Counseling the Victims and the Perpetrators of Sexual Abuse and Sexual Assault

Introduction

This is not going to be typical conference paper. This paper is envisioned as a tool to facilitate a fraternal and free-flowing discussion among Lutheran pastors regarding matters that are or should be very important to us as caretakers of souls. But these are sensitive matters. I will not be breaking any confidences in this paper, but I will be drawing on over thirty years of experience as a pastor, and as a confessor and counselor, as I lead our discussion of the things that this paper will address.

The first point I want to make, is that this paper is written specifically to address approaches and insights related to *pastoral* counseling for the victims and perpetrators of sexual assault and sexual abuse. I am in agreement with the central point that John T. Pless makes in an article with a self-explanatory title, "Your Pastor Is Not Your Therapist," published in the Eastertide 2001 issue of *Logia* (10:2, pp. 115-20). The subtitle of that article, "Private Confession – The Ministry of Repentance and Faith," also summarizes what a primary thrust of this paper will be – especially in the second part of this paper.

Victims of sexual sins and crimes, and perpetrators of these sins and crimes who have begun to face up to the evil of their actions, can and usually do benefit from therapy with mental health professionals. A Lutheran pastor can also certainly benefit from a sound understanding of certain insights of human psychology. This can help him better to understand how the person whom he is counseling is processing information and emotions. But a Lutheran pastor is neither trained nor called to be the therapist that these victims and perpetrators probably need. He is, rather, trained and called to be the mouthpiece and official spokesman of God; the teacher of God's revealed truth; and the administrant of God's law and gospel to consciences that are confused, troubled, or hardened – as the case at hand may be. Insofar as the teaching of God's law according to its third use is also a part of what a pastor, as a pastor, is called and qualified to do, he may also provide practical and constructive advice to those he counsels, in terms of how they might move forward in life and in their relationships, under the grace and guidance of Christ. But this does not make a pastor a therapist. A pastor should be willing to *refer* those to whom he ministers in these ways *to* a trusted and competent therapist – one who holds to the Christian worldview if that is at all possible. But he himself should *be* a *pastor*.

A pastor is likewise not an officer of the court or a law enforcement officer, and should not act as if he were. It is not within his calling and competency to effect the equivalent of a "citizen's arrest" of someone who has confessed a crime to him, or in most cases to demand that a counselee turn himself or herself in to the authorities. But again, as the circumstances warrant, he can encourage and perhaps even actively facilitate communication between his counselee and a district attorney or a police officer. More on that later.

Counseling the Victims of Sexual Abuse and Sexual Assault

The Joyful Heart Foundation (joyfulheartfoundation.org) offers statistics regarding sexual abuse and sexual assault that may be shocking to some of us:

> Sexual violence is not an isolated problem. 1 in 3 women are survivors of sexual violence. 1 in 6 men are survivors of sexual violence. Every 92 seconds, an American is sexually assaulted. 60% of survivors know the person who assaulted them.

The chances that more than one member of your congregation, or more than one person within your circle of friends and acquaintances, has been a victim of sexual violence, are very high. But the chances that you do not know who most of those people are, are also very high.

People usually do not discuss these experiences, because they are so degrading and humiliating; and because they are such deeply personal attacks on, and invasions of, the life of a human being. People often try to forget that the incident or incidents occurred. But these things are remembered. When a victim does eventually open up in a confidential setting about what had happened to her, the mixture of competing emotions that starts to pour out can be overwhelming. And even if these emotions are suppressed, they manifest themselves in other ways that have an ongoing negative affect on the person's life and relationships. The Joyful Heart Foundation lists these typical long-term issues that are often to be found in the life of a victim of sexual assault:

> Post-traumatic stress disorder, including flashbacks, nightmares, severe anxiety, and uncontrollable thoughts; Depression, including prolonged sadness, feelings of hopelessness, unexplained crying, weight loss or gain, loss of energy or interest in activities previously enjoyed; Suicidal thoughts or attempts; Dissociation, including not being able to focus on work or on schoolwork, as well as not feeling present in everyday situations; Changes in trusting others; Anger and blame; Shock; Numbness; Loss of control; Disorientation; Helplessness; Sense of vulnerability; Fear; Self-blame/guilt for "allowing" the crime to happen; Feeling that these reactions are a sign of weakness.

