropriate penalty.

[19] Code of Canon Law, can. 927 - It is absolutely forbidden, even in extreme urgent necessity, to consecrate one matter without the other or even both outside the eucharistic celebration.

[20] Code of Canon Law, can. 1378 - § 1. A priest who acts against the prescript of can. 977 incurs a latae sententiae excommunication reserved to the Apostolic See.

[21] Code of Canons of the Eastern Churches, can. 1457 - A priest who has absolved an accomplice in a sin against chastity is to be punished with a major excommunication, with due regard for canon 728, § 1, n. 2.

[22] Code of Canon Law, can. 1387 - A priest who, in the act, on the occasion, or under the pretext of confession solicits a penitent to sin against the sixth commandment of the Decalogue is to be punished, according to the gravity of the delict, by suspension, prohibitions, and privations; in graver
cases he is to be dismissed from the clerical state.

[24] Code of Canons of the Eastern Churches, can. 1458 – A priest who in the act, on the occasion, or under the pretext of confession, has solicited a penitent to sin against chastity, is to be punished with an appropriate penalty, not excluding deposition.

[25] Code of Canon Law, canon 1388 – § 1. A confessor who directly violates the sacramental seal incurs a latae sententiae excommunication reserved to the Apostolic See; one who does so only indirectly is to be punished according to the gravity of the delict.

[26] Code of Canons of the Eastern Churches, can. 1456 – § 1. A confessor who has directly violated the sacramental seal is to be punished with a major excommunication, with due regard for canon 728, § 1, n. 1; however, if he broke this seal in another manner, he is to be punished with an appropriate penalty.

[27] Code of Canon Law, can 1362 – § 1. Prescription extinguishes a criminal action after three years unless it concerns:

1. delicts reserved to the Congregation for the Doctrine of the Faith ...

Cf. Code of Canons of the Eastern Churches, can. 1152 – § 2. A penal action is extinguished by prescription after three years, unless it is a question of:

1. delicts reserved to the Apostolic See ...

[28] Code of Canon Law, can. 1362 – § 2. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

Cf. Code of Canons of the Eastern Churches, can. 1152 – § 3. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

[29] Code of Canon Law, can. 1722 – To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude (arcere) the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

[30] Code of Canons of the Eastern Churches, can. 1473 – To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the hierarch, after having heard the promoter of justice and cited the accused, at any stage and grade of the penal trial can exclude (arcere) the accused from the exercise of sacred orders, an office, a ministry, or another function, can impose or forbid residence in some place or territory, or even can prohibit public reception of the Divine Eucharist. Once the cause ceases, all these measures must be revoked and they will end by the law itself when the penal trial ceases.

[31] Secretariat of State,Roscript from an Audience of the Holy Father Il 4 febbraio, by which the Regolamento Generale della Curia Romana is made public, April 30, 1999, Regolamento Generale della Curia Romana, April 30, 1999, art. 36 § 2, in AAS 91 (1999) 646: "With particular care, the pontifical secret will be observed, according the norm of the
Instruction *Secreta continere* of February 4, 1974."

The Secretariat of State or Papal Secretariat, Rescript from an Audience, the Instruction *Secreta continere*, Concerning the Pontifical Secret, February 4, 1974, in *AAS* 66 (1974) 89-92:

"Art. 1. Included under the pontifical secret are:

4. Extrajudicial denunciations received regarding delicts against faith and against morals, and regarding delicts perpetrated against the sacrament of Penance; likewise the trial and decision which pertain to those denunciations, with due regard for the right of the one who has been reported to the authorities to know of the denunciation, if such knowledge is necessary for his own defense. However, it will be permissible to make known the name of the denouncer only when it seems opportune to the authorities that the denounced person and the denouncer appear together in the trial; ..." (p. 90).
The Code of Canon Law promulgated by Pope Benedict XV in 1917 recognized the existence of a number of canonical crimes or "delicts" reserved to the exclusive competence of the Sacred Congregation of the Holy Office which, as a tribunal, was governed by its own proper law (cfr. can. 1555 CIC 1917).

A few years after the promulgation of the 1917 Code, the Holy Office issued an Instruction, "Crimen Sollicitationis" (1922), which gave detailed instruction to local dioceses and tribunals on the procedures to be adopted when dealing with the canonical delict of solicitation. This most grave crime concerned the abuse of the sanctity and dignity of the Sacrament of Penance by a Catholic priest who solicited the penitent to sin against the sixth commandment, either with the confessor himself, or with a third party. The norms issued in 1922 were an update, in light of the Code of Canon Law of 1917, of the Apostolic Constitution "Sacramentorum Poenitentiae" promulgated by Pope Benedict XIV in 1741.

A number of concerns had to be addressed, underlining the specificity of the legislation (with implications which are less relevant from the perspective of civil penal law): the respect of the dignity of the sacrament, the inviolable seal of the confessional, the dignity of the penitent and the fact that in most cases the accused priest could not be interrogated fully on what occurred without putting the seal of confession in danger.

This special procedure was based, therefore, on an indirect method of achieving the moral certitude necessary for a definitive decision in the case. This indirect method included investigating the credibility of the person accusing the priest and the life and behaviour of the accused priest. The accusation itself was considered the most serious accusation one could bring against a Roman Catholic priest. Therefore, the procedure took care to ensure that a priest who could be a victim of a false or calumnious accusation would be protected from infamy until proven guilty. This was achieved through a strict code of confidentiality, which was meant to protect all persons concerned from undue publicity until the definitive decision of the ecclesiastic tribunal.

The 1922 Instruction included a short section dedicated to another canonical delict: the "crimen pessimum" which dealt with same-sex clerical misconduct. This further section determined that the special procedures for solicitation cases should be used for "crimen pessimum" cases, with those adaptations rendered necessary by the nature of the case. The norms concerning the "crimen pessimum" also extended to the heinous crime of sexual abuse of prepubescent children and to bestiality.

The Instruction "Crimen sollicitationis" was, therefore, never intended to represent the entirety of the policy of the Catholic Church regarding sexual improprieties on the part of the clergy. Rather, its sole purpose was to establish a procedure that responded to the singularly delicate situation that is a sacramental confession, in which the duty of complete confidentiality on the part of the priest corresponds, according to divine law, to the complete
openness of the intimate life of the soul on the part of the penitent. Over time and only analogously, these norms were extended to some cases of immoral conduct of priests. The idea that there should be comprehensive legislation that treats the sexual conduct of persons entrusted with the educational responsibility is very recent; therefore, attempting to judge the canonical norms of the past century from this perspective is gravely anachronistic.

The 1922 Instruction was given as needed to bishops who had to deal with particular cases concerning solicitation, clerical homosexuality, sexual abuse of children and bestiality. In 1962, Blessed Pope John XXIII authorised a reprint of the 1922 Instruction, with a small section added regarding the administrative procedures to be used in those cases in which religious clerics were involved. Copies of the 1962 re-print were meant to be given to the Bishops gathering for the Second Vatican Council (1962-1965). A few copies of this re-print were handed out to bishops who, in the meantime, needed to process cases reserved to the Holy Office but, most of the copies were never distributed.

The reforms proposed by the Second Vatican Council required a reform of the 1917 Code of Canon Law and of the Roman Curia. The period between 1965 and 1983 (the year when the new Latin Code of Canon Law appeared) was marked by differing trends in canonical scholarship as to the scope of canonical penal law and the need for a de-centralized approach to cases with emphasis on the authority and discretion of the local bishops. A "pastoral attitude" to misconduct was preferred and canonical processes were thought by some to be anachronistic. A "therapeutic model" often prevailed in dealing with clerical misconduct. The bishop was expected to "heal" rather than "punish". An over-optimistic idea of the benefits of psychological therapy guided many decisions concerning diocesan or religious personnel, sometimes without adequate regard for the possibility of recidivism.

Cases concerning the dignity of the Sacrament of Penance remained with the Congregation for the Doctrine of the Faith (formerly the Holy Office; its name changed in 1965) after the Council, and the Instruction "Crimen Sollicitationis" was still used for such cases until the new norms established by the motu proprio "Sacramentorum sanctitatis tutela" in 2001.

A small number of cases concerning sexual misconduct of clergy with minors were referred to the Congregation for the Doctrine of the Faith after the Second Vatican Council. Some of these cases were linked with the abuse of the sacrament of Penance, while a number may have been referred as requests for dispensations from the obligations of priesthood, including celibacy (sometimes referred to as "laicization") which were dealt with by the Congregation for the Doctrine of the Faith until 1989 (From 1989 to 2005 the competence in these dispensation cases was transferred to the Congregation for Sacraments and Divine Worship; from 2005 to the present the same cases have been treated by the Congregation for the Clergy).

The Code of Canon Law promulgated by Pope John Paul II in 1983 updated the whole discipline n can. 1395, § 2: "A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants". According to the 1983 Code of Canon Law canonical trials are held in the dioceses. Appeals from judicial
sentences may be presented to the Roman Rota, whereas administrative recourses against penal decrees are presented to the Congregation for the Clergy.

In 1994 the Holy See granted an indult to the Bishops of the United States: the age for the canonical crime of sexual abuse of a minor was raised to 18. At the same time, prescription (canonical term for Statute of Limitations) was extended to a period of 10 years from the 18th birthday of the victim. Bishops were reminded to conduct canonical trials in their dioceses. Appeals were to be heard by the Roman Rota. Administrative Recourses were heard by the Congregation for the Clergy. During this period (1994 - 2001) no reference was made to the previous competence of the Holy Office over such cases.

The 1994 Indult for the US was extended to Ireland in 1996. In the meantime the question of special procedures for sexual abuse cases was under discussion in the Roman Curia. Finally Pope John Paul II decided to include the sexual abuse of a minor under 18 by a cleric, among the new list of canonical delicts reserved to the Congregation for the Doctrine of the Faith. Prescription for these cases was of ten (10) years from the 18th birthday of the victim. This new law was promulgated in the motu proprio “Sacramentorum sanctitatis tutela” on 30 April 2001. A letter signed by Cardinal Joseph Ratzinger and Archbishop Tarcisio Bertone, respectively Prefect and Secretary of the Congregation for the Doctrine of the Faith, was sent to all the Roman Catholic Bishops on 18 May 2001. This letter informed the bishops of the new law and the new procedures, which replaced the Instruction “Crimen Sollicitationis”.

