

The Seal of Confession in the Evangelical Lutheran Church, with Special Reference to Confessions of Child Abuse

The Evangelical Lutheran Church confesses in the Apology of the Augsburg Confession that, “Because of the call of the Church,” public ministers of Word and Sacrament “represent the person of Christ and do not represent their own persons, as Christ testifies, ‘The one who hears you hears Me’ (Luke 10:16). When they offer God’s Word, when they offer the Sacraments, they offer them in the stead and place of Christ.”¹ According to this Lutheran understanding of the public ministry of the church, when a penitent confesses his sins to a pastor, he does so because of and according to the pastor’s office as a representative of God. And a penitent receives absolution from the pastor likewise according to the pastor’s office as a representative of God. In the confessional setting the pastor is not acting and speaking in his personal capacity as a private individual, but he is acting and speaking in Christ’s stead and as the mouthpiece and spokesman of Christ. The words of pardon and forgiveness that he declares – as he applies to the penitent the loosing key – are Christ’s words, not his own. The Apology accordingly also teaches:

Because God truly brings a person to life through the Word, the Keys truly forgive sins before God. According to Luke 10:16, “The one who hears you hears Me.” Therefore, the voice of the one absolving must be believed no differently than we would believe a voice from heaven. Absolution can properly be called a Sacrament of repentance...²

Regarding his forgiveness of the sins of his people, God makes these promises: “For I will be merciful toward their iniquities, and I will remember their sins no more” (Hebrews 8:12, ESV³); “I will remember their sins and their lawless deeds no more” (Hebrews 10:17, ESV). Also pertinent are these statements of our Lord: “I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven” (Matthew 16:19, ESV); “If you forgive the sins of anyone, they are forgiven; if you withhold forgiveness from anyone, it is withheld” (John 20:23, ESV).

Since God does not “remember” confessed and forgiven sins, there is an important sense in which a called pastor who has become aware of people’s sins in his official capacity as God’s representative – in the context of confession and absolution – likewise “will remember their sins no more.” A pastor, in confidence, may continue to counsel and advise an absolved sinner in matters relating to the enduring practical *consequences* of his sin, or in matters relating to what the practical consequences of his *repentance* and *forgiveness* may or should now be. But a pastor will not think of or treat an absolved sinner as someone who still stands as *guilty* of the repented-of sin – either before God or in the pastor’s own mind.

¹Apology of the Augsburg Confession VII/VIII:28, *Concordia: The Lutheran Confessions*, Second Edition, edited by Paul Timothy McCain (Saint Louis: Concordia Publishing House, 2006), p. 147.

²Apology XII:40-41, p. 162.

³*The Holy Bible, English Standard Version*, copyright 2001 by Crossway Bibles (a division of Good News Publishers).

An important aspect of this official “not remembering” of absolved sins on the part of a Lutheran minister is summarized by John H. C. Fritz in his influential book on *Pastoral Theology*, under the topical heading *Sigillum Confessionis* (“Seal of Confession”):

A pastor should never reveal what has been told him by way of private confession. A pastor who becomes guilty of such an offense...deserves to be deposed from office. When a confession is made, it is in the very nature of the case that there really exists a silent agreement between both parties that whatever is confessed is said *inter nos* in the strictest sense of these words and dare not be revealed. ... In this respect Christians ought to be in a position to put absolute confidence in their spiritual adviser. The pastor should be known to be a man who can hold his tongue. Hippocrates even made physicians promise under oath not to reveal the secret ailments of their patients, and this oath is still in use. How much more is it necessary and may it be expected that the pastor, who is a spiritual physician, will not reveal the secret sins which have been confessed to him! Even in court a pastor while under oath dare not reveal a confessional secret, nor does the court expect or demand it. Since the pastor acts in Christ’s stead when he absolves a sinner, 2 Cor. 2:10, he acts in Christ’s stead also when he hears a confession. He may therefore not reveal what Christ Himself does not reveal. Cp. Jer. 31:34.⁴

In his statement that the courts do not “expect or demand” a pastor to reveal confessional secrets, Fritz is referring to what is often called the “clergy-penitent privilege,” which has indeed been recognized in the past by the civil authorities of the United States. But in our time this privilege is not respected and honored as consistently as it was in Fritz’s time, in the early- to mid-twentieth century. And even some within the contemporary church may no longer fully understand, or be fully committed to defending, the important pastoral and theological principle of the inviolability of the seal of confession.

Crimes involving the sexual abuse, the physical and emotional abuse, and even the killing of children, are among the most heinous of offenses. For this reason, many states have passed laws requiring members of the clergy and of certain other professions to report to the authorities any cases of the abuse of children of which they become aware. These laws usually recognize an exception to this reporting requirement with respect to information that a pastor or priest has learned in the context of private confession, if that pastor or priest adheres to a religion, or belongs to a church, in which it is understood that such private penitential communications are to be kept confidential.

In a 2015 document published by the United States Department of Health and Human Services on “Clergy as Mandatory Reporters of Child Abuse and Neglect,” we are told that

Every State, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes that identify persons who are required to report child maltreatment under specific circumstances. Approximately 28 States and Guam currently include members of the clergy among those professionals

⁴John H. C. Fritz, *Pastoral Theology: A Handbook of Scriptural Principles Written Especially for Pastors of the Lutheran Church* (Second Edition, Revised) (Saint Louis: Concordia Publishing House, 1945), pp. 115-16.

specifically mandated by law to report known or suspected instances of child abuse or neglect. In approximately 18 States and Puerto Rico, any person who suspects child abuse or neglect is required to report it.⁵

With respect to the legal principle of “clergy-penitent privilege,” and the confidentiality that inheres in that privilege, the HHS document states that

Mandatory reporting statutes in some States specify the circumstances under which a communication is “privileged” or allowed to remain confidential. Privileged communications may be exempt from the requirement to report suspected abuse or neglect. ... Most States do provide the privilege, typically in rules of evidence or civil procedure. If the issue of privilege is not addressed in the reporting laws, it does not mean that privilege is not granted; it may be granted in other parts of State statutes. This privilege, however, is not absolute. While clergy-penitent privilege is frequently recognized within the reporting laws, it is typically interpreted narrowly in the context of child abuse or neglect.⁶