According to the Foundation,

> Other circumstances can develop for a survivor after being sexual assaulted or raped. A survivor may develop a negative outlook and feel "damaged" or unworthy of a better life. Drug or alcohol abuse may also become an issue as a way to cope with the overwhelming feelings. Women may also have trouble with their menstrual cycle and fertility. In addition, survivors may experience: Chronic fatigue, Shortness of breath, Muscle tension, Involuntary shaking, Changes in eating and sleeping patterns, Sexual dysfunction.

When someone has been a victim of sexual assault or sexual abuse – and for now I will be thinking and speaking chiefly of a female victim – she may suppress and bury her emotions of shame or guilt, and her feelings of being morally dirty. But these emotions and feelings, while buried deeply within the psyche of the victim, remain harmfully alive, and can often manifest their presence in the ways that are listed above. There needs to be a cleansing of the poison that has been pushed into the mind and conscience of a victim, in order for this person to resume some semblance of a normal life.

But this is easier said than done. The level of humiliation and degradation that a sexual crime inflicts upon a woman is extreme. It is a profound invasion, not only of the *bodily* integrity, but also and even chiefly of the *personal* integrity of the person. By the coercion of the perpetrator (whether physical, or psychological, or a combination of both), she is treated as, and in a functional sense is turned into, an impersonal object, whose reason for existence – in the assault – is the gratification of the perpetrator's lust for power. The sin that has been committed

against her is among the most egregious – second only to murder, one would generally think. And so the healing for that sin that she needs to receive would be a very deep and comprehensive healing. Spiritually, this healing can come, in the final analysis, only through the application of the restorative love of Christ. But this presents two practical challenges.

First, the victimized woman's emotions are so distressing, and even so frightening, that she hesitates ever to share them with another person. And that would include a pastor. There are cases I can think of where I, as a pastor, was the first person – besides a spouse – with whom such a victim had been willing to open up about the totality of her experience; and about all the consequences of this experience in the realms of her self-image and of her sense of her standing and relationship with God. And this openness came about only after trust had been established.

And so my advice to you, my brother pastors, is to live out your ministry in such a way that people are able to see, over time, that you are a trustworthy person. Don't allow yourself to be seen as someone who enjoys laughing at the misfortunes of others, who enjoys telling stories about the embarrassments of others, or who divulges private information about others. I emphasize not only that you must not actually do these things, but you must not be *perceived* as doing these things. Also, in sermons and Bible classes, and perhaps also in bulletin and newsletter announcements, let it be known that you welcome opportunities for confidential pastoral counseling, and for private confession and absolution, with anyone who would like to come to you for those specialized pastoral services. And then, when people do start coming to you with such things, even if you are surprised at who is coming, do not *act* surprised. Do not say or do anything that will dam up the flow of openness and sharing, or will make the person think that she should withhold her deepest and darkest thoughts from you because you are uncomfortable hearing about them. Be kind, welcoming, gentle, and a compassionate listener. Be sensitive to how difficult it is for her to talk with you about these intimate and painful matters.

And the second practical problem that may cause a victim to hesitate to come to you for help, is the crisis of faith that she may be experiencing as a consequence of the severe injustice of what happened to her. The victim may be afraid to admit this crisis of faith even to herself, and therefore would likely not find it easy to admit it to you, either. But when she does talk to you about this, be prepared to respond with something other than a religious platitude that, in the midst of her pain and doubt, could come off as dismissive of the very real pain and doubt she is experiencing. When she asks something like, "Why did God allow this to happen?," or even, "Why did God do this to me?"; and when she wonders out loud, "Is God angry with me? Is God punishing me? Is God real?", keep your answer focused like a lazar-light on Jesus Christ. Don't presume to explain the mystery of God's hidden will, but draw her trembling and wavering faith back to the suffering of Christ on the cross, where God reveals and defines his love for the world – and for her.

On the cross, the greatest injustice in the history of the world was perpetrated upon a man who was perfectly righteous. But there was a deep and important meaning in that injustice. God was at work in that injustice. God was deeply embedded in that injustice, and in the suffering of Christ, because "in Christ God was reconciling the world to himself, not counting their trespasses against them" (2 Corinthians 5:19a, ESV). While it is true that Jesus was "crucified and killed by the hands of lawless men," it is also true at the same time that he was by these means "delivered up according to the definite plan and foreknowledge of God" (Acts 2:23, ESV). Your counselee's suffering does not contribute toward her redemption from sin, as the suffering of Christ did. But

the point you would want to make, is that God has not abandoned her in her suffering. He is there, with her, in the suffering.