The acts that constitute the most grave delicts reserved to the Congregation were specified in this letter, both those against morality and those committed in the celebration of the Sacraments. Also given were special procedural norms to be followed in cases concerning these grave delicts, including those norms regarding the determination and imposition of canonical sanctions.

The delicta graviora reserved to the Congregation for the Doctrine of the Faith were as follows:

Delicts against the sanctity of the Most Holy Sacrament and Sacrifice of the Eucharist:
1. Throwing away, taking or retaining the consecrated species for a sacrilegious purpose, or profaning the consecrated species (CIC can. 1367; CCEO can. 1442).
2. Attempting the liturgical action of the Eucharistic sacrifice or the simulation thereof (CIC can. 1378 § 2 n. 1, can. 1379; CCEO can. 1443).
3. Concelebrating the Eucharistic Sacrifice together with ministers of ecclesial communities which do not have Apostolic succession nor recognize the Sacramental dignity of priestly ordination (CIC can. 908, 1365; CCEO can. 792, 1440).
4. Consecrating one matter without the other in a Eucharistic celebration or both outside of a Eucharistic celebration (cf. CIC can. 927).

Delicts against the sanctity of the Sacrament of Penance:
1. Absolution of an accomplice in the sin against the sixth commandment of the Decalogue (CIC can. 1378 § 1; CCEO can. 1457).
2. Solicitation to sin with the confessor against the sixth commandment of the Decalogue, in the act of, context of or pretext of the Sacrament of Penance (CIC can. 1387; CCEO can. 1458).
3. Direct violation of the Sacramental seal (CIC can. 1388 § 1; CCEO can. 1456).
Delicts against morality:
1. The violation of the sixth commandment of the Decalogue, committed by a cleric with a minor under the age of 18.

The procedural norms to be followed in these cases were as follows: Whenever an Ordinary or Hierarch had at least probable knowledge (notitiam saltem verisimilem habeat) of the commission of one of the reserved grave delicts, after having carried out the preliminary investigation, he was to inform the Congregation for the Doctrine of the Faith which, unless it called the case to itself because of special circumstances, would indicate to the Ordinary or Hierarch how to proceed. The right of appeal against a sentence of the first instance was to be exercised only before the Supreme Tribunal of the Congregation.

Criminal action in the cases reserved to the Congregation for the Doctrine of the Faith was extinguished by a prescription of ten years. It was also foreseen that prescription would be computed according to the norms of CIC can. 1362 § 2 and CCEO can. 1152 § 3, with the singular exception of the delict contra sextum cum minore, in which case prescription would begin to run from the day when the minor had completed his eighteenth year of age.

In tribunals established by Ordinaries of Hierarchs, for the cases of the more grave delicts reserved to the Congregation for the Doctrine of the Faith, the functions of judge, promoter of justice, notary and legal representative could be validly performed only by priests. Furthermore, upon completion of the trial in the tribunal in any manner, the acts of the case were to be transmitted ex officio, as soon as possible, to the Congregation.

It was also established that all of the tribunals of the Latin Church and of all Eastern Catholic Churches were to observe the canons on delicts, penalties and the penal process of both Codes respectively. These were to be followed together with the special norms given by the Congregation for the Doctrine of the Faith.

Nine years after the promulgation of the motu proprio Sacramentorum sanctitatis tutela, the Congregation for the Doctrine of the Faith felt it necessary to propose certain changes to these norms, not modifying the text in its entirety, but rather only in a few areas, in an effort to improve the application of the law.

After a serious and attentive study of the proposed changes, the Cardinals and Bishops Members of the Congregation for the Doctrine of the Faith presented the results of their decisions to the Supreme Pontiff and, on 21 May 2010, Pope Benedict XVI gave his approval and ordered the promulgation of the revised text.

The text of the NORMS on delicta graviora currently in force is the text approved by the Holy Father Benedict XVI on 21 May 2010.
ANNEXURE 2010 B: 2010 NORMS
http://www.vatican.va/resources/resources_norme_en.html

Part One

SUBSTANTIVE NORMS

Art. 1
§ 1. The Congregation for the Doctrine of the Faith, according to art. 52 of the Apostolic Constitution Pastor Bonus[1], judges delicts against the faith, as well as the more grave delicts committed against morals and in the celebration of the sacraments and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law, with due regard for the competence of the Apostolic Penitentiary[2] and in keeping with Agendi ratio in doctrinarum examine.[3]

§ 2. With regard to the delicts mentioned above in § 1, the Congregation for the Doctrine of the Faith, by mandate of the Roman Pontiff, may judge Cardinals, Patriarchs, Legates of the Apostolic See, Bishops as well as other physical persons mentioned in can. 1405 § 3 of the Code of Canon Law[4], and in can. 1061 of the Code of Canons of the Eastern Churches.[5]

§ 3. The Congregation for the Doctrine of the Faith judges the reserved delicts mentioned in § 1 according to the following norms.

Art. 2

§ 2. In the abovementioned cases referred to in § 1, it pertains to the Ordinary or Hierarch to remit, by norm of law, if it be the case, the latae sententiae excommunication and likewise to undertake a judicial trial in the first instance or issue an extrajudicial decree, with due regard for the right of appeal or of recourse to the Congregation for the Doctrine of the Faith.

Art. 3
§ 1. The more grave delicts against the sanctity of the most Holy Sacrifice and Sacrament of the Eucharist reserved to the Congregation for the Doctrine of the Faith for judgment are:

1° the taking or retaining for a sacrilegious purpose or the throwing away of the consecrated species[10], as mentioned in can. 1367 of the Code of Canon Law[11], and in can. 1442 of the Code of Canons of the Eastern Churches[12];

2° attempting the liturgical action of the Eucharistic Sacrifice spoken of in can. 1378 § 2, n. 1, of the Code of Canon Law[13];

3° the simulation of the same, spoken of in can. 1379 of the Code of Canon Law[14] and in can. 1443 of the Code of Canons of the Eastern Churches[15];

4° the concelebration of the Eucharistic Sacrifice prohibited in can. 908 of the Code of Canon Law[16], and in can. 702 of the Code of Canons of the Eastern Churches[17], spoken of in can. 1365 of the Code of Canon Law[18], and in can. 1440 of the Code of Canons of the Eastern Churches[19], with ministers of ecclesial communities which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination.

§ 2. Also reserved to the Congregation for the Doctrine of the Faith is the delict which consists in the consecration for a sacrilegious purpose of one matter without the other or even of both, either within or outside of the eucharistic
celebration[20]. One who has perpetrated this delict is to be punished according to the gravity of the crime, not excluding dismissal or deposition.

Art. 4
§ 1. The more grave delicts against the sanctity of the Sacrament of Penance reserved to the Congregation for the Doctrine of the Faith are:
1° the absolution of an accomplice in a sin against the sixth commandment of the Decalogue, mentioned in can. 1378 § 1 of the Code of Canon Law[21], and in can. 1457 of the Code of Canons of the Eastern Churches[22];
2° attempted sacramental absolution or the prohibited hearing of confession, mentioned in can. 1378 § 2, 2° of the Code of Canon Law[23];
3° simulated sacramental absolution, mentioned in can. 1379 of the Code of Canon Law[24], and in can. 1443 of the Code of Canons of the Eastern Churches[25];
4° the solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, as mentioned in can. 1387 of the Code of Canon Law[26], and in can. 1458 of the Code of Canons of the Eastern Churches[27], if it is directed to sinning with the confessor himself;
5° the direct and indirect violation of the sacramental seal, mentioned in can. 1388 § 1 of the Code of Canon Law[28], and in can. 1456 § 1 of the Code of Canons of the Eastern Churches[29];
§ 2. With due regard for § 1, n. 5, also reserved to the Congregation for the Doctrine of the Faith is the more grave delict which consists in the recording, by whatever technical means, or in the malicious diffusion through communications media, of what is said in sacramental confession, whether true or false, by the confessor or the penitent. Anyone who commits such a delict is to be punished according to the gravity of the crime, not excluding, if he be a cleric, dismissal or deposition[30].

Art. 5
The more grave delict of the attempted sacred ordination of a woman is also reserved to the Congregation for the Doctrine of the Faith:
1° With due regard for can. 1378 of the Code of Canon Law, both the one who attempts to confer sacred ordination on a woman, and she who attempts to receive sacred ordination, incurs a latae sententiae excommunication reserved to the Apostolic See.
2° If the one attempting to confer sacred ordination, or the woman who attempts to receive sacred ordination, is a member of the Christian faithful subject to the Code of Canons of the Eastern Churches, with due regard for can. 1443 of that Code, he or she is to be punished by major excommunication reserved to the Apostolic See.
3° If the guilty party is a cleric he may be punished by dismissal or deposition[31].

Art. 6
§ 1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:
1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.
2° the acquisition, possession, or distribution by a cleric of pornographic
images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;

§ 2. A cleric who commits the delicts mentioned above in § 1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

Art. 7

§ 1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

§ 2. Prescription runs according to the norm of can. 1362 § 2 of the Code of Canon Law[32], and can. 1152 § 3 of the Code of Canons of the Eastern Churches[33]. However, in the delict mentioned in art. 6 § 1 n. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age.

Part Two

PROCEDURAL NORMS

Title I

The Constitution and Competence of the Tribunal

Art. 8

§ 1. The Congregation for the Doctrine of the Faith is the Supreme Apostolic Tribunal for the Latin Church as well as the Eastern Catholic Churches, for the judgment of the delicts defined in the preceding articles.

§ 2. This Supreme Tribunal also judges other delicts of which a defendant is accused by the Promotor of Justice, by reason of connection of person and complicity.

§ 3. The sentences of this Supreme Tribunal, rendered within the limits of its proper competence, do not need to be submitted for the approval of the Supreme Pontiff.

Art. 9

§ 1. The Members of the Congregation for the Doctrine of the Faith are ipso iure the judges of this Supreme Tribunal.

§ 2. The Prefect of the Congregation presides as first among equals over the college of the Members, and if the office of Prefect is vacant or if the Prefect himself is impeded, the Secretary of the Congregation carries out his duties.

§ 3. It is the responsibility of the Prefect of the Congregation to nominate additional stable or deputed judges.

Art. 10

It is necessary that such appointed judges be priests, of mature age, possessing a doctorate in canon law, outstanding in good morals, prudence and expertise in the law. Such priests may at the same time exercise a judicial or consultative function before another Dicastery of the Roman Curia.