Wisconsin Statute 48.981 is a good example of a state law that recognizes, yet narrowly defines, the clergy-penitent privilege; and that exempts a clergyman from reporting his knowledge of a case of child abuse when this knowledge has been obtained by him exclusively in a setting of private confession and absolution. That statute requires pastors (and others) to report to the authorities any instances of the sexual abuse of children of which they have definite knowledge or which they reasonably suspect, but makes this exception:

A member of the clergy is not required to report child abuse information...that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret.⁷

The historic disciplines, tenets, and traditions of the Evangelical Lutheran Church do in fact recognize and require the inviolability of the seal of confession in such cases, so that Lutheran pastors are accordingly not being called upon by this law – or by similarly-worded laws in other states – to violate the seal of confession. Lutheran pastors are, however, required to report any abuse that they themselves witness, that is reported to them by a victim, or that they learn about in some other way, apart from the confessional.

⁵“Clergy as Mandatory Reporters of Child Abuse and Neglect,” State Statutes Current through August 2015 (published through the Child Welfare Information Gateway by the Youth and Families Children’s Bureau of the Administration on Children within the Administration for Children and Families of the U.S. Department of Health and Human Services), p. 1.

⁶“Clergy as Mandatory Reporters of Child Abuse and Neglect,” p. 2.

⁷“Clergy as Mandatory Reporters of Child Abuse and Neglect,” p. 16.

Martin Luther's deeply-held convictions on this question – which are fully in accord with the teaching of the Holy Scriptures and the Lutheran Confessions – are set forth (in his typically colorful way) in a Table Talk conversation that took place in August of 1540:

Somebody asked, “Doctor, if a parish minister absolves a woman who has killed her infant child and afterward the matter becomes public through others, should the parish minister, when asked, offer testimony in this case before a judge?”

“By no means,” said the doctor [Martin Luther], “for the forum of conscience is to be distinguished from the forum of the civil government. The woman didn't confess anything to me; she confessed to Christ. But if Christ keeps it hidden, I should conceal it and simply deny that I heard anything. But I would say privately to the woman when she came to me for absolution, ‘You whore, don't you ever do it again!’”

“Doctor, what if that woman said that she had been absolved by you and wished to be set free for the reason that Christ had discharged her. Therefore, she would say, the judges can't decide anything against her.”

The doctor replied, “I repeat that civil matters must be distinguished [from ecclesiastical]. If I were summoned to appear in this case I would deny it again, for I'm not the person who should speak, testify, etc., in the political forum but in the forum of conscience. Therefore I would say, ‘I, Martin Luther, don't know anything at all about whether she was absolved. Christ knows, for he's the one with whom she spoke, to whom she confided something or didn't, who (as he certainly knows) absolved her or didn't. I know nothing about it because I don't hear confession; it's Christ who does.’”⁸

The man “Martin Luther,” insofar as he is a citizen of Electoral Saxony over whom the civil courts of Electoral Saxony have legitimate jurisdiction, does not “know” anything about this matter – even if Christ and Christ's official representative *may* know something about it. But the civil courts of Electoral Saxony have no legitimate jurisdiction over Christ – or by extension over an official representative of Christ, when that representative is functioning within the parameters, and according to the requirements, of the sacred office that Christ has entrusted to him. In the confessional setting, the pastor does stand in the place of Christ, not in the place of his own person, and certainly not in the place of the civil government. This is the primary Biblical and theological underpinning of the principle that the seal of confession must always be maintained.

In our time, however, civil courts and state legislatures do not always recognize the proper limits of their authority in these matters. Some states, in their mandatory reporting laws, presume to dictate to pastors or priests that they must, if need be, *violate* the historical disciplines, tenets, and traditions of their church when a penitent has privately confessed a sin of child abuse. Regarding the “clergy-penitent privilege,” the HHS document states that

The circumstances under which it is allowed vary from State to State, and in some States it is denied altogether. For example, among the States that list clergy as mandated reporters, Guam, New Hampshire, and West Virginia deny the clergy-penitent privilege in cases of child abuse or neglect. Four of the States that enumerate “any person” as a

⁸Table Talk #5178, *Luther's Works*, Vol. 54 (Philadelphia: Fortress Press, 1967), pp. 395-96.

mandated reporter (North Carolina, Oklahoma, Rhode Island, and Texas) also deny clergy-penitent privilege in child abuse cases.⁹

This is unacceptable to any conscientious pastor of any denomination who believes in the Biblical doctrines of the public ministry, the divine call, the office of the keys, and divine forgiveness; and who also believes that “we must obey God rather than men” on those occasions when “men” demand that Christian pastors “render to Caesar” what they are permitted by vocation and conscience to render only to God (Acts 5:29b; Matthew 22:21b, ESV). It is also difficult to imagine how such statutory demands would pass Constitutional muster if they were ever challenged in a United States federal court, in view of the First Amendment’s guarantee that the government “shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*”

A secondary factor in maintaining the principle that the seal of confession is inviolable, is the implied “contract” that is in effect when a penitent speaks confidentially with a pastor, and confesses a sin. This sin is confessed with the understanding that it will never be divulged. If that understanding were not in place, then it is extremely unlikely that the penitent would have come to the pastor and confessed the sin in the first place. A pastor’s official blanket pledge of confidentiality with respect to such matters allows him to have ongoing relationships of trust with his parishioners and with others whom he serves in a pastoral capacity. This is very similar to the ethical standard of the legal profession regarding private privileged conversations between an attorney and a client, which likewise requires such confidentiality. If there were no such pledge on the part of a pastor, then there would be no such trusting relationships.

And when there is such a pledge, either stated or implied, and a pastor divulges a confessed sin anyway, then this would be a profoundly serious breach of personal and professional ethics. A lawyer could be disbarred for such an offense. Historically, a Christian clergyman who violated the seal of confession would face defrocking – and on occasion an even worse punishment. In his highly-respected *American-Lutheran Pastoral Theology*, C. F. W. Walther reports that

When Luther was told that the city council in Venice had condemned to the fire a monk who had absolved a murder confessed to him by someone but had then let himself be persuaded to disclose it through bribery, Luther replied, “This is a proper, good, and reasonable ruling and a wise opinion on the part of the council, and it was fitting to burn the monk as a traitor.”