Now it is true, of course, that Jesus – in his state of humiliation, and according to his human nature – felt abandoned by God on the cross. He experienced the equivalent of hell for us, as our Substitute. He cried out with the deepest of human anguish, quoting the opening verse of Psalm 22, "My God, my God, why have you forsaken me?" The reason why God *had* forsaken his own Son in human flesh, was so that this Son could atone for the damnable sins of the entire human race by being, in effect, damned in that moment himself. A reason for mentioning this in a counseling scenario such as we are considering, is to emphasize that because *Jesus* was forsaken *for us*, we now will *never be* forsaken by God. And again, even as Jesus *was* forsaken in his state of humiliation and according to his *humanity*, according to his *divinity* Jesus *never* stopped being the God who fills and sustains the universe. In the darkest moment of Jesus' unjust suffering, he never stopped being the Second Person of the Holy Trinity. Our Johannine-Cyrillic-Chemnitzian Christology makes this notion totally inconceivable for us.

And so, even in our counselee's deepest and darkest suffering – in the agonizing moments of her violation, and in all the lonely moments that have come since then – God, in Christ, was nevertheless with her. Why didn't he stop the attack? We don't know. Why didn't he miraculously protect her from this sexual assault, like Lot's angelic visitors (in Genesis 19) were protected from the sexual assault that the Sodomites desired to perpetrate upon them, when the Sodomites were struck blind? Again, we don't know. But we do know that God had not abandoned her, and has not now abandoned her. When Jesus called out in anguish, "My God, my God, why have you forsaken me?" (Mark 15:34), he did this for her, so that she will never need to cry out in such a way herself. Any thought to the contrary that may afflict her – that is, any feeling or fear that God has in fact forsaken her – is a deception not to be believed. What is to be believed, in the midst of this pain and doubt, is what the Prophet Isaiah tells us of God's Messiah:

> He was despised and rejected by men, a man of sorrows and acquainted with grief; and as one from whom men hide their faces he was despised, and we esteemed him not. Surely he has borne our griefs and carried our sorrows; yet we esteemed him stricken, smitten by God, and afflicted. But he was pierced for our transgressions; he was crushed for our iniquities; upon him was the chastisement that brought us peace, and with his wounds we are healed. (Isaiah 53:3-5, ESV)

Another thing to consider in the pastoral counsel that we offer to victims of sexual assault and sexual abuse, is an appropriation of a fuller and broader meaning of the Biblical concepts of forgiveness, and of the washing away of sin by the blood of Christ; and an application of these concepts which may differ from the usual way in which God's "forgiveness" is applied.

The Old Testament uses a number of terms to express the various aspects of the concept of forgiveness. All of these terms contribute, however, to a general picture of sin being *lifted off of,* and *sent away from,* the one or the many who are being forgiven. The ritual of the scapegoat in particular fleshes out this image of what God's forgiveness of his people actually entails (see Leviticus 16:21-22). Their sins are lifted off of them, as a weight or burden would be lifted, and are then sent or carried away from them. Psalm 103 also verbally paints such a picture of God's forgiveness, when it states: "For as high as the heavens are above the earth, so great is his steadfast love toward those who fear him; as far as the east is from the west, so far does he remove our transgressions from us" (11-12, ESV).

The most commonly-used New Testament Greek word for "forgive" – *aphiēmi* – is constructed from a combination of two antecedent words: *apo*, which means "off" or "away"; and *hiēmi*, which means "to send." So, when the New Testament, through the use of this term, speaks of the forgiveness of sins, what it is literally saying is that sins are being sent off and away from the forgiven person. To *forgive* sin is, quite literally, to *take away* sin. Because of his love for the world, God the Father sent the world's sin *off of* the world by transferring it to his Son, so that his Son could then take it *away from* the world. John the Baptist accordingly invites us in faith to behold "the Lamb of God, who takes away the sin of the world!" (John 1:29, ESV)

There is a sense in which we can say, therefore, that the sins that are lifted off of people in Christ's forgiveness, are not only the sins that have been *committed by* these people – the guilt of which comes back to them, and weighs down upon them – but also the sins that have been *committed against* these people. When I sin against God's law, and against my neighbor, those sins are, as it were, piled up on me; and are then lifted off of me in God's forgiveness of my offenses. But if someone else has burdened me with *his* sin, and has ground that sin into me and poisoned my conscience with it, Jesus, as the great physician and healer of souls, *also* extracts *that* sin from me, and lifts *it* off of me, in his "forgiveness" more broadly considered.