Art. 11

To present and sustain an accusation a Promotor of Justice is to be appointed, who is to be a priest, possessing a doctorate in canon law, outstanding in good morals, prudence, and expertise in the law. He is to carry out his office in all grades of judgment.

Art. 12

For the functions of Notary and Chancellor, priests are appointed, whether or not they are officials of this Congregation.
Art. 13
The role of Advocate or Procurator is carried out by a priest possessing a doctorate in canon law. He is to be approved by the presiding judge of the college.

Art. 14
Indeed, in the other tribunals dealing with cases under these norms, only priests can validly carry out the functions of Judge, Promotor of Justice, Notary, and Patron [Procurator and Advocate].

Art. 15
With regard to the provisions of can. 1421 of the Code of Canon Law[34], and can. 1087 of the Code of Canons of the Eastern Churches[35], the Congregation for the Doctrine of the Faith may dispense from the requirements of the priesthood and of a doctorate in Canon Law.

Art. 16
Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the case warrants, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation.

Art. 17
If a case is referred directly to the Congregation without a preliminary investigation having been undertaken, the steps preliminary to the process, which fall by common law to the Ordinary or Hierarch, may be carried out by the Congregation itself.

Art. 18
With full respect for the right of defense, the Congregation for the Doctrine of the Faith may sanate acts in cases lawfully presented to it if merely procedural laws have been violated by lower Tribunals acting by mandate of the same Congregation or according to art. 16.

Art. 19
With due regard for the right of the Ordinary to impose from the outset of the preliminary investigation those measures which are established in can. 1722 of the Code of Canon Law[36], or in can. 1473 of the Code of Canons of the Eastern Churches[37], the respective presiding judge may, at the request of the Promotor of Justice, exercise the same power under the same conditions determined in the canons themselves.

Art. 20
The Supreme Tribunal of the Congregation for the Doctrine of the Faith judges in second instance:
1° cases adjudicated in first instance by lower tribunals;
2° cases decided by this same Supreme Apostolic Tribunal in first instance.

Title II
The Procedure to be followed in the Judicial Trial

Art. 21
§ 1. The more grave delicts reserved to the Congregation for the Doctrine of the Faith are to be tried in a judicial process.
§ 2. However, the Congregation for the Doctrine of the Faith may:

1° decide, in individual cases, ex officio or when requested by the Ordinary or Hierarch, to proceed by extrajudicial decree, as provided in can. 1720 of the Code of Canon Law[38] and can. 1486 of the Code of Canons of the Eastern Churches[39]. However, perpetual expiatory penalties may only be imposed by mandate of the Congregation for the Doctrine of the Faith.

2° present the most grave cases to the decision of the Roman Pontiff with regard to dismissal from the clerical state or deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the delict was committed and after having given the guilty party the possibility of defending himself.

Art. 22
The Prefect is to constitute a turnus of three or five judges to try the case.

Art. 23
If in the appellate stage the Promotor of Justice brings forward a specifically different accusation, this Supreme Tribunal can admit it and judge it as if at first instance.

Art. 24
§ 1. In cases concerning the delicts mentioned of in art. 4 §1, the Tribunal cannot indicate the name of the accuser to either the accused or his patron unless the accuser has expressly consented.

§ 2. This same Tribunal must consider the particular importance of the question concerning the credibility of the accuser.

§ 3. Nevertheless, it must always be observed that any danger of violating the sacramental seal be altogether avoided.

Art. 25
If an incidental question arises, the college is to decide the matter by decree most expeditiously [expeditissime, cf. cann. 1629, n.5° CIC; 1310, n. 5° CCEO].

Art. 26
§ 1. With due regard for the right to appeal to this Supreme Tribunal, once an instance has been finished in any manner before another tribunal, all of the acts of the case are to be transmitted ex officio to the Congregation for the Doctrine of the Faith as soon as possible.

§ 2 The right of the Promotor of Justice of the Congregation to challenge a sentence runs from the day on which the sentence of first instance is made known to this same Promotor.

Art. 27
Recourse may be had against singular administrative acts which have been decreed or approved by the Congregation for the Doctrine of the Faith in cases of reserved delicts. Such recourse must be presented within the preemptory period of sixty canonical days to the Ordinary Session of the Congregation (the Feria IV) which will judge on the merits of the case and the lawfulness of the Decree. Any further recourse as mentioned in art. 123 of the Apostolic Constitution Pastor bonus is excluded[40].

Art. 28
A res judicata occurs:

1° if a sentence has been rendered in second instance;

2° if an appeal against a sentence has not been proposed within a month;

3° if, in the appellate grade, the instance is abated or is renounced;
4° if the sentence has been rendered in accord with the norm of art.20.

Art. 29
§ 1. Judicial expenses are to be paid as the sentence has determined.
§ 2. If the defendant is not able to pay the expenses, they are to be paid by the Ordinary or Hierarchy of the case.

Art. 30
§ 1. Cases of this nature are subject to the pontifical secret.
§ 2. Whoever has violated the secret, whether deliberately (ex dolo) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher turnus at the insistence of the injured party or even ex officio.

Art. 31
In these cases, together with the prescripts of these norms, by which all Tribunals of the Latin Church and Eastern Catholic Churches are bound, the canons concerning delicts and penalties as well as the canons concerning the penal process of each Code also must be applied.


[4] Codex Iuris Canonici, can. 1405 - § 3. Rotae Romanae reservatur iudicare:
1° Episcopos in contentiosis, firmo praecepto can. 1419 § 2;
2° Abbatem primatem, vel Abbatem superiorum congregations monasticae, et supremae Moderatorum instititorum religiosorum iuris pontificii;
3° dioeceses aliasve personas ecclesiasticas, sive physicas sive iuridicas, quae Superiorem infra Romanum Pontificem non habent.

[5] Codex Canonum Ecclesiarum Orientalium, can. 1061 - Coram tribunalibus Sedis Apostolicae conveniri debent personae, quae auctoritatem superiorum infra Romanum pontificem non habent, sive sunt personae physicae in ordine episcopatus non constitutae sive sunt personae iuridicae salvo can. 1063 § 4 nn. 3 et 4.

[6] Codex Iuris Canonici, can. 751 - Dicitur haeresis, pertinax, post receptum baptismum, aliquius veritatis fide divina et catholica credendae denegatio, aut de eadem pertinax dubitation; apostasia, fidei christianae ex toto repudiatio; schisma, subiectionis Summo Pontifici aut communionis cum Ecclesiae membris eadem subditis detrectatio.

[7] Codex Iuris Canonici, can. 1364 - § 1. Apostata a fide, haereticus vel
schismaticus in excommunicationem latae sententiae incurrit, firmo praescripto can. 194, § 1, n. 2; clericus praeterea potest poenis, de quibus in can. 1336, § 1, nn. 1, 2 et 3, puniri. - § 2. Si diurna contumacia vel scandali gravitas postulet, aliae poenae addi possunt, non excepta dimissione e statu clericali.
[8] Codex Canonum Ecclesiarum Orientalium, can. 1436 - § 1. Qui aliquam veritatem fide divina et catholica credendam denegat vel eam in dubium ponit aut fidem christianam ex toto repudiat et legitime monitus non resipiscit, ut haereticus aut apostata excommunicatione maiore puniatur, clericus praeterea alii poenis puniri potest non exclusa depositione.
[9] Codex Canonum Ecclesiarum Orientalium, can. 1437 - Qui subiectum supremae Ecclesiae auctoritati aut communione cum christifidelibus eisdem subjectis detectat et legitime monitus oboedientiam non praestat, ut schismaticus excommunicatione maiore puniatur.
[11] Codex Iuris Canonici, can. 1367 - Qui species consecratas abicit aut in sacrilegum finem abducit vel retinet, in excommunicationem latae sententiae Sedl Apostolicae reservata incurrre; clericus praeterea alia poena, non exclusa dimissione e statu clericali, puniri potest.
[12] Codex Canonum Ecclesiarum Orientalium, can. 1442 - Qui Divinam Eucharistiam abiecit aut in sacrilegum finem abduxit vel retinuit, excommunicatione maiore puniatur et, si clericus est, etiam alii poenis non exclusa deposizione.
[13] Codex Iuris Canonici, can. 1378 - § 2. In poenam latae sententiae interdicti vel, si sit clericus, suspensionis incurrit: 1° qui ad ordinem sacerdotalem non promotus liturgicam eucharisticum Spectaculam actionem attentat ...
[14] Codex Iuris Canonici, can. 1379 - Qui, praeter casus de quibus in can. 1378, sacramentum se administrare simulat, iusta poena puniatur.
[15] Codex Canonum Ecclesiarum Orientalium, can. 1443 - Qui Divinae Liturgiae vel aliis sacramentorum celebrationem simulavit, congrua poena puniatur non exclusa excommunicatione maiore.
[16] Codex Iuris Canonici, can. 908 - Sacerdotibus catholicis vetitum est una cum sacerdotibus vel ministris Ecclesiarum communitatumve ecclesialium plenum communione cum Ecclesia catholica non habentium, Eucharistiam concelebrare.
[17] Codex Canonum Ecclesiarum Orientalium, can. 702 - Sacerdotes catholicis et veterum sunt una cum sacerdotibus vel ministris ad catastüm Divinam Liturgiam concelebrare.
[18] Codex Iuris Canonici, can. 1365 - Reus vetitae communicationis in sacris iusta poena puniatur.
Codex Juris Canonici, can. 927 - Nefas est, urgente etiam extrema necessitate, alteram materiam sine altera, aut etiam utramque extra eucharisticam celebrationem, consecrare.

Codex Juris Canonici, can. 1378 - § 1. Sacerdos qui contra praescriptum can. 977 agit, in excommunicationem latae sententiae Sedi Apostolicae reservatam incurrit.

Codex Canonum Ecclesiarum Orientalium, can. 1457 - Sacerdos, qui complicem in peccato contra castitatem absolvit, excommunicatione maiore puniatur firmo can. 728 § 1, n. 2.

Codex Juris Canonici, can. 1378 - § 2. In poenam latae sententiae interdicti vel, si sit clericus, suspensionis incurrit: ... 2° qui, praeter casum de quo in § 1, cum sacramentalem absolutionem dare videatur, eam impertire attentat, vel sacramentalem confessionem audit.

Codex Juris Canonici, can. 1379 - Qui, praeter casus de quibus in can. 1378, sacramentum se administrare simuit, iusta poena puniatur.