Walther does not endorse such a severe punishment for this kind of offense, but he does go on to say that, “At any rate, a preacher who gossips [about things revealed] in confession has ruined his ministry and deserves to be removed.”¹⁰ A pastor divulging a confessed sin would also be a

⁹“Clergy as Mandatory Reporters of Child Abuse and Neglect,” p. 2.

¹⁰C. F. W. Walther, *American-Lutheran Pastoral Theology*, edited by David W. Loy, translated by Christian C. Tiews (Saint Louis: Concordia Publishing House, 2017), p. 195. The Luther reference is cited from Walch 22:880.

violation of the Eighth Commandment, which forbids not only telling lies, but also telling the truth to the wrong people and for the wrong reasons. A pastor who knows of a sin only by means of the confessional, but who may be tempted to speak of that sin to a third party, would be admonished by the Large Catechism: “if you know about it, know it for yourself and not for another.”¹¹

In keeping with this line of thought, the orthodox Lutheran theologian Johannes Fecht writes that the pastoral obligation not to break the seal of confession “is based on a silent agreement between the one hearing confession and the one confessing. For if the minister of the Church were not obligated to the most rigorous silence, then the hearer would be acting foolishly if he entrusted to the former at his own risk something he could, according to Lutheran principles, keep secret.”¹² In other words, a penitent is not obligated by Lutheran teaching to enumerate all his sins in order to receive absolution. As the Augsburg Confession states, “Our churches teach that private Absolution should be retained in the churches, although listing all sins is not necessary for Confession.”¹³ A Lutheran penitent is nevertheless invited and encouraged to confess to the pastor any specific sins that are especially troubling to him, so that the pastor or confessor can assure him personally of God’s forgiveness of those sins, and so that the pastor can also offer additional counsel and instruction tailored to his specific circumstances. As Luther explains,

To confess sin does not mean (as among the papists) to recite a long catalog of sins, but to desire absolution. This is in itself a sufficient confession, that is, acknowledging yourself guilty and confessing that you are a sinner. And no more should be demanded and required, no naming and recitation of all or some, many or a few sins, unless you of your own accord desire to indicate something that especially burdens your conscience and calls for instruction and advice or specific comfort, such as young, plain folk and also others often require.¹⁴

The Small Catechism points out that “for those who have great burdens on their consciences, or are distressed and tempted, the confessor will know how to comfort and to encourage them to believe with more passages of Scripture.”¹⁵ The pastor’s knowledge of specific offenses also gives him an opportunity to guide a penitent toward a proper making of amends, and toward the bearing of the proper fruits of repentance, when the proper amends and fruits in a particular situation are clear. But this level of spiritual care and pastoral influence – together with all the

¹¹Large Catechism I:270, *Concordia: The Lutheran Confessions*, p. 390.

¹²Johannes Fecht, *Instructio pastoralis*, p. 151; quoted in Walther, *American-Lutheran Pastoral Theology*, p. 195.

¹³Augsburg Confession XI:1, *Concordia: The Lutheran Confessions*, pp. 35-36.

¹⁴Martin Luther, *Am Oster Dinstage. Evangelium Luc. xxiii. Ein ander Predigt*. [On the Festival of Easter. The Gospel according to Luke, 24. Another Sermon.] (1531) (*Crucigers Sommerpostille*, 1544) (WA 21:263); quoted in *What Luther Says: An Anthology* (compiled and edited by Ewald M. Plass) (Saint Louis: Concordia Publishing House, 1959), Vol. I, p. 331.

¹⁵Small Catechism V, *Concordia: The Lutheran Confessions*, p. 342.

benefits for the soul and conscience that accompany this care and influence – would not be possible, if the penitent did not know in advance that such communications would be kept confidential. He consequently would keep all of these things to himself, and not discuss them with the pastor.

Fecht goes on to say that in the act of hearing confession, “the minister of the Church is not regarded as a prosecutor or examiner or judge.” And in response to the erroneous opinion that a high regard for the integrity and confidentiality of the clergy-penitent relationship is to be found only in the Roman Catholic Church, and only as a component of the distinctive Romanist doctrine of the priesthood, Fecht plainly states that “not only the Roman but also our whole Lutheran Church commands that this confidentiality be kept holy.” He adds that, “with regard to the seal of confession, we should note that it extends not only to whatever is discussed with the prior promise of secrecy in the confessional between the one hearing confession and the one confessing but also to all other, even private, interactions that occur pastorally between the father confessor and the one confessing, unless he explicitly stated that he was speaking with him in a different capacity.”¹⁶

One area where the casuistic norms of the Evangelical Lutheran Church differ from the casuistic norms and canonical requirements of the Roman Catholic Church, is that there is no unqualified requirement that a Lutheran pastor keep in confidence absolutely everything that is discussed in the context of the confessional conversation or ritual. Fritz asks, “Shall a pastor reveal a sin *which is yet to be committed* and which has been confessed to him?” His answer is that such a “confession” is “in its very nature different” from a confession of a sin of the past that the penitent regrets. Fritz goes on to explain that “The only purpose of the confession of any sin is to receive the assurance of forgiveness; this assurance, however, cannot be sought in advance for sins yet to be committed.”¹⁷

For Lutherans, then, the seal of confession, and the bond of pastoral confidentiality, do not necessarily apply in all respects to someone’s admission of a plan to commit a sin in the future – especially if the pastor is not able to persuade the person with whom he is speaking to refrain from the evil that he intends. And the seal of confession, and the bond of pastoral confidentiality, likewise do not necessarily apply in all respects to a sin that *began* in the past but that is, in effect, still taking place – especially when such a sin presents a current and future danger to other people and to the larger community, such as the kidnaping of a person who is still in confinement and has not been released; the poisoning of a well from which people are still drinking; or involvement in an assassination conspiracy that the other conspirators still intend to carry out. Fritz adds that in regard to difficult cases of this kind, “When a pastor is in doubt what to do, he will do well to seek the advice of more experienced brethren in the ministry, in whom he has the confidence that they will exercise good judgment in such a matter.”¹⁸

¹⁶Fecht, p. 151; quoted in Walther, *American-Lutheran Pastoral Theology*, p. 195.