John W. Kleinig develops this point, specifically in regard to how the blood of Jesus washes away sin in our lives, in a sermon on "The Blood of Jesus" based on Matthew 26:27-28. And as Kleinig goes on to recount a particularly moving story of spiritual healing and restoration in the life of a deeply wounded victim of sexual abuse, he thereby gives us an example of a specific kind of pastoral approach, and a specific kind of sacramental application of the cleansing power of the gospel, that we too might use with victims of sexual crimes. What Dr. Kleinig says deserves to be quoted at length:

> St John tells us...in 1 John 1:7: "the blood of Jesus God's Son cleanses us from all sin." When we sin we pollute ourselves. Sin contaminates our conscience. It makes us unclean. This does not just happen when we sin; it also happens when others sin against us. Their sin stains us; it taints our conscience just as our own sins do. We therefore feel unclean, unworthy, and out of place in God's presence. No matter how much we try, we can't cleanse ourselves from sin and its pervasive pollution. We all know that; we have all had some experience of an unclean conscience that makes us feel so rotten about ourselves and so unworthy of God.
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> Jesus gives you His blood to counteract that. His blood washes you clean inside; it gives you a clear conscience. What a precious gift that is! His blood does not just remove your spiritual impurity; it also overcomes the sin that causes it. ...Jesus...took on all our sin and overcame every temptation that we could ever suffer. He did this to produce the antidote to sin for us. He took on the sins that we have committed, as well as the sins that have been committed against us, to give us his righteousness; he took on our impurity to give us his purity; he took on our spiritual sickness to give us his spiritual health. And he conveys all that to us in his blood. The blood of God's Son who overcame sin for us cleanses us and overcomes sin in us.
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> The power of Christ's blood to cleanse came home to me when I preached on it in Malaysia some years ago. As I was helping the pastor distribute the Lord's Supper after the sermon, I was struck by a young woman who was crying as she received the chalice from me. She was dressed in drab clothes and stayed on long afterwards at the altar. When the service was over, the pastor [said] said that something remarkable had happened. He did not have time to tell me about it because we needed to greet the people

> at the door. When that woman came to us, she took both my hands in hers and fell on her knees before me, saying "Thank you! Thank you!" After all the people had left, the pastor told me more about her. The last time that she had communed was at her confirmation eight years earlier. But her life had been ruined soon afterwards by sexual abuse from a member of her own family. No matter how much her pastors had tried to help her, they could not remove the awful taint, the crippling sense of shame from that abuse. Since then she always sat at the back of the church, coming in after the service had begun and leaving before the service was over. But her reliance on the blood of Jesus for cleansing changed all that. She is now married and has become a mother of two children.
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> Do you feel unclean and spiritually unwell? Then come to drink the blood that cleanses and heals your soul. Jesus does not provide it for those who are pure and well but for those who know that they are unclean and infected with sin. Borrow blood from Him. Drink the blood that cleanses you and overcomes sin in your soul. (LTR 14, pp. 84-88)

Victims of a sexual crime often want to swear us, as pastors and confidants, to secrecy and strict confidentiality, before they are willing to divulge to us the experience they had. This is because of the shame and embarrassment they feel. But this can also present a problem with respect to a case where a *minor* comes to us, to reveal that he or she has been the victim of sexual abuse. And this is because many states now identify clergy as mandatory reporters of child abuse. So, according to these statutes, we would be obligated by the civil law *not* to keep such a confidence, and *not* to maintain our silence, if a victim has made us aware of such abuse.