Codex Canonum Ecclesiarum Orientalium, can. 1443 - Qui Divinae Liturgiae vel aliorum sacramentorum celebrationem simulavit, congrua poena puniatur non exclusa excommunicatione maiore.

Codex Juris Canonici, can. 1387 - Sacerdos, qui in actu vel occasione vel praetextu confessionis paenitentem ad peccatum contra sextum Decalogi praecceptum sollicitat, pro delicti gravitate, suspensione, prohibitionibus, privationibus puniatur, et in casibus gravioribus dimittatur et statu clericali.

Codex Canonum Ecclesiarum Orientalium, can. 1458 - Sacerdos, qui in actu vel occasione vel praetextu confessionis paenitentem ad peccatum contra castitatem sollicitavit, congrua poena puniatur non exclusa depositione.

Codex Juris Canonici, can. 1388 - § 1. Confessarius, qui sacramentale sigillum directe violat, in excommunicationem latae sententiae Sedi Apostolicae reservatam incurrit; qui vero indirecte tantum, pro delicti gravitate puniatur.

Codex Canonum Ecclesiarum Orientalium, can. 1456 - § 1. Confessarius, qui sacramentale sigillum directe violavit, excommunicatione maiore puniatur firmo can. 728, § 1, n. 1; si vero allo modo hoc sigillum fregit, congrua poena puniatur.


Codex Juris Canonici, can. 1362 - § 2. Praescriptio decurrat ex die quo delictum patratum est, vel, si delictum sit permanens vel habituale, ex die quo cessavit.

Codex Canonum Ecclesiarum Orientalium, can. 1152 - § 3. Praescriptio decurrat ex die, quo delictum patratum est, vel, si delictum est permanens vel habituale, ex die, quo cessavit.

Codex Juris Canonici, can. 1421 - § 1. In dioecesi constituantur ab Episcopo iudices dioecesani, qui sint clerici. § 2. Episcoporum conferentia permittere potest etiam laici iudices constituantur, e quibus, suadente necessitate, unus assumi potest ad collegium efformandum.

§ 3. Iudices sint integrae famae et in iure canonico doctores vel saltem licentiati.

Codex Canonum Ecclesiarum Orientalium, can. 1087 -
§ 1. In eparchia nominentur ab Episcopo eparchiali iudices eparchiales, qui sint clerici.
§ 2. Patriarcha consulta Synodo permanenti vel Metropolita, qui Ecclesiae metropolitanae sui iuris praest, consultis duobus Episcopis eparchialibus ordinatione episcopali senioribus permettere potest, ut etiam alii christifideles iudices nominentur, quibus suadente necessitate unus assumi potest ad collegium efferendum; in ceteris casibus hac in re adeatur Sedes Apostolica.
§ 3. Iudices sint integrae famae, in iure canonico doctores vel saltem licentiati, prudentia et iustitiae zelo probati.

[36] Codex Iuris Canonici, can. 1722 - Ad scandala praevenienda, ad testium libertatem protegender ad iustitiae cursum tutandum, potest Ordinarius, audito promotore iustitiae et citato ipso accusato, in quolibet processus stadio accusatum a sacro ministerio vel ab aliquo officio et munere ecclesiastico arcere, ei imponere vel interdicere commorationem in aliquo loco vel territorio, vel etiam publicam sanctissimae Eucharistiae participationem prohibere; quae omnia, causa cessante, sunt revocanda, eaque ipso iure finem habent, cessante processu poenali.

[37] Codex Canonum Ecclesiarum Orientalium, can. 1473 - Ad scandala praevenienda, ad testium libertatem protegender ad iustitiae cursum tuendum potest Hierarcha audito promotore iustitiae et citato ipso accusato in quolibet statu et grado iudicii poenalis accusatum ab exercitio ordinis sacrini, officii, ministerii vel alterius munus arcere, ei imponere vel prohibere commorationem in aliquo loco vel territorio, vel etiam publicam Divinae Eucharistiae susceptione prohibere; quae omnia causa cessante sunt revocanda et ipso iure finem habent cessante iudicio poenali.

[38] Codex Iuris Canonici, can. 1720 - Si Ordinarius censuerit per decretum extra iudicium esse procedendum:
1° reo accusationem atque probationes, data facultate sese defendendi, significt, nisi reus, rite vocatus, comparere neglexerit;
2° probationes et argumenta omnia cum duobus assessoribus accurate perpendat;
3° si de delicto certo constet neque actio criminalis sit extincta, decretum ferat ad normam cann. 1342-1350, expositis, breviter saltem, rationibus in iure et in facto.

[39] Codex Canonum Ecclesiarum Orientalium, can. 1486 - § 1. Ad validitatem decreti, quo poena irrogatur, requiritur, ut:
1° accusatus de accusatione atque probationibus certior fiat data sibi opportunitate ius ad sui defensem plene exercendi, nisi ad normam iuris citatus comparere neglexerit;
2° discussio oralis inter Hierarcham vel eius delegatum et accusatum habeatur praesentibus promotore iustitiae et notario;
3° in ipso decreto exponatur, quibus rationibus in facto et in iure punitio innitatur.

§ 2. Poenae autem, de quibus in can. 1426, § 1, sine hac procedura imponi possunt, dummodo de earum acceptatione ex parte rei scripto constet.

administrativos singulares sive a Dicasteris Curiae Romanae latos sive ab ipsis probatos, quoties contendatur num actus impugnatus legem aliquam in decernendo vel in procedendo violaverit. § 2. In his casibus, praeter iudicium de illegitimitate, cognoscere etiam potest, si recurrens id postulet, de reparacione damnorum actu illegitimo illatorum. § 3. Cognoscit etiam de alis controversiis administrativis, quae a Romano Pontifice vel a Romanae Curiae Dicasteris ipsi deferantur necnon de conflictibus competentiae inter eadem Dicasteria».

ANNEXURE 2011 A: US BISHOPS Charter for the Protection of Children and Young People


Charter for the Protection of Children and Young People

The revised Charter for the Protection of Children and Young People was developed by the Ad Hoc Committee for Sexual Abuse of the United States Conference of Catholic Bishops (USCCB). It was approved by the full body of U.S. Catholic bishops at its June 2005 General Meeting, and this second revision was approved at the June 2011 General Meeting. The revised Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons was developed by the Ad Hoc Committee on Sexual Abuse of the USCCB and by the Vatican-U.S. Bishops’ Mixed Commission on Sex Abuse Norms. They were approved by the full body of bishops at its June 2005 General Meeting, received the subsequent recognitio of the Holy See on January 1, 2006, and were promulgated May 5, 2006. The revised Statement of Episcopal Commitment was developed by the Ad Hoc Committee on Bishops’ Life and Ministry of the USCCB. It was approved by the full body of U.S. Catholic bishops at its November 2005 General Meeting and then again in 2011. This revised edition, containing all three documents, is authorized for publication by the undersigned.

—Msgr. David J. Malloy, STD
General Secretary, USCCB

Preamble

Since 2002, the Church in the United States has experienced a crisis without precedent in our times. The sexual abuse of children and young people by some deacons, priests, and bishops, and the ways in which these crimes and sins were addressed, have caused enormous pain, anger, and confusion. As bishops, we have acknowledged our mistakes and our roles in that suffering, and we apologize and take responsibility again for too often failing victims and the Catholic people in the past. From the depths of our hearts, we bishops express great sorrow and profound regret for what the Catholic people have endured.

Again, with this 2011 revision of the Charter for the Protection of Children and Young People, we re-affirm our deep commitment to creating a safe environment within the Church for children and youth. We have listened to the profound pain and suffering of those victimized by sexual abuse and will continue to respond to their cries. We have agonized over the sinfulness, the criminality, and the breach of trust perpetrated by some members of the clergy. We have determined as best we can the extent of the problem of this abuse of minors by clergy in our country, as well as commissioned a study of the causes and context of this problem. We continue to have a special care for and a commitment to reaching out to the victims.
of sexual abuse and their families. The damage caused by sexual abuse of minors is devastating and long-lasting. We apologize to them for the grave harm that has been inflicted on them, and we offer our help for the future. The loss of trust that is often the consequence of such abuse becomes even more tragic when it leads to a loss of the faith that we have a sacred duty to foster.

We make our own the words of His Holiness, Pope John Paul II: that the sexual abuse of young people is "by every standard wrong and rightly considered a crime by society; it is also an appalling sin in the eyes of God" (Address to the Cardinals of the United States and Conference Officers, April 23, 2002).

Along with the victims and their families, the entire Catholic community in this country has suffered because of this scandal and its consequences. In the last nine years, the intense public scrutiny of the minority of the ordained who have betrayed their calling has caused the vast majority of faithful priests and deacons to experience enormous vulnerability to being misunderstood in their ministry and even to the possibility of false accusations. We share with them a firm commitment to renewing the image of the vocation to Holy Orders so that it will continue to be perceived as a life of service to others after the example of Christ our Lord.

We, who have been given the responsibility of shepherding God's people, will, with his help and in full collaboration with all the faithful, continue to work to restore the bonds of trust that unite us. Words alone cannot accomplish this goal. It will begin with the actions we take in our General Assembly and at home in our dioceses and eparchies. We feel a particular responsibility for "the ministry of reconciliation" (2 Cor 5:18) which God, who reconciled us to himself through Christ, has given us. The love of Christ impels us to ask forgiveness for our own faults but also to appeal to all—to those who have been victimized, to those who have offended, and to all who have felt the wound of this scandal—to be reconciled to God and one another.

Perhaps in a way never before experienced, we have felt the power of sin touch our entire Church family in this country; but as St. Paul boldly says, God made Christ "to be sin who did not know sin, so that we might become the righteousness of God in him" (2 Cor 5:21). May we who have known sin experience as well, through a spirit of reconciliation, God's own righteousness. We know that after such profound hurt, healing and reconciliation are beyond human capacity alone. It is God's grace and mercy that will lead us forward, trusting Christ's promise: "for God all things are possible" (Mt 19:26).

In working toward fulfilling this responsibility, we have relied first of all on Almighty God to sustain us in faith and in the discernment of the right course to take.

We have received fraternal guidance and support from the Holy See that has sustained us in this time of trial.

We have relied on the Catholic faithful of the United States. Nationally and in each diocese, the wisdom and expertise of clergy, religious, and laity have contributed immensely to
confronting the effects of the crisis and have taken steps to resolve it. We are filled with
gratitude for their great faith, for their generosity, and for the spiritual and moral support that
we have received from them.