¹⁷Fritz, pp. 116-17. Emphasis in original.

¹⁸Fritz, p. 117.

The Evangelical Lutheran Church would, in principle, recognize the right of the civil authorities to require people – including pastors – to divulge their knowledge of certain *current and future crimes*, regardless of how they obtained that knowledge. And so, for example, if someone admitted to a pastor – even in a setting of private confession – that he was abusing a child and did not plan to stop, this would be treated differently from someone’s confidential admission to a pastor that he had abused a child (or anyone else) *in the past*, and was deeply remorseful over this past sin. The seventeenth-century theologian Johann Conrad Dannhauer is speaking of such things when he writes:

It is true that what is confided is to be kept secret, in accordance with natural obligation (Prov. 11:13), in accordance with the ancient practice of the church, and because the preacher acts in the stead of Christ – because the latter [Christ] covers up the sins of the repentant, the one absolving must not disclose them, especially secret and nonoffensive sins. But if silence would harm the state or love of one’s neighbor (if, for example, a conspiracy, treason, poisoning of wells, or the danger of arson were confessed), then the one who confessed this is to be urged either to disclose the matter himself or explicitly to allow it to be revealed. Otherwise he will not receive the blessing of the loosing key. If he does not want this, then more concern should be had for society than for an individual person, and there is no seal in the divine Law that could be held over the mouth in this case.¹⁹

Also addressing these kinds of current and future sins – but not sins that are only in the past – Fecht similarly explains that

Those sins which, if they remain concealed, involve the destruction of either an entire community or several [people] should not be kept secret, since a community should be the object of greater concern than an individual. ... However, one should proceed as considerately in such a disclosure as the holiness of the seal of confession demands. The person must be protected as long and as far as possible.²⁰

But past sins for which a penitent had sought the Lord’s forgiveness – including sins that were also civil crimes – may not be divulged by a Christian pastor. This remains the case even if the pastor personally suspects that the confessing person may not have been completely sincere in his repentance or in his stated intention to avoid that sin in the future. Only God “knows the heart” (Acts 15:8, ESV). While a pastor according to his office represents God and speaks for God, he is not God, and is not able to know everything that God knows. “For the Lord sees not as man sees: man looks on the outward appearance, but the Lord looks on the heart” (1 Samuel 16:7, ESV).

Regarding the way in which a pastor deals with someone who says that he repents of a certain sin, but whose sincerity in this repentance is doubted by the pastor, Fritz writes:

¹⁹Johann Conrad Dannhauer, *Hodomoria Spiritus Papae*, p. 1456; quoted in Walther, *American-Lutheran Pastoral Theology*, p. 197.

²⁰Fecht, p. 152; quoted in Walther, *American-Lutheran Pastoral Theology*, p. 196.

Whenever a pastor is much in doubt whether or not a person...is penitent, but cannot absolutely prove the impenitence of such a person, he dare not...absolve such a person *conditionally* nor add any manner of warning or threat to the absolution; for the absolution is in its very nature unconditional, and so-called conditional absolution is not absolution at all. Whether or not the sinner receives the benefit of such absolution is another question. The benefit of the absolution can be received only by faith, and faith presupposes a contrite heart. But as far as the absolution is concerned, *God verily and truly offers forgiveness.*²¹

Lutheran casuists through the years have also addressed highly extraordinary situations, where a pastor's procedure in dealing with statements that had been made by a penitent in the context of confession did differ from what his ordinary procedure would be. One example involved a woman who under torture confessed to a capital crime that she had not actually committed, since she preferred death over continuing torture. In the setting of private confession with a pastor, before her scheduled execution, she admitted that she had not actually committed the crime of which she had been convicted. But she also asked the pastor not to divulge this private recantation, since she feared being tortured again. The pastor did divulge what she had said in confidence anyway, and this prompted the authorities to overturn her conviction and cancel her execution. This divulging of information that had been learned in the confessional was not a divulging of a sin that someone had committed, but it was a divulging of a sin that someone had not committed.²²

Another extraordinary case involved a bandit known as Lips Tullian. He was caught, tried, and convicted of his crimes. Because of his cooperation with the authorities – in his having persuaded several of his accomplices also to confess what they had done – he was granted a more humane form of execution (beheading rather than being broken on the wheel). One additional requirement was that he also confess his sins publicly and express repentance for them. This he did, also in the presence of a pastor, who then publicly absolved him before his beheading in Dresden in 1715.²³ The pastor's willingness to go along with this unusual way of hearing and responding to a confession did not involve his personal divulging of past sins of which the civil authorities were not already aware.

The eighteenth-century theologian Salomon Deyling refers to the Tullian case in his explanation of the important Lutheran distinction that has already been mentioned, between a confession of past repented-of sins, and a confession of ongoing present sins or intended future sins:

We distinguish between sins that have already occurred and those that have yet to be committed. The former are rightfully kept secret and covered with complete silence,

²¹Fritz, p. 115. Emphases in original.

²²See Walther, *American-Lutheran Pastoral Theology*, p. 197.

²³See Mitchell B. Merback, *The Thief, the Cross and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (London: Reaktion Books, Ltd., 1999), pp. 153-54.

provided the general well-being and the command of the highest authorities do not command something else, as was the case with the notorious Lips Tullian. With regard to future sins and sins still to be committed, there is less concern. For if an offense revealed under the seal of confession and keeping that same [sin] secret would lead to the destruction of the highest authorities or the state or the neighbor – for instance, if a conspiracy, treason, the poisoning of a well, and arson were confessed – and the person confessing persisted in his evil plan after being warned by the preacher, in this case he, as an impenitent, may not be absolved nor may his horrific crime be kept secret, if the one hearing confession does not wish to act contrary to the law of nature, which commands us to prevent every destruction of the neighbor, [and if he does not want] to make himself a participant in the same sin and guilty of shedding innocent blood. Thus that Jesuit could have prevented the murder of King Henry IV of France if he had not kept secret the plan of Ravailac which had been revealed to him. And even if someone who confessed the intention to commit a crime promised not to commit the crime after stern reproach by the father confessor, it would still be in accordance with love and prudence, while keeping the one who confessed anonymous, quickly to inform the people whose well-being is at stake, so that they may exercise care and ward off the danger. In fact, if the well-being of the highest authority or of the republic requires it, he may not conceal even the name. In light of all of this, it is not difficult to answer the question whether a confession should be revealed if, by concealing the confession of the guilty person, an innocent person would lose his life, even if he had not revealed his innocence himself. Our theologians correctly answer the question in the affirmative, but with a distinction between revealing the criminal and [revealing] the crime; only the latter is permissible here.²⁴