The September 17, 2019, issue of *Church Law & Tax Weekly Update* includes a piece on "Child Abuse Reporting Laws," in which we are told that

> few people know about these laws and their significant implications – particularly those who fall under these laws and are required to act when a situation arises. Depending on the state, mandatory reporters oftentimes include clergy members, church school officials, children's ministry directors, and daycare leaders. When these persons become aware of a situation, the clock starts ticking – and the margin of error is small. Criminal penalties for failing to act can range from misdemeanors to felonies; some states' laws even recognize the right for victims to file civil lawsuits seeking damages against mandatory reporters who failed to act. Courts are increasingly inclined to allow these civil lawsuits, too, as a Connecticut appellate court recently ruled in a case involving a religious school.

Most states explicitly exempt pastors from reporting child abuse if they have learned about the abuse solely in the context of private confession and absolution, when the perpetrator in penitence voluntarily confesses his crime and sin to a pastor. And even if a state does not explicitly recognize the traditional "clergy-penitent privilege" in such cases, a faithful Lutheran pastor will nevertheless honor the inviolability of the seal of confession, regardless of what the civil authorities presume to demand. But what we are talking about now is not that, but rather a situation in which someone has informed us of his or her victimization by another.

Especially when a juvenile approaches us for a private conversation, asking that we keep secret what he or she is going to tell us before we actually know what is on that young person's mind, we should probably not agree to this – even if we fear that this would bring that pastoral encounter to an end. Juveniles often hold each other to such vows of secrecy, and much mischief can result from this. As adults we should not allow ourselves to be drawn into the same trap – especially when a minor is coming to us to tell us something significant.

But in any case, after such abuse has been reported to us in a private conversation, and we have applied comfort and instruction from God's Word to the person in ways that are suitable for his or her circumstances, we should then attempt to secure the young victim's permission to report the abuse to the authorities. We should try to persuade him or her to allow us to report the abuse, by pointing out that no one has the right to treat another person in this way, and that any stated or implied claim on the part of the abuser to have this right, is invalid and illegitimate. The courage it takes for a young victim of abuse to come to us in the first place, already marks that particular person as someone who is not following the most common route that such victims usually take, namely the route of silence, and of suffering in silence. So it should be possible to persuade a person who has come to us with such sensitive information, to take the next step, and with us to allow the authorities to know about what has been happening.

If that permission is not forthcoming, however, we should then state – with assurances that we will stand by the young person who had spoken to us about these painful things with our protection and support – that we need to report the abuse. Remember that we are dealing here with juveniles, who are not fully able to process, and clearly think through, all the factors involved in evaluating the abuse they have endured, and in bringing that abuse to an end. Not only as pastors, but also as adults, we are able to bring a level of clarity in thinking and emotions to the situation that the young victims are often not able to bring.

Victims of sexual crimes of all ages who come to us, often do so with a confused conscience, feeling that they are somehow to blame for what happened to them. If it comes out in the conversation that the victim may actually have made some mistakes regarding her safety and well-being that did in a sense create an opportunity for the assault – such as drinking to excess or being in an isolated place out of public view – It can be granted that in the future, such mistakes should not be made. The Fifth Commandment, in its positive application, does direct us to have a care for the bodily safety of ourselves and others. But it would nevertheless need to be emphasized that none of that in any way gave the perpetrator the right to commit his crime, or made the victim responsible for the crime having been committed against her. And because of the severe confusion of conscience that often is a factor in such cases, we must be emphatic in this assurance. Any hint of agreement with the idea that a woman had brought her assault upon herself by unwise words or actions would be a harmful confusion of law and gospel.

Also in light of the positive application of the Fifth Commandment, and in light of the general ethical principle that you are to love your neighbor as yourself, a victim should usually be encouraged to report the crime to the authorities. In many states, as already noted, the sexual abuse of minors *must* be reported, as a matter of law, when it is learned about outside of the setting of the perpetrator's private confession to a clergyman. But even if the law does not require this, we should recognize that the criminal deserves to be civilly punished for his crime, in the interest of justice. And it is also very likely that a person who has committed this crime once, has also committed it on other occasions; and that if he remains at liberty he will pose a continuing threat to other people. Out of love for those other people, therefore, a victim should be encouraged to inform the police of the crime that was perpetrated against her.

But we should not underestimate the difficulty that is often involved in doing something like this. If the case goes to trial, the victim will be cross-examined by the perpetrator's defense attorney in such a way that embarrassing things about her life may be brought up, even if they are not germane to the assault. If there is no corroborating evidence that the assault took place, beyond the testimony of the victim, a conviction will be very difficult. These things, however, are

matters for the district attorney to work through with the victim. Our pastoral role here is limited to encouraging the victim to go to the district attorney, and perhaps also to accompany her to his office for the first visit.