We acknowledge and affirm the faithful service of the vast majority of our priests and
deacons and the love that their people have for them. They deservedly have our esteem and
that of the Catholic people for their good work. It is regrettable that their committed ministerial
witness has been overshadowed by this crisis.

In a special way, we acknowledge those victims of clergy sexual abuse and their families
who have trusted us enough to share their stories and to help us appreciate more fully the
consequences of this reprehensible violation of sacred trust.

Let there now be no doubt or confusion on anyone’s part: For us, your bishops, our
obligation to protect children and young people and to prevent sexual abuse flows from the
mission and example given to us by Jesus Christ himself, in whose name we serve.

As we work to restore trust, we are reminded how Jesus showed constant care for the
vulnerable. He inaugurated his ministry with these words of the Prophet Isaiah:

\[
\text{The Spirit of the Lord is upon me,}
\]
\[
\text{because he has anointed me}
\]
\[
\text{to bring glad tidings to the poor.}
\]
\[
\text{He has sent me to proclaim liberty to captives}
\]
\[
\text{and recovery of sight to the blind,}
\]
\[
\text{to let the oppressed go free,}
\]
\[
\text{and to proclaim a year acceptable to the Lord. (Lk 4:18-19)}
\]

In Matthew 25, the Lord, in his commission to his apostles and disciples, told them that
whenever they show mercy and compassion to the least ones, they show it to him.

Jesus extended this care in a tender and urgent way to children, rebuking his disciples for
keeping them away from him: “Let the children come to me” (Mt 19:14). And he uttered a grave
warning that for anyone who would lead the little ones astray, it would be better for such a
person “to have a great millstone hung around his neck and to be drowned in the depths of the
sea” (Mt 18:6).

We hear these words of the Lord as prophetic for this moment. With a firm determination
to restore the bonds of trust, we bishops recommit ourselves to a continual pastoral outreach
to repair the breach with those who have suffered sexual abuse and with all the people of the
Church.

In this spirit, over the last nine years, the principles and procedures of the Charter have
been integrated into church life.

- The Secretariat of Child and Youth Protection provides the focus for a consistent,
ongoing, and comprehensive approach to creating a secure environment for young people
throughout the Church in the United States.
- The Secretariat also provides the means for us to be accountable for achieving the goals
of the Charter, as demonstrated by its annual reports on the implementation of the
Charter based on independent compliance audits.

- The National Review Board is carrying on its responsibility to assist in the assessment of diocesan compliance with the Charter for the Protection of Children and Young People.
- The descriptive study of the nature and scope of sexual abuse of minors by Catholic clergy in the United States, commissioned by the National Review Board, has been completed. The resulting study, examining the historical period 1950-2002, by the John Jay College of Criminal Justice provides us with a powerful tool not only to examine our past but also to secure our future against such misconduct.
- The U.S. bishops charged the National Review Board to oversee the completion of the Causes and Context study.
- Victims' assistance coordinators are in place throughout our nation to assist dioceses in responding to the pastoral needs of those who have been injured by abuse.
- Diocesan/eparchial bishops in every diocese are advised and greatly assisted by diocesan review boards as the bishops make the decisions needed to fulfill the Charter.
- Safe environment programs are in place to assist parents and children—and those who work with children—in preventing harm to young people. These programs continually seek to incorporate the most useful developments in the field of child protection.

Through these steps and many others, we remain committed to the safety of our children and young people.

While it seems that the scope of this disturbing problem of sexual abuse of minors by clergy has been reduced over the last decade, the harmful effects of this abuse continue to be experienced both by victims and dioceses.

Thus it is with a vivid sense of the effort which is still needed to confront the effects of this crisis fully and with the wisdom gained by the experience of the last six years that we have reviewed and revised the Charter for the Protection of Children and Young People. We now reaffirm that we will assist in the healing of those who have been injured, will do all in our power to protect children and young people, and will work with our clergy, religious, and laity to restore trust and harmony in our faith communities, as we pray for God's kingdom to come, here on earth, as it is in heaven.

To make effective our goals of a safe environment within the Church for children and young people and of preventing sexual abuse of minors by clergy in the future, we, the members of the United States Conference of Catholic Bishops, have outlined in this Charter a series of practical and pastoral steps, and we commit ourselves to taking them in our dioceses and eparchies.

To Promote Healing and Reconciliation with Victims/Survivors of Sexual Abuse of Minors
ARTICLE 1.
Dioceses/eparchies are to reach out to victims/survivors and their families and demonstrate a sincere commitment to their spiritual and emotional well-being. The first obligation of the Church with regard to the victims is for healing and reconciliation. Each diocese/eparchy is to continue its outreach to every person who has been the victim of sexual abuse* as a minor by anyone in church service, whether the abuse was recent or occurred many years in the past. This outreach may include provision of counseling, spiritual assistance, support groups, and other social services agreed upon by the victim and the diocese/eparchy. Through pastoral outreach to victims and their families, the diocesan/eparchial bishop or his representative is to offer to meet with them, to listen with patience and compassion to their experiences and concerns, and to share the "profound sense of solidarity and concern" expressed by His Holiness, Pope John Paul II, in his Address to the Cardinals of the United States and Conference Officers (April 23, 2002). Pope Benedict XVI, too, in his address to the U.S. bishops in 2008 said of the clergy sexual abuse crisis, "It is your God-given responsibility as pastors to bind up the wounds caused by every breach of trust, to foster healing, to promote reconciliation and to reach out with loving concern to those so seriously wronged."
We bishops and eparchs commit ourselves to work as one with our brother priests and deacons to foster reconciliation among all people in our dioceses/eparchies. We especially commit ourselves to work with those individuals who were themselves abused and the communities that have suffered because of the sexual abuse of minors that occurred in their midst.

ARTICLE 2.
Dioceses/eparchies are to have policies and procedures in place to respond promptly to any allegation where there is reason to believe that sexual abuse of a minor has occurred. Dioceses/eparchies are to have a competent person or persons to coordinate assistance for the immediate pastoral care of persons who report having been sexually abused as minors by clergy or other church personnel. The procedures for those making a complaint are to be readily available in printed form in the principal languages in which the liturgy is celebrated in the diocese/eparchy and be the subject of public announcements at least annually.
Dioceses/eparchies are also to have a review board that functions as a confidential consultative body to the bishop/eparch. The majority of its members are to be lay persons not in the employ of the diocese/eparchy (see Norm 5 in Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons, 2006). This board is to advise the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry. It is regularly to review diocesan/eparchial policies and procedures for dealing with sexual abuse of minors. Also, the board can review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases.
ARTICLE 3.
Dioceses/eparchies are not to enter into settlements which bind the parties to confidentiality unless the victim/survivor requests confidentiality and this request is noted in the text of the agreement.

To Guarantee an Effective Response to Allegations of Sexual Abuse of Minors

ARTICLE 4.
Dioceses/eparchies are to report an allegation of sexual abuse of a person who is a minor to the public authorities. Dioceses/eparchies are to comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and cooperate in their investigation in accord with the law of the jurisdiction in question. Dioceses/eparchies are to cooperate with public authorities about reporting cases even when the person is no longer a minor.
In every instance, dioceses/eparchies are to advise victims of their right to make a report to public authorities and support this right.

ARTICLE 5.
We affirm the words of His Holiness, Pope John Paul II, in his Address to the Cardinals of the United States and Conference Officers: “There is no place in the priesthood or religious life for those who would harm the young.” Sexual abuse of a minor by a cleric is a crime in the universal law of the Church (CIC, c. 1395 §2; CCEO, c. 1453 §1). Because of the seriousness of this matter, jurisdiction has been reserved to the Congregation for the Doctrine of the Faith (Motu proprio Sacramentorum sanctitatis tutela, AAS 93, 2001). Sexual abuse of a minor is also a crime in all civil jurisdictions in the United States.
Diocesan/eparchial policy is to provide that for even a single act of sexual abuse of a minor*—whenever it occurred—which is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon is to be permanently removed from ministry and, if warranted, dismissed from the clerical state. In keeping with the stated purpose of this Charter, an offending priest or deacon is to be offered therapeutic professional assistance both for the purpose of prevention and also for his own healing and well-being. The diocesan/eparchial bishop is to exercise his power of governance, within the parameters of the universal law of the Church, to ensure that any priest or deacon subject to his governance who has committed even one act of sexual abuse of a minor as described below (see note) shall not continue in ministry.
A priest or deacon who is accused of sexual abuse of a minor is to be accorded the presumption of innocence during the investigation of the allegation and all appropriate steps are to be taken to protect his reputation. He is to be encouraged to retain the assistance of civil
and canonical counsel. If the allegation is deemed not substantiated, every step possible is to be taken to restore his good name, should it have been harmed.

In fulfilling this article, dioceses/eparchies are to follow the requirements of the universal law of the Church and of the Essential Norms approved for the United States.

ARTICLE 6.
There are to be clear and well publicized diocesan/eparchial standards of ministerial behavior and appropriate boundaries for clergy and for any other paid personnel and volunteers of the Church in positions of trust who have regular contact with children and young people.

ARTICLE 7.
Dioceses/eparchies are to be open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individuals involved. This is especially so with regard to informing parish and other church communities directly affected by the sexual abuse of a minor.

To Ensure the Accountability of Our Procedures

ARTICLE 8.
By the authority of the United States Conference of Catholic Bishops, the mandate of the Ad Hoc Committee on Sexual Abuse is renewed, and it is now constituted the Committee on the Protection of Children and Young People. It becomes a standing committee of the Conference. Its membership is to include representation from all the episcopal regions of the country, with new appointments staggered to maintain continuity in the effort to protect children and youth. The Committee is to advise the USCCB on all matters related to child and youth protection and is to oversee the development of the plans, programs, and budget of the Secretariat of Child and Youth Protection. It is to provide the USCCB with comprehensive planning and recommendations concerning child and youth protection by coordinating the efforts of the Secretariat and the National Review Board.

ARTICLE 9.
The Secretariat of Child and Youth Protection, established by the Conference of Catholic Bishops, is to staff the Committee on the Protection of Children and Young People and be a resource for dioceses/eparchies for the implementation of “safe environment” programs and for suggested training and development of diocesan personnel responsible for child and youth protection programs, taking into account the financial and other resources, as well as the population, area, and demographics of the diocese/eparchy. The Secretariat is to produce an annual public report on the progress made in
implementing and maintaining the standards in this Charter. The report is to be based on an annual audit process whose method, scope, and cost are to be approved by the Administrative Committee on the recommendation of the Committee on the Protection of Children and Young People. This public report is to include the names of those dioceses/eparchies which the audit shows are not in compliance with the provisions and expectations of the Charter.