Walther summarizes the normative centuries-old Confessional Lutheran standards concerning these matters:

A preacher must not reveal what is confessed or [made] known to him in confession, or even [just] as a preacher. Instead, he must keep it secret because of the seal of confession.²⁵

...if someone confesses a sin still to be committed, this does not at all fall into the category of confession. While such admissions should also in no way be revealed except in the most extreme emergencies, if what is revealed concerns a sin that would harm another person, perhaps an entire community – a planned murder, maybe the assassination of a king, the poisoning of a well, arson, treason, and the like – then [the pastor] must above all appeal with all means to the conscience of the one blinded not to carry out his plan. However, if this is unsuccessful, the matter must be reported to the

²⁴Salomon Deyling, *Institutiones prudentiae pastoralis*, p. 456; quoted in Walther, *American-Lutheran Pastoral Theology*, pp. 196-97.

²⁵Walther, *American-Lutheran Pastoral Theology*, p. 194.

proper authorities (without names, if this is enough to avert the danger; however, where this is not the case, then also by naming names).²⁶

In *The Counseling Shepherd* – coauthored by Armin W. Schuetze and Frederick A. Matzke – we are told that in a “confession and absolution” setting, “both pastor and member recognize that what is happening is confidential unless there is a specific understanding to the contrary.”²⁷ Yet Deyling, as already cited, seems to back away from this absolute commitment to confidentiality regarding past sins when he says that “sins that have already occurred...are rightfully kept secret and covered with complete silence, *provided the general well-being and the command of the highest authorities do not command something else.*” The example of such a “command of the highest authorities” that he gives (the Lips Tullian case) did not, however, involve a real breaking of the seal of confession. One does also suspect that Deyling may have been influenced by the improper subservience to the civil government that so often characterized the “state church” Lutheranism of his era, which we today would certainly not want to emulate.

But in any case, the possible dilemma posed by Deyling’s seeming deference to “the highest authorities” in such a matter would not be a factor in states where these authorities do not in fact command the breaking of the seal, but explicitly protect it with a clergy-penitent exception to the reporting requirements of laws that otherwise require pastors to report the abuse of children or others. Yet even when a state (or country) would presume to require a clergyman to break the seal of confession in certain situations, a Lutheran pastor would not recognize the legitimacy of such a demand, but would see it as an improper governmental intrusion into a realm where the civil authorities have no proper jurisdiction. We recall Luther’s way of dealing with a hypothetical situation involving a pastor being subpoenaed to testify in court concerning a confession of infanticide that he would have heard in the course of his pastoral duties. Luther states unambiguously that a pastor should “By no means” comply with such a subpoena, since “the forum of conscience is to be distinguished from the forum of the civil government.”

Specifically in regard to the abuse of children, and laws that require a clergyman to report such abuse when he becomes aware of it, we read in *The Counseling Shepherd*:

The question for the pastor may be: “Must I violate my confessional relationship with a member by telling the government? Must I suffer the consequences if I don’t think I should reveal what I know?” In certain situations the pastor may in advance warn a counselee what the law requires him to do. Such a warning may, however, terminate a necessary spiritual ministry to that counselee. If indeed the government should ever demand that the pastor violate his conscience bound by the word of God, the pastor must answer, as Peter did, “We must obey God rather than men!” (Ac 5:29).²⁸

²⁶Walther, *American-Lutheran Pastoral Theology*, p. 196.

²⁷Armin W. Schuetze and Frederick A. Matzke, *The Counseling Shepherd* (Milwaukee: Northwestern Publishing House, 1988), p. 116.

²⁸Schuetze and Matzke, p. 183.

Pedophiles and people with similar compulsions, as a category, are notoriously narcissistic and lacking in empathy for their victims; are masters of deception and manipulation; and are very adept at avoiding exposure and hiding their crimes. So, if someone who has been engaging in this kind of behavior approaches a pastor and voluntarily admits what he has been doing, that in itself indicates that this person is not a typical pedophile or sexual predator. It indicates that he is instead an individual whose conscience has been severely pricked by God's Word, so that he would accordingly be expected to be receptive to the Scriptural instruction of the pastor. In the anguish and confusion of his guilt and fear, a pedophile who has internally come under the conviction of the judgment of the divine law against his perverse behavior, may not yet know, when he first confesses his sin to the pastor, what course of action he should now follow in order to avoid this behavior in the future. But in the course of the confidential conversation or conversations that such an individual would then have with the pastor, after the pastor had heard his confession and absolved him, he would in all likelihood allow himself to be guided by the pastor in making the right decisions and in doing the right thing.

This pastoral counseling process – flowing from the confession and the absolution strictly speaking – needs to be allowed to follow its natural calming course, and to reach its proper clarifying conclusion. But this pastoral counseling process would likely never be initiated if a pedophile who is troubled in his conscience, yet uncertain of what he should do, would know in advance that the pastor will automatically turn him in to the authorities if he admits his crime to the pastor. Knowing this in advance would likely have an inhibiting effect on him, and would likely dissuade him from taking that first scary step of opening up to the pastor. If the proper course of action for a penitent sex criminal is indeed for that person to turn himself in to the authorities, we should not expect him to see this at the *beginning* of the counseling process, but rather at the *end* of that process, after the offender has been able to hear, ponder, and eventually embrace the pastor's counsel – all within the safe boundaries of the seal of confession. His receiving of God's forgiveness, and of the comfort of his justification in Christ, can give him the courage and fortitude he needs to be willing and able to report his crime to the authorities. He would not *have* this courage and fortitude *before* receiving God's forgiveness and the transforming grace of the gospel.

