

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**

Vatican Polyglot Press, 1962

**INSTRUCTION
On the Manner of Proceeding in Causes involving the Crime 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NOT TO BE PUBLISHED OR AUGMENTED WITH COMMENTARIES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 O) 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 subiicere*]. 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 quem* 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