Returning now to a consideration of situations involving the abuse of a minor, when a young person is victimized by an abuser, his or her childhood is in effect stolen by the perpetrator. The carefree "innocence" of childhood – relatively speaking – is stolen. The joy and contentment of childhood is marred and disfigured. The fact that children are sinful, as Psalm 51:5 teaches, does not in any way mean that dehumanizingly abusive experiences in childhood should be accepted as normal, or be perceived as easy to overcome. Because this abuse has taken place during that person's psychologically-formative years, and because the sexual abuse of children is usually an ongoing violation and not a one-time event, the psychological impact is often deeper and more damaging that the effect of a single assault on an adult.

Be prepared, therefore, for an ongoing pastoral relationship with that young person, with a relational dynamic that draws substantially on the classic imagery of a pastor as a "spiritual father." Be a father to the child, with fatherly love, fatherly acceptance, and positive fatherly encouragement. On those occasions when your counseling relationship with a victimized child is not inaugurated by the child coming to you, but by your learning about the abuse after it has been exposed elsewise – so that you are the one who inaugurates the counseling relationship, with the concurrence of the parents – you would approach these communications with the child with this same kind of fatherly demeanor. His or her life needs to be rebuilt and reconstructed. He or she needs to be able to reclaim a stolen childhood. Jesus' love for children would be a good place to start in applying the gospel to such a situation:

> And they were bringing children to him that he might touch them, and the disciples rebuked them. But when Jesus saw it, he was indignant and said to them, "Let the children come to me; do not hinder them, for to such belongs the kingdom of God. Truly, I say to you, whoever does not receive the kingdom of God like a child shall not enter it." And he took them in his arms and blessed them, laying his hands on them. (Mark 10:13-16, ESV)

And if the abuse represents a betrayal by a parent, this passage from the Prophet Isaiah can also bring an assurance of God's love, even when those persons who are supposed to represent and embody God's love in the child's life have forsaken that calling and duty:

> Sing for joy, O heavens, and exult, O earth; break forth, O mountains, into singing! For the Lord has comforted his people and will have compassion on his afflicted. But Zion said, "The Lord has forsaken me; my Lord has forgotten me." "Can a woman forget her nursing child, that she should have no compassion on the son of her womb? Even these may forget, yet I will not forget you. Behold, I have engraved you on the palms of my hands..." (Isaiah 49:13-16a, ESV)

As I have already mentioned, the child should also be seeing a professional mental health counselor or therapist. You are equipped to offer some of what the child needs – to have his life reconstituted through the power of God's Word, and to be restored to a sense of spiritual wholeness and safety in the embrace of Christ and in the fellowship of the church. But you are not equipped to offer everything that such a child needs.

Another issue to be addressed in pastoral counseling with a victim of sexual assault or sexual abuse, would be the bitterness or anger that a victim may be tempted to harbor in his or her heart toward the perpetrator. We are, of course, taught by our Lord in various passages in the Gospels that we are to forgive those who have sinned against us. This does not mean that a victim of a crime is to refrain from seeking justice in the civil realm and according to civil law, or is to refrain from testifying against the perpetrator. That would be a confusion of a Christian citizen's duties and obligations within each of the two kingdoms.

As a citizen of the kingdom of the left, a love for other victims and for potential victims would ordinarily lead a victim to be willing to pursue justice in this way. A Christian's duty to forgive, as a citizen of the kingdom of the right, does not negate any of that, but it does manifest itself in prayers that the perpetrator be brought to repentance – perhaps in and through the chastisement of imprisonment and other outward punishments – so that his ultimate destiny will be salvation and not damnation.

This desire for the ultimate good for the criminal is also something that resides in the *regenerated will* more so than in the *emotions*. I can confess, as a corollary to my Christian confession generally, that I will forgive those whom my Lord tells me to forgive, with his help and in his strength, even if I do not yet *feel* this forgiveness, and even if I *never* fully feel it in the realm of my emotions. In my weakness in fully and unrestrainedly forgiving those who have hurt me, I myself live under the healing forgiveness of Christ, and not only under God's demands and condemnation. I in faith sincerely *pray* for the forgiving heart Jesus wants me to have. I am not obligated by God's Word to create that forgiving heart within myself by my own reason or strength, even as I am not obligated to create within myself the faith that receives *God's* forgiveness of *my* sins – from which my forgiveness of others flows – by my own reason or strength.