In his immediate or ongoing interactions with someone who has confessed a sin involving the abuse of a child, a Lutheran pastor can indeed be expected in most cases to try to figure out a way of persuading the offender to turn himself in to the authorities as a proper fruit of repentance – especially if this was a relatively recent offense. At the very least, a Lutheran pastor who is dealing with such a case can be expected to try to figure out a way of preventing any possible future occurrences of the abuse if there is a danger of this. And a Lutheran pastor can also be expected to try to figure out a way of providing much-needed spiritual care to the victim of such abuse if he is able to do so. But none of this can be at the expense of breaking the seal of confession.

Consider the alternative. If it is known in advance that a pastor will divulge to the authorities any sins of abusing children when these sins are confessed to him, then those who have committed such sins in the past – and who may be tempted to commit them in the future! – will most probably never talk to the pastor about it. The pastor would therefore have no opportunity to interact with an offender regarding these harmful behaviors and temptations; or to

offer him the counsel and admonition that he needs concerning such behaviors and temptations, and concerning what the fruits of repentance should now be in his life. If a pastor has a stated policy of reporting and divulging such sins, this would virtually guarantee that such sins would never be confessed to him. Over the long term, that would make the children whom the pastor has an obligation to protect, less safe, and not more safe.

If a pastor who has heard such a confession struggles with the question of what to do with the troubling information he now has regarding the abuse, he needs to remember that the only reason why he does in fact have this information, is because of the seal of confession. Without the guarantee of the seal having been in place before the confession, the confession never would have been made. The seal of confession, and a full and frank confession of sin, rise or fall together. A full and frank confession of sin is therefore not a reason to break the seal. It was precisely the seal that had invited and facilitated this full and frank confession.

A pastor's encouragements toward the bearing of the proper fruits of repentance in the life of a forgiven sinner do not negate God's forgiveness of the sin, or imply that the sin is now being "remembered" once again by either God or the pastor. But these encouragements are an additional component of the ministry of the Word in its totality that a pastor is called to carry out with God's people as God's representative. Martin Chemnitz writes that

the faithful minister of the Word...brings forth all things which are beneficial and applies them to certain subjects which Christ includes under the summary statement "Preach repentance and remission of sins," and "teach them to observe all things which I have commanded you," Luke 24:47 and Matt. 28:19... And Paul in Acts 26:20 sums them up thus: repentance, faith, and works, or the fruits of repentance.²⁹

Irwin J. Habeck accordingly exhorts pastors who are hearing a confession that

where there is sorrow over sin against God, there proclaim the forgiveness of that God which was purchased with the blood which our Savior shed for the remission of our sins. We know that where there is true repentance there will be "fruits meet for repentance" (Matt. 3:8). We shall have to point this out. We may have to advise the penitent sinner when he asks what he can do to show that he is sorry for what he has done. But we shall have to be very careful not to let him get the impression that by what he is doing he is making himself worthy of forgiveness, but to lead him to seek it in the Savior's sacrifice of which the gospel tells us. And we must be careful not to impose conditions which must be met before we will let the sinner hear the gospel. ... We dare not withhold the gospel from those to whom the law has revealed their sin, who repent of it, and show the sincerity of their repentance by promising to bring forth the fruits of repentance. "(Charity) believeth all things, hopeth all things" (I Cor. 13:7).³⁰

²⁹Martin Chemnitz, *Loci Theologici*, translated by J. A. O. Preus [Saint Louis: Concordia Publishing House, 1989], Vol. II, p. 707.

³⁰Irwin J. Habeck, "Law and Gospel and the Proper Distinction in Their Use in the Life of the Church," *Wisconsin Lutheran Quarterly*, Vol. 69, No. 3 [July 1972], pp. 180-81.

In Thesis IX of his well-known lectures on *Law & Gospel*, Walther explores the subject of the forgiving power of absolution, and the objective basis of that forgiving power in the death and resurrection of Christ. He explains that, for a penitent,

The right procedure is not to base the validity of Absolution on our own *contrition*, but to make our *contrition* rest on our Absolution. ... Christ Himself said, “Your sins are forgiven.” If He said it, then believe it. If you do not believe it, then you yourself call Christ a liar. Even if we pastors were to pronounce the Absolution to such a person ten times, it would not benefit him. We cannot look into people’s hearts. But that is not necessary anyway. We should look only at the Word of our heavenly Father, which informs us that God has absolved the entire world. That assures us that all sins of all humans have been forgiven.³¹

Walther then asks and answers a couple hypothetical questions:

You might ask: “Does this also apply to an ungodly scoundrel who might be plotting a burglary tonight – intent on stealing and robbing?” Indeed it does. The reason this person does not benefit from Absolution is because he does not accept the forgiveness offered him, for he does not believe in his Absolution. If he believed the Holy Spirit, he would stop stealing.

You might also ask: “Is it right to absolve such a scoundrel?” Answer: If you know he is a scoundrel, it would be wrong to absolve him because you know that he will not accept forgiveness. If you know this, you would commit a great and serious sin by performing the sacred act of Absolution for him and thus casting your pearls before swine. But Absolution itself is always valid. If Judas had received Absolution, God would have forgiven his sins; but Judas would have had to accept forgiveness. To obtain this treasure, there must be someone to give it – and someone else to receive it. An unbeliever may imagine and even say that he accepts forgiveness, but in his heart he is resolved to continue his sinful life and to prefer serving the devil.³²

Another question naturally arises: How *does* a confessor “know” when a person who has come to him for private confession does not actually repent of his sins, and does not actually believe in Christ and his absolution? How does a pastor “know” when he is dealing with a “scoundrel,” and not with a weak and struggling Christian? The answer is that he would know this – to the extent that he *can* know this – through carefully listening to what the penitent or would-be penitent says or does not say. He would not know this through presuming to read the mind, or peer into the heart, of the person with whom he is speaking.

An authentic expression of repentance involves not only a statement of sincere regret that a sin was committed in the past, but also a statement of a sincere desire that, with the Lord’s help

³¹C. F. W. Walther, *Law & Gospel: How to Read and Apply the Bible*, edited by Charles P. Schaum, translated by Christian C. Tiews (Saint Louis: Concordia Publishing House, 2010), pp. 206-07. Emphases in original.