As a member of the Conference staff, the Executive Director of the Secretariat is appointed by and reports to the General Secretary. The Executive Director is to provide the Committee on the Protection of Children and Young People and the National Review Board with regular reports of the Secretariat’s activities.

ARTICLE 10.
The whole Church, especially the laity, at both the diocesan and national levels, needs to be engaged in maintaining safe environments in the Church for children and young people.

The Committee on the Protection of Children and Young People is to be assisted by the National Review Board, a consultative body established in 2002 by the USCCB. The Board will review the annual report of the Secretariat of Child and Youth Protection on the implementation of this Charter in each diocese/eparchy and any recommendations that emerge from it, and offer its own assessment regarding its approval and publication to the Conference President.

The Board will also advise the Conference President on future members. The Board members are appointed by the Conference President in consultation with the Administrative Committee and are accountable to him and to the USCCB Executive Committee. Before a candidate is contacted, the Conference President is to seek and obtain, in writing, the endorsement of the candidate’s diocesan bishop. The Board is to operate in accord with the statutes and bylaws of the USCCB and within procedural guidelines developed by the Board in consultation with the Committee on the Protection of Children and Young People and approved by the USCCB Administrative Committee. These guidelines set forth such matters as the Board’s purpose and responsibility, officers, terms of office, and frequency of reports to the Conference President on its activities.

The Board will offer its advice as it collaborates with the Committee on the Protection of Children and Young People on matters of child and youth protection, specifically on policies and best practices. The Board and Committee on the Protection of Children and Young People will meet jointly several times a year.

The Board will review the work of the Secretariat of Child and Youth Protection and make recommendations to the Director. It will assist the Director in the development of resources for dioceses.

The Board will offer its assessment of the Causes and Context study to the Conference, along with any recommendations suggested by the study.

ARTICLE 11. The President of the Conference is to inform the Holy See of this revised Charter
to indicate the manner in which we, the Catholic bishops, together with the entire Church in the United States, intend to continue our commitment to the protection of children and young people.

The President is also to share with the Holy See the annual reports on the implementation of the Charter.

To Protect the Faithful in the Future

ARTICLE 12.
Dioceses/eparchies are to maintain “safe environment” programs which the diocesan/eparchial bishop deems to be in accord with Catholic moral principles. They are to be conducted cooperatively with parents, civil authorities, educators, and community organizations to provide education and training for children, youth, parents, ministers, educators, volunteers, and others about ways to make and maintain a safe environment for children and young people.

Dioceses/eparchies are to make clear to clergy and all members of the community the standards of conduct for clergy and other persons in positions of trust with regard to children.

ARTICLE 13.
Dioceses/eparchies are to evaluate the background of all incardinated and nonincardinated priests and deacons who are engaged in ecclesiastical ministry in the diocese/eparchy and of all diocesan/eparchial and parish/school or other paid personnel and volunteers whose duties include ongoing, unsupervised contact with minors. Specifically, they are to utilize the resources of law enforcement and other community agencies. In addition, they are to employ adequate screening and evaluative techniques in deciding the fitness of candidates for ordination (cf. United States Conference of Catholic Bishops, Program of Priestly Formation [Fifth Edition], 2006, no. 39).

ARTICLE 14.
Transfers of clergy who have committed an act of sexual abuse against a minor for residence, including retirement, shall be as in accord with Norm 12 of the Essential Norms. (Cf. Proposed Guidelines on the Transfer or Assignment of Clergy and Religious, adopted by the USCCB, the Conference of Major Superiors of Men (CMSM), the Leadership Conference of Women Religious (LCWR), and the Council of Major Superiors of Women Religious (CMSWR) in 1993.)

ARTICLE 15.
To ensure continuing collaboration and mutuality of effort in the protection of children and young people on the part of the bishops and religious ordinaries, two representatives of the Conference of Major Superiors of Men are to serve as consultants to the
Committee on the Protection of Children and Young People. At the invitation of the Major Superiors, the Committee will designate two of its members to consult with its counterpart at CMSM.

Diocesan/eparchial bishops and major superiors of clerical institutes or their delegates are to meet periodically to coordinate their roles concerning the issue of allegations made against a cleric member of a religious institute ministering in a diocese/eparchy.

ARTICLE 16.
Given the extent of the problem of the sexual abuse of minors in our society, we are willing to cooperate with other churches and ecclesial communities, other religious bodies, institutions of learning, and other interested organizations in conducting research in this area.

ARTICLE 17.
We commit ourselves to work individually in our dioceses/eparchies and together as a Conference, through the appropriate committees, to strengthen our programs both for initial priestly formation and for the ongoing formation of priests. With renewed urgency, we will promote programs of human formation for chastity and celibacy for both seminarians and priests based upon the criteria found in Pastores Dabo Vobis, the Program of Priestly Formation, the Basic Plan for the Ongoing Formation of Priests, and the results of the Apostolic Visitation. We will continue to assist priests, deacons, and seminarians in living out their vocation in faithful and integral ways.

Conclusion
As we wrote in 2002, "It is within this context of the essential soundness of the priesthood and of the deep faith of our brothers and sisters in the Church that we know that we can meet and resolve this crisis for now and the future."

We wish to reaffirm once again that the vast majority of priests and deacons serve their people faithfully and that they have the esteem and affection of their people. They also have our love and esteem and our commitment to their good names and well-being.

An essential means of dealing with the crisis is prayer for healing and reconciliation, and acts of reparation for the grave offense to God and the deep wound inflicted upon his holy people. Closely connected to prayer and acts of reparation is the call to holiness of life and the care of the diocesan/eparchial bishop to ensure that he and his priests avail themselves of the proven ways of avoiding sin and growing in holiness of life.

It is with reliance on prayer and penance that we renew the pledges which we made in the original Charter:

We pledge most solemnly to one another and to you, God’s people, that we will work to our utmost for the protection of children and youth.

We pledge that we will devote to this goal the resources and personnel necessary to accomplish it.
We pledge that we will do our best to ordain to the priesthood and put into positions of trust only those who share this commitment to protecting children and youth.

We pledge that we will work toward healing and reconciliation for those sexually abused by clerics.

Much has been done to honor these pledges. We devoutly pray that God who has begun this good work in us will bring it to fulfillment.

This Charter is published for the dioceses/eparchies of the United States. It is to be reviewed again after two years by the Committee on the Protection of Children and Young People with the advice of the National Review Board. The results of this review are to be presented to the full Conference of Bishops for confirmation.

NOTE

* For purposes of this Charter, the offense of sexual abuse of a minor will be understood in accord with the provisions of Sacramentorum sanctitatis tutela (SST), article 6, which reads:

§1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1o the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2o the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;

§2. A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

In view of the Circular Letter from the Congregation for the Doctrine of the Faith, dated May 3, 2011, which calls for “making allowance for the legislation of the country where the Conference is located,” Section III(g), we will apply the federal legal age for defining child pornography, which includes pornographic images of minors under the age of eighteen, for assessing a cleric’s suitability for ministry and for complying with civil reporting statutes.

If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained (Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State, 1995, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act.

Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons

Office of the President
THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS
DECREE OF PROMULGATION
On November 13, 2002, the members of the United States Conference of Catholic Bishops approved as particular law the Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons. Following the grant of the required recognitio by the Congregation for Bishops on December 8, 2002, the Essential Norms were promulgated by the President of the same Conference on December 12, 2002.
Thereafter, on June 17, 2005, the members of the United States Conference of Catholic Bishops approved a revised text of the Essential Norms. By a decree dated January 1, 2006, and signed by His Eminence, Giovanni Battista Cardinal Re, Prefect of the Congregation for Bishops, and His Excellency, the Most Reverend Francesco Monterisi, Secretary of the same Congregation, the recognitio originally granted to the Essential Norms of 2002 was extended to the revised version donec aliter provideatur.
As President of the United States Conference of Catholic Bishops, I therefore decree the promulgation of the Essential Norms of June 17, 2005. These Norms shall obtain force on May 15, 2006, and so shall from that day bind as particular law all Dioceses and Eparchies of the United States Conference of Catholic Bishops.
Most Reverend William S. Skystad
Bishop of Spokane
President, USCCB
Reverend Monsignor David J. Malloy
General

Preamble
On June 14, 2002, the United States Conference of Catholic Bishops approved a Charter for the Protection of Children and Young People. The charter addresses the Church’s commitment to deal appropriately and effectively with cases of sexual abuse of minors by priests, deacons, and other church personnel (i.e., employees and volunteers). The bishops of the United States have promised to reach out to those who have been sexually abused as minors by anyone serving the Church in ministry, employment, or a volunteer position, whether the sexual abuse was recent or occurred many years ago. They stated that they would be as open as possible with the people in parishes and communities about instances of sexual abuse of minors, with respect always for the privacy and the reputation of the individuals involved. They have committed themselves to
the pastoral and spiritual care and emotional well-being of those who have been sexually abused and of their families.

In addition, the bishops will work with parents, civil authorities, educators, and various organizations in the community to make and maintain the safest environment for minors. In the same way, the bishops have pledged to evaluate the background of seminary applicants as well as all church personnel who have responsibility for the care and supervision of children and young people.

Therefore, to ensure that each diocese/eparchy in the United States of America will have procedures in place to respond promptly to all allegations of sexual abuse of minors, the United States Conference of Catholic Bishops decrees these norms for diocesan/eparchial policies dealing with allegations of sexual abuse of minors by diocesan and religious priests or deacons.

These norms are complementary to the universal law of the Church and are to be interpreted in accordance with that law. The Church has traditionally considered the sexual abuse of minors a grave delict and punishes the offender with penalties, not excluding dismissal from the clerical state if the case so warrants.

For purposes of these Norms, sexual abuse shall include any offense by a cleric against the Sixth Commandment of the Decalogue with a minor as understood in CIC, canon 1395 §2, and CCEO, canon 1453 §1 (Sacramentorum sanctitatis tutela, article 6 §1).

Norms

1. These Essential Norms have been granted recognitio by the Holy See. Having been legitimately promulgated in accordance with the practice of the United States Conference of Catholic Bishops on May 5, 2006, they constitute particular law for all the dioceses/eparchies of the United States of America.