³²Walther, *Law & Gospel: How to Read and Apply the Bible*, p. 207.

and in the Lord's strength, that sin will be avoided in the future. If I am genuinely sorry for what I have done, I genuinely do not want to do it again. This is why the formula of private confession given in the Small Catechism has the penitent say, at the end of his description of his failings and transgressions: "For all this I am sorry, and I pray for grace. *I want to do better.*"³³

In the 1569 *Church Order for Braunschweig-Wolfenbüttel* – prepared by Chemnitz and Jacob Andreae – the statement of repentance that worshipers are expected to recite in the public rite of general confession is even more explicit in this regard, when it directs penitents to conclude their acknowledgment of their transgressions with these words: "But I repent and am sorry for them and heartily desire grace of God, through His beloved Son, Jesus Christ, and *I pray that He would impart to me His Holy Spirit for the amendment of my life.*"³⁴ The formula for the public absolution that is provided in this Church Order is also quite detailed in its description of the character and content of a sincere repentance. The pastor is directed to respond to the congregation's confession in this way:

The Almighty God has had mercy on you and by the merit of the most holy suffering, death, and resurrection of His beloved Son, our Lord Jesus Christ, forgives you all your sins; and I, as an ordained minister of the Christian Church, announce to all who truly repent and who, by faith, place all their trust in the sole merit of Jesus Christ *and who intend to conform their lives according to the command and will of God* the forgiveness of all your sins, in the name of God the Father, the Son, and the Holy Spirit. Amen.³⁵

And the Church Order's directions concerning *private* confession and absolution say this:

First, pastors shall instruct the simple in a thorough and Christian manner regarding proper confession, so that they learn to fear and acknowledge God's wrath against sin. Then, when the people repent *and are resolved to amend their lives*, they [the pastors] shall console them with God's Word.³⁶

These formulations are not making absolution conditional, or dependent on the amendment of life. But these formulations are describing a true and complete repentance as necessarily including *a desire for* amendment of life. Absolution "is not dependent upon subsequent works of faith; and the amended, new life in Christ is never perfect. However, faith cannot coexist with the intention to sin or a deliberate persistence in sin."³⁷

³³Small Catechism V, p. 342. Emphasis added.

³⁴Martin Chemnitz and Jacob Andreae, *Church Order for Braunschweig-Wolfenbüttel*, 1569, edited by Jacob Corzine and Matthew Carver, translated by Corzine, Matthew C. Harrison, and Andrew Smith (Saint Louis: Concordia Publishing House, 2015), p. 85. Emphasis added.

³⁵Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbüttel*, p. 85. Emphasis added.

³⁶Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbüttel*, p. 116. Emphasis added.

³⁷Norbert H. Mueller and George Kraus, coordinating editors, *Pastoral Theology* (Saint Louis: Concordia Publishing House, 1990), p. 122 [note 7]. Punctuation slightly revised.

In light of all this, there may be circumstances in which a conscientious pastor may conclude that someone who rhetorically *claims* to be repentant of a past serious sin, is actually *not* repentant, if he also hesitates to say that with God's help he wants to amend his sinful life, and hesitates to say that with God's guidance he is willing to do what is necessary to avoid that serious sin in the future. What such a person has told the pastor would therefore not be considered to be a genuine confession, protected by the seal of confession. And absolution would not be pronounced upon such a person. But again, such a conclusion would not be reached by the pastor on the basis of his presuming to read the mind, or peer into the heart, of the person with whom he is speaking; but it would be based on his careful and attentive listening to what that person says or does not say.

As a pastor seeks to guide a penitent in the fruits of repentance that are proper for his particular offenses, he must remember that he is not doing this as if he were a civil law enforcement officer. Especially in the United States, with its Fifth Amendment Constitutional guarantee that no person "shall be compelled in any criminal case to be a witness against himself," it is not in itself a civil crime to decline to admit publicly to another previous crime. And so, if a confessed sin happens also to be a civil crime, this does not automatically mean that it would be a necessary fruit of repentance for the penitent to turn himself in to the authorities for that past crime. The Prophet Nathan, who privately absolved David of his sin of adultery, did not tell him that he must now submit himself to be stoned to death – even though adultery was a capital crime in ancient Israel (Leviticus 20:10). In fact, Nathan said just the opposite: "The Lord also has put away your sin; *you shall not die*" (2 Samuel 12:13b, ESV).

If, however, the present and future welfare and safety of another person or other people are clearly at stake – such as when an innocent person is in prison for a crime that the penitent actually committed, or when the penitent's pattern of criminal behavior is imbued with a deep-seated pathological compulsion to reoffend – that would certainly serve to flesh out the details of what a penitent's sincere intention to conform his life to "the command and will of God" would involve. Still, it is not an inherent part of the pastor's vocation to insist that all criminals who have confessed their crimes to the pastor, must confess those crimes also to a law enforcement officer. Yet if a law enforcement officer, according to *his* vocation, does someday figure out that the penitent committed the crime, and if the penitent is found guilty in a court of law, then he must be willing to accept the punishment that his crime deserves according to the civil law.

If the pastor, with the use of *objective* evaluative criteria, discerns and concludes that someone who confessed a past crime is truly sorry for his crime, and yet may still be in the process of working through the way in which he is going to make amends or be accountable for his actions, the pastor must not lift the protection of the seal from him and from his confession. But the pastor reserves the right proactively to continue to counsel, advise, and instruct the person in question – with increasing firmness and frequency if that is what the situation requires. And this would include someone who in the past abused a child, and is now sorry for it.

If the seal of confession and pastoral confidentiality can be broken and violated for this sin, then why not for other hurtful and serious sins, such as murder, rape, robbery, or dealing drugs? Should the authorities be told about these crimes, if they are confessed to the pastor? Should a cuckolded husband be told about his wife's adultery, if she confesses that to the pastor?

Should parents be told if their teen-age children have confessed fornication, drug use, or underage drinking to the pastor?

If the church would start going down this pathway, and begin to draft a list of sins that will be divulged by a pastor if they are confessed, where would it stop? Would any Lutheran penitent be able to trust his pastor with the knowledge of a shameful sin or crime from the past that has been privately confessed? Would a penitent who confessed a sin to his pastor in confidence always be wondering if his pastor would end up deciding that his particular secret need not be kept after all? If that kind of distrust and fear on the part of a pastor's parishioners began to permeate their relationship with him, then they would always keep their pastor "at arm's length." They would not confide in him. They would not seek him out for individualized pastoral care when their consciences would be especially burdened by something. Souls would be harmed, and God's will for the cure of souls – for *Seelsorge* – would be thwarted.

Luther writes in the Smalcald Articles that

Absolution, or the Power of the Keys, is an aid against sin and a consolation for a bad conscience; it is ordained by Christ in the Gospel [Matthew 16:19]. Therefore, Confession and Absolution should by no means be abolished in the Church.³⁸

The specific practice of *private* absolution is not explicitly and directly addressed in the New Testament. But the practice of private absolution is naturally derived from, based on, and implicit within, the New Testament doctrine of the keys. Therefore, "Since private Absolution originates in the Office of the Keys, it should not be despised, but greatly and highly esteemed, along with all other offices of the Christian Church."³⁹ The seal of confession, in turn, is naturally derived from, based on, and implicit within, the practice of private absolution. The seal of confession should likewise "not be despised, but greatly and highly esteemed," since it serves God's saving purposes in the lives of troubled sinners, and ultimately also in the lives of those whom they have hurt through their sins, by inviting and facilitating a full and free confession of those sins.

A penitent sinner confessing his sins in the presence of the pastor is in many ways the equivalent of a penitent sinner praying to God directly and asking God to forgive him. The difference is that in private confession, by means of the vocation of the pastor, God responds to this prayer by absolving the penitent sinner through the lips of the pastor; and by using the pastor as his instrument in providing to the absolved sinner the comfort, the instruction, and the counsel concerning the proper fruits of repentance, that he needs.

A Confessional Lutheran church body should be clear and unambiguous in enunciating its teaching that the seal of confession must always be honored in its congregations and institutions. And a Confessional Lutheran church body should be clear and unambiguous in making known its expectation that the pastors who serve under its aegis will always preserve the

³⁸Smalcald Articles III, VIII:1, *Concordia: The Lutheran Confessions*, p. 280.

³⁹Smalcald Articles III, VIII:2, p. 280.

confidentiality of penitential communications of this nature. This is especially the case in states where clergy are, as a general principle, defined by state law as mandatory reporters of child abuse. If a Lutheran church body is unclear or inconsistent in its teaching and expectation in this regard, a zealous prosecutor – even in a state that otherwise respects the clergy-penitent privilege when it is invoked – may conclude that this particular church body does *not* in fact claim a clergy-penitent privilege for its pastors. A zealous prosecutor under such circumstances may feel free to haul one of these pastors into court, with a demand that he give testimony regarding a conversation he had with a penitent in a confessional setting. If their church does not protect them through a clear and unambiguous articulation of its adherence to the historic Lutheran principles of pastoral confidentiality, conscientious Lutheran pastors in the future may end up in jail under contempt of court citations; or may end up being prosecuted in criminal court themselves, for their failure to divulge their knowledge of a crime that had later become known to the authorities – even when the pastors had obtained their knowledge of it through a private confession. If conscientious Lutheran pastors do not have the unswerving support of their church in their commitment to keeping penitential conversations in strict confidence, they may also end up being bankrupted by civil lawsuits, because they had not broken the seal of confession in particular cases.

In 1999, the Commission on Theology and Church Relations of The Lutheran Church – Missouri Synod issued a report on *The Penitent-Pastor Relationship: Privileged Communications*. This report includes “Summary Principles and Practical Guidelines,” which we also include here. We would commend these principles and guidelines to Lutherans of all synods as a good and helpful summary of the standards to which all Lutheran churches and pastors should hold themselves, and as a good and helpful summary of the practices that all Lutheran churches and pastors should follow:

Before we provide a set of guidelines, it may be helpful to summarize the general principles upon which they are based and that govern the pastor-penitent privilege.

1. The Lutheran Church – Missouri Synod practices and encourages individual confession and absolution which is a significant function of the pastoral office.
2. Historically, the Lutheran church has consistently and resolutely maintained the seal of the confessional, that is, the confidential nature of confessional communications. The Lutheran church expects its pastors to maintain this position.
3. Scriptural teaching regarding the pastoral office and its responsibilities supports the principle that communications made to a pastor by a person confessing his or her sin(s) are not to be disclosed.
4. Although there may be a distinction between communications to a pastor that are confessional in nature (made for the purpose of receiving forgiveness) and those that are not (offered for other reasons), communications to a pastor as pastor – except in the most extraordinary circumstances – are to be held in strict confidence as privileged communications.
5. Although certainly to be respected, the status of the civil law as it relates to confidential communications to a pastor does not dictate a pastor’s decision as to whether and to what extent a communication is to be divulged.

Therefore, the Commission on Theology and Church Relations offers the following

guidelines for a pastor regarding confidential communications received by him in his capacity as pastor:

1. A communication made by a penitent seeking absolution for a particular act must not be divulged, even if the act was criminal and even if the law may compel its disclosure.
2. A communication made outside the context of a confession by a person who recognizes the sinfulness of the conduct communicated and who is not likely to put others in danger by repeating it, is not to be divulged.
3. Where a communication made to a pastor is confidential, it should not be disclosed solely because the penitent shared the communication in the presence of a third person.
4. Where a communication is made (whether in or outside the context of a confession) suggestive of an intended and/or imminent harmful act such that the person's or someone else's safety would be jeopardized if steps were not taken to hinder the penitent, a pastor must exercise his judgment in protecting the interests of those in danger.

Certainly situations may arise that are difficult to place within these guidelines. In such circumstances a pastor should seek the counsel of his fellow pastors and above all seek to discern God's will through prayerful examination of Scripture, the Lutheran Confessions and the writings of the fathers and teachers of the church. Finally, the Commission recommends that congregations adopt these guidelines and make them generally available to their members.⁴⁰

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⁴⁰“Summary Principles and Practical Guidelines,” from *The Penitent-Pastor Relationship: Privileged Communications*, A Report of the Commission on Theology and Church Relations of The Lutheran Church – Missouri Synod (September 1999), pp. 13-15.