2. Each diocese/eparchy will have a written policy on the sexual abuse of minors by priests and deacons, as well as by other church personnel. This policy is to comply fully with, and is to specify in more detail, the steps to be taken in implementing the requirements of canon law, particularly CIC, canons 1717-1719, and CCEO, canons 1468-1470. A copy of this policy will be filed with the United States Conference of Catholic Bishops within three months of the effective date of these norms. Copies of any eventual revisions of the written diocesan/eparchial policy are also to be filed with the United States Conference of Catholic Bishops within three months of such modifications.

3. Each diocese/eparchy will designate a competent person to coordinate assistance for the immediate pastoral care of persons who claim to have been sexually abused when they were minors by priests or deacons.

4. To assist diocesan/eparchial bishops, each diocese/eparchy will also have a review board which will function as a confidential consultative body to the bishop/eparch in discharging his responsibilities. The functions of this board may include

a. advising the diocesan bishop/eparch in his assessment of allegations of sexual abuse of
minors and in his determination of suitability for ministry;
b. reviewing diocesan/eparchial policies for dealing with sexual abuse of minors; and
c. offering advice on all aspects of these cases, whether retrospectively or prospectively.

5. The review board, established by the diocesan/eparchial bishop, will be composed of at least five persons of outstanding integrity and good judgment in full communion with the Church. The majority of the review board members will be lay persons who are not in the employ of the diocese/eparchy; but at least one member should be a priest who is an experienced and respected pastor of the diocese/eparchy in question, and at least one member should have particular expertise in the treatment of the sexual abuse of minors. The members will be appointed for a term of five years, which can be renewed. It is desirable that the Promoter of Justice participate in the meetings of the review board.

6. When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively (CIC, c. 1717; CCEO, c. 1468). During the investigation the accused enjoys the presumption of innocence, and all appropriate steps shall be taken to protect his reputation. The accused will be encouraged to retain the assistance of civil and canonical counsel and will be promptly notified of the results of the investigation. When there is sufficient evidence that sexual abuse of a minor has occurred, the Congregation of the Doctrine of the Faith shall be notified. The bishop/eparch shall then apply the precautionary measures mentioned in CIC, canon 1722, or CCEO, canon 1473—i.e., withdraw the accused from exercising the sacred ministry or any ecclesiastical office or function, impose or prohibit residence in a given place or territory, and prohibit public participation in the Most Holy Eucharist pending the outcome of the process.4

7. The alleged offender may be requested to seek, and may be urged voluntarily to comply with, an appropriate medical and psychological evaluation at a facility mutually acceptable to the diocese/eparchy and to the accused.

8. When even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants (SST, Art. 6; CIC, c. 1395 §2; CCEO, c. 1453 §1). 5

a. In every case involving canonical penalties, the processes provided for in canon law must be observed, and the various provisions of canon law must be considered (cf. Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State, 1995; Letter from the Congregation for the Doctrine of the Faith, May 18, 2001). Unless the Congregation for the Doctrine of the Faith, having been notified, calls the case to itself because of special circumstances, it will direct the diocesan bishop/eparch to proceed (Article 13, “Procedural Norms” for Motu proprio Sacramentorum sanctitatis tutela, AAS, 93, 2001, p. 787). If the case would otherwise be barred by prescription, because sexual abuse of a minor is a grave offense, the bishop/eparch may apply to the
Congregation for the Doctrine of the Faith for a derogation from the prescription, while indicating relevant grave reasons. For the sake of canonical due process, the accused is to be encouraged to retain the assistance of civil and canonical counsel. When necessary, the diocese/eparchy will supply canonical counsel to a priest. The provisions of CIC, canon 1722, or CCEO, canon 1473, shall be implemented during the pendency of the penal process.

b. If the penalty of dismissal from the clerical state has not been applied (e.g., for reasons of advanced age or infirmity), the offender ought to lead a life of prayer and penance. He will not be permitted to celebrate Mass publicly or to administer the sacraments. He is to be instructed not to wear clerical garb, or to present himself publicly as a priest.

9. At all times, the diocesan bishop/eparch has the executive power of governance, within the parameters of the universal law of the Church, through an administrative act, to remove an offending cleric from office, to remove or restrict his faculties, and to limit his exercise of priestly ministry.6 Because sexual abuse of a minor by a cleric is a crime in the universal law of the Church (CIC, c. 1395 §2; CCEO, c. 1453 §1) and is a crime in all civil jurisdictions in the United States, for the sake of the common good and observing the provisions of canon law, the diocesan bishop/eparch shall exercise this power of governance to ensure that any priest or deacon who has committed even one act of sexual abuse of a minor as described above shall not continue in active ministry.7

10. The priest or deacon may at any time request a dispensation from the obligations of the clerical state. In exceptional cases, the bishop/eparch may request of the Holy Father the dismissal of the priest or deacon from the clerical state ex officio, even without the consent of the priest or deacon.

11. The diocese/eparchy will comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and will cooperate in their investigation. In every instance, the diocese/eparchy will advise and support a person’s right to make a report to public authorities.8

12. No priest or deacon who has committed an act of sexual abuse of a minor may be transferred for a ministerial assignment in another diocese/eparchy. Every bishop/eparch who receives a priest or deacon from outside his jurisdiction will obtain the necessary information regarding any past act of sexual abuse of a minor by the priest or deacon in question. Before such a diocesan/eparchial priest or deacon can be transferred for residence to another diocese/eparchy, his diocesan/eparchial bishop shall forward, in a confidential manner, to the bishop of the proposed place of residence any and all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people.

In the case of the assignment for residence of such a clerical member of an institute or a society into a local community within a diocese/eparchy, the major superior shall inform the diocesan/eparchial bishop and share with him in a manner respecting the limitations of
confidentiality found in canon and civil law all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people so that the bishop/eparch can make an informed judgment that suitable safeguards are in place for the protection of children and young people. This will be done with due recognition of the legitimate authority of the bishop/eparch; of the provisions of CIC, canon 678 (CCEO, canons 415 §1 and 554 §2), and of CIC, canon 679; and of the autonomy of the religious life (CIC, c. 586).

13. Care will always be taken to protect the rights of all parties involved, particularly those of the person claiming to have been sexually abused and of the person against whom the charge has been made. When an accusation has been shown to be unfounded, every step possible will be taken to restore the good name of the person falsely accused.

Notes
1 These Norms constitute particular law for the dioceses, eparchies, clerical religious institutes, and societies of apostolic life of the United States with respect to all priests and deacons in the ecclesiastical ministry of the Church in the United States. When a major superior of a clerical religious institute or society of apostolic life applies and interprets them for the internal life and governance of the institute or society, he has the obligation to do so according to the universal law of the Church and the proper law of the institute or society.

2 If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained (Canonical Delicts, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act.

3 Due regard must be given to the proper legislative authority of each Eastern Catholic Church.

4 Article 19 Sacramentorum sanctitatis tutela states, “With due regard for the right of the Ordinary to impose from the outset of the preliminary investigation those measures which are established in can. 1722 of the Code of Canon Law, or in can. 1473 of the Code of Canons of the Eastern Churches, the respective presiding judge may, at the request of the Promoter of Justice, exercise the same power under the same conditions determined in the canons themselves.”

5 For purposes of these Norms, the offense of sexual abuse of a minor will be understood in accord with the provisions of Sacramentorum sanctitatis tutela (SST), article 6, which reads:

§1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1o the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2o the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;
§2. A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained (Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State, 1995, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act. Removal from ministry is required whether or not the cleric is diagnosed by qualified experts as a pedophile or as suffering from a related sexual disorder that requires professional treatment. With regard to the use of the phrase “ecclesiastical ministry,” by clerical members of institutes of consecrated life and societies of apostolic life, the provisions of canons 678 and 738 also apply, with due regard for canons 586 and 732.

6 Cf. CIC, cc. 35-58, 149, 157, 187-189, 192-195, 277 §3, 381 §1, 383, 391, 1348, and 1740-1747. Cf. also CCEO, cc. 1510 §1 and 2, 1°-2°, 1511, 1512 §§1-2, 1513 §§2-3 and 5, 1514-1516, 1517 §1, 1518, 1519 §2, 1520 §§1-3, 1521, 1522 §1, 1523-1526, 940, 946, 967-971, 974-977, 374, 178, 192 §§1-3, 193 §2, 191, and 1389-1396.

7 The diocesan bishop/eparch may exercise his executive power of governance to take one or more of the following administrative actions (CIC, cc. 391, 129ff.; CCEO, cc. 178, 979ff.):

a. He may request that the accused freely resign from any currently held ecclesiastical office (CIC, cc. 187-189; CCEO, cc. 967-971).

b. Should the accused decline to resign and should the diocesan bishop/eparch judge the accused to be truly not suitable (CIC, c. 149 §1; CCEO, c. 940) at this time for holding an office previously freely conferred (CIC, c. 157), then he may remove that person from office observing the required canonical procedures (CIC, cc. 192-195, 1740-1747; CCEO, cc. 974-977, 1389-1396).

c. For a cleric who holds no office in the diocese/eparchy, any previously delegated faculties may be administratively removed (CIC, cc. 391 §1 and 142 §1; CCEO, cc. 191 §1 and 992 §1), while any de iure faculties may be removed or restricted by the competent authority as provided in law (e.g., CIC, c. 764; CCEO, c. 610 §§2-3).

d. The diocesan bishop/eparch may also determine that circumstances surrounding a particular case constitute the just and reasonable cause for a priest to celebrate the Eucharist with no member of the faithful present (CIC, c. 906). The bishop may forbid the priest to celebrate the Eucharist publicly and to administer the sacraments, for the good of the Church and for his own good.
e. Depending on the gravity of the case, the diocesan bishop/eparch may also dispense (CIC, cc. 85-88; CCEO, cc. 1536 §1-1538) the cleric from the obligation of wearing clerical attire (CIC, c. 284; CCEO, c. 387) and may urge that he not do so, for the good of the Church and for his own good.

These administrative actions shall be taken in writing and by means of decrees (CIC, cc. 47-58; CCEO, cc.1510 §2, 1°-2°, 1511, 1513 §§2-3 and 5, 1514, 1517 §1, 1518, 1519 §2, 1520) so that the cleric affected is afforded the opportunity of recourse against them in accord with canon law (CIC, cc. 1734ff.; CCEO, cc. 999ff.).

8 The necessary observance of the canonical norms internal to the Church is not intended in any way to hinder the course of any civil action that may be operative. At the same time, the Church reaffirms her right to enact legislation binding on all her members concerning the ecclesiastical dimensions of the delict of sexual abuse of minors.

A Statement of Episcopal Commitment

We bishops pledge again to respond to the demands of the Charter in a way that manifests our accountability to God, to God's people, and to one another. Individually and together, we acknowledge mistakes in the past when some bishops transferred, from one assignment to another, priests who abused minors. We recognize our roles in the suffering this has caused, and we continue to ask forgiveness for it.

Without at all diminishing the importance of broader accountability, this statement focuses on the accountability which flows from our episcopal communion and fraternal solidarity, a moral responsibility we have with and for each other.

While bishops are ordained primarily for their diocese or eparchy, we are called as well to protect the unity and to promote the common discipline of the whole Church (CIC, c. 392; CCEO, c. 201). Participating in the college of bishops, each bishop is responsible to act in a manner that reflects both effective and affective collegiality.

Respecting the legitimate rights of bishops who are directly accountable to the Holy See, in a spirit of collegiality and fraternity we renew our commitment to the following:

1. Within each province, we will assist each other to interpret correctly and implement the Charter for the Protection of Children and Young People, always respecting Church law and striving to reflect the Gospel.

2. We will apply the requirements of the Charter also to ourselves, respecting always Church law as it applies to bishops. Therefore, if a bishop is accused of the sexual abuse of a minor, the accused bishop is obliged to inform the Apostolic Nuncio. If another bishop becomes aware of the sexual abuse of a minor by another bishop or of an allegation of the sexual abuse of a minor by a bishop, he too is obliged to inform the Apostolic Nuncio and comply with applicable civil laws.

3. In cases of financial demands for settlements involving allegations of any sexual misconduct by a bishop, he, or any of us who become aware of it, is obliged to inform the Apostolic Nuncio.
4. Within each of our provinces, as an expression of collegiality, including fraternal support, fraternal challenge and fraternal correction, we will engage in ongoing mutual reflection upon our commitment to holiness of life and upon the exercise of our episcopal ministry.

In making this statement, we firmly uphold the dignity of every human being and renew our commitment to live and promote the chastity required of all followers of Christ and especially of deacons, priests and bishops.

This Statement of Episcopal Commitment will be reviewed by the Committee on Clergy, Consecrated Life and Vocations upon the next review of the Charter.

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Issued by USCCB, June 16, 2011
ANNEXURE 2016 A
Apostolic letter Motu proprio: Like a loving mother, 04.06.2016
Bulletin Vatican 4/6/2016
http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2016/06/04/160604a.html

Vatican City, 4 June 2016 – Pope Francis today wrote an apostolic letter in the form of a Motu Proprio, in which he affirms that the Church, like a loving mother, loves all her children, but treats and protects with special affection the smallest and most helpless. This is a task that Christ Himself entrusts to all the Christian community as a whole. Although this care and protection is the responsibility of all the Church, the Holy Father emphasises that it is to be carried out in particular through her pastors. Therefore, diocesan bishops, eparchs and those who are responsible for a particular Church must act with special diligence in the protection of the weakest among those entrusted to them.

He goes on to note that canon law already provides the possibility of the removal from ecclesiastical office "for grave causes" and this refers also to diocesan bishops, eparchs and those of equivalent status by law. By this Motu Proprio, the Pope specifies that these "grave causes" include the negligence of a bishop in the exercise of his role, especially in relation to cases of sexual abuse of minors and vulnerable adults, as referred to in the Motu Proprio Sacramentorum Sanctitatis Tutela, promulgated by St. John Paul II and amended by Benedict XVI, and establishes a series of procedures to be followed in these cases, as follows.

The diocesan bishop or eparch, or he who even on a temporary basis is responsible for a particular Church, or another community of faithful, may legitimately be removed from office for acts committed or omitted by negligence, resulting in the provocation of grave damage to others, either physical persons or a community as a whole. The damage may be physical, moral, spiritual or patrimonial. The diocesan bishop or eparch may be removed from office only if he may be shown objectively to have lacked the diligence required for his pastoral office, even without grave moral culpability on his part. In the case of abuse of minors or vulnerable adults, it is sufficient for the lack of diligence to be grave. Major superiors of religious institutes and societies of apostolic life of Pontifical right are to be considered equivalent to the diocesan bishop or eparch.

In the second article of the Motu Proprio, the Pope specifies that in all cases in which serious indications, as listed in the previous article, are present, the competent Congregation of the Roman Curia may initiate an investigation on the issue, notifying the interested party and providing him the possibility of producing documents and witnesses. The bishop will be given the opportunity to defend himself using the means provided by the law. He will receive communication of all phases of the investigation and will always be granted the possibility of meeting the Superiors of the Congregations. If the bishop does not take the initiative, such a meeting shall be proposed by the dicastery itself. Following the arguments presented by the bishop, the Congregation may decide whether to proceed with a further investigation.

Before making its decision, the Congregation may meet, as appropriate, with other bishops or eparchs belonging to the Episcopal Conference, or the Synod of Bishops.
of the *sui iuris* Church to which the bishop or eparch in question belongs, with the objective of discussing the case. The Congregation will make its decisions in ordinary Session.

The fourth article specifies that should the Congregation consider it appropriate to remove the bishop from office, it will determine on the basis of the circumstances of the case whether to issue, as soon as possible, the decree for removal, or to fraternally exhort the bishop to present his resignation within a period of fifteen days. If the bishop does not respond within the indicated period, the Congregation may issue a degree for removal from office.

Finally, the decision of the Congregation must be subject to specific approval by the Roman Pontiff who, prior to assuming a definitive decision, will be assisted by a special College of legal experts, designated for the purpose.

The Motu Proprio, dated 4 June, will come into effect from 5 September 2016.

Fr. Federico Lombardi, S.J., director of the Holy See Press Office, clarifies in a note that the "investigation" in cases of negligence will be performed by the competent Congregations, of which there are four: Bishops, Evangelisation of Peoples, Oriental Churches, and Institutes of Consecrated Life and Societies of Apostolic Life. The Congregation for the Doctrine of the Faith is not included as this does not regard cases of abuse, but rather of negligence in office. He also emphasises the novelty of the establishment of a "college of legal experts" to assist the Holy Father in arriving at a definitive decision, and adds that this College will likely be constituted of Cardinals and Bishops.
ANNEXURE 2016 B: Apostolic Letter 4/6/2016 (Google Translation from Latin Text):  
http://w2.vatican.va/content/francesco/it/motu_propr...html 
English Text not available on Vatican Website accessed 5/6/2016

APOSTOLIC LETTER OF "MOTU PROPRIO" OF POPE FRANCIS

LIKE A LOVING MOTHER

As a loving mother the Church loves all her children, but treats and protects with a very particular affection the smaller and helpless: this is a task that Christ entrusted to the entire Christian community as a whole. Aware of this, the Church dedicates a cure vigilant to protect children and vulnerable adults.

Such protection job and care up to the whole Church, but especially through its pastors that it must be exercised. Thus diocesan bishops, the Eparchs and those who have the responsibility of a particular Church, must employ a particular diligence in protecting those who are the weakest among the people entrusted to them.

The Canon law already provides for the possibility of removal from office ecclesiastical "for serious reasons": this also relates to the diocesan bishops the Eparchs and those who are equivalent to them by law (cf. c. 193 §1 CIC, can. 975 § 1 CCEO). In this letter I intend to point out that among those "grave reasons" includes the negligence of the bishops in the exercise of their office, in particular in relation to cases of sexual abuse of minors and vulnerable adults, provided by MP Sacramentorum Sanctitatis Protectionem promulgated by Saint John Paul II and amended by my beloved predecessor Pope Benedict XVI. In such cases it will be observed the following procedure.

Art. 1

§ 1. The Diocesan Bishop or Eparch, or who, even if on a temporary basis, has the responsibility of a particular Church, or another of the faithful community equivalent to it in accordance with can. 368 CIC and can. 313 CCEO, can be legitimately removed from office, if have, through negligence, place or omitted acts have caused serious harm to others, whether it be individuals, whether it is of a community as a whole. The damage may be physical, moral, or spiritual balance.

§ 2. The Diocesan Bishop or Eparch can be removed only if objectively he has missed in a very serious diligence that is required by his pastoral office, even without serious moral fault of his own.

§ 3. In the case of abuse of minors or vulnerable adults it is sufficient that the lack of care is serious.
§4. The diocesan bishop and all’Eparca are equivalent major superiors of religious institutes and societies of apostolic life of pontifical right.

Article 2

§1. In all cases in which serious indications appear with the provisions preceding article, the competent authority of the Roman Curia Congregation can start an investigation on the matter, giving notice to the person and giving him the opportunity to produce documents and testimony.

§2. The Bishop will be given the opportunity to defend himself, what he will do with the means provided by the law. All steps of the investigation will be notified and will always be given the opportunity to meet the Superiors of the Congregation. Said meeting, if the Bishop does not take the initiative, will be proposed by the Department itself.

§3. Following the arguments presented by the Bishop Congregation may decide further investigation.

Article 3

§1. Before taking its decision, the Congregation will meet, as appropriate, other bishops or Eparchs belonging to the Bishops’ Conference, or Synod of Bishops of the Church sui iuris, which is part of the Bishop or Eparch concerned, in order to discuss the case.

§2. The Congregation takes its determinations meeting in ordinary session.

Article 4

If it considers it appropriate to remove the bishop, the Congregation will determine, based on the circumstances of the case, if:

1st. to give, in the shortest possible time, the decree of removal;

2. fraternally urge the Bishop to submit his resignation in a period of 15 days. If the bishop does not give his response within the prescribed period, the Congregation can issue a decree of removal.

Article 5

The decision of the Congregation of Articles. 3-4 must be submitted for approval specifies the Roman Pontiff, Who, before taking a final decision, will be assisted by a special college of lawyers, duly assigned.

All that I have determined with this Apostolic Letter given motu proprio I order to be observed in all its parts, notwithstanding anything to the contrary, even if
worthy of special mention, and I establish that it is published in the official commentary Acta Apostolicae Sedis and promulgated in the newspaper "L'Osservatore Romano" entering into force on 5 September 2016.

From the Vatican, June 4, 2016

Francesco PP