Counseling the Perpetrators of Sexual Abuse and Sexual Assault

By the very nature of the case, we will probably have occasion to counsel sex crime offenders much less often than sex crime victims. But these opportunities will occasionally present themselves. It has often happened that a family that holds membership in a congregation is impacted by sexual abuse, with both the victim and the perpetrator being members of the same family and members together of the congregation. I personally know of a few instances where this has been the case. If a perpetrator who has been turned in to the police and arrested is willing to talk with the pastor once his crime has become known; or if the perpetrator, with a troubled conscience over his sin, comes to the pastor to confess, those circumstances will indeed create opportunities for us to counsel sex crime offenders.

When the counseling that we do with a perpetrator comes about because we approached that person, rather than because that person approached us, there is a strong likelihood that this person is not yet cognizant of the depth and seriousness of his guilt. If, say, a member of our congregation has been caught in, and arrested for, a sex crime, so that we then go to that person in jail to speak with him, we will probably find that this person *is sorry*. But let us make sure he is sorry that he *did* it, and not just that he is sorry that he *got caught*.

Is the sorrow due to his recognition of the great damnable evil he has done, so that he fears God's eternal wrath? Or is the sorrow due to his recognition that his reputation is now permanently ruined, and that his whole remaining life will be marred by this embarrassment and shame before men? Listen for expressions of regret over his hurting the actual victim, and not

just expressions of regret over how his behavior has hurt *himself*. Listen for some remorseful compassion for the victim, and not just statements about how *he* has become a victim of his sin. Pile on the law, until you hear what you need to hear – which may not come easily for someone with a pathological narcissism that had allowed him to use and exploit another human being with such disregard for that person's human dignity. Use the Lord's words from St. Matthew:

> "Truly, I say to you, unless you turn and become like children, you will never enter the kingdom of heaven. Whoever humbles himself like this child is the greatest in the kingdom of heaven. Whoever receives one such child in my name receives me, but whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened around his neck and to be drowned in the depth of the sea. Woe to the world for temptations to sin! For it is necessary that temptations come, but woe to the one by whom the temptation comes!" (Matthew 18:3-7, ESV)

Use also St. Paul's words addressed to the Corinthians:

> Or do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practice homosexuality, nor thieves, nor the greedy, nor drunkards, nor revilers, nor swindlers will inherit the kingdom of God. And such were some of you. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God. (1 Corinthians 6:9-11, ESV)

When offenders are hardened and uncaring about their victims, and care about the consequences of their actions only with respect to how their own quality of life will be affected, and only with respect to how their own liberty will now be taken from them, make them feel the flames of hell licking up their leg. Hammer the law into them. But when the law does break them, crush them, and pulverize them, then do by all means allow the Lord's absolution to reconstitute them. And over time, as you continue to counsel with them, help them to learn and grow as new persons in Christ. Even as they face a severe and deserved civil punishment for their crime, they can be comforted to know that they will not face it alone, and that they now will not face it *at all* in eternity. Allow them to apply St. Paul's words to themselves:

> The saying is trustworthy and deserving of full acceptance, that Christ Jesus came into the world to save sinners, of whom I am the foremost. But I received mercy for this reason, that in me, as the foremost, Jesus Christ might display his perfect patience as an example to those who were to believe in him for eternal life. (1 Timothy 1:15-16, ESV)

It is a different matter when a sexual offender comes to me as a pastor, and in the context of a confidential confession volunteers to me what he has done, expresses repentance for it, and in great sorrow yearns for the Lord's forgiveness and help. When that happens, we shift into an application of the pastoral norms that pertain generally to private confession and absolution, and to the counsel that accompanies and follows the absolution that is spoken to a penitent sinner in the stead and by the command of Christ. Because there is currently quite a bit of confusion in both church and society regarding these pastoral principles – with various states passing laws that in some ways impact the church's traditional understanding and practice, especially when the sexual abuse of children is involved – it would serve us well to take some time in thinking through the reasons why the Lutheran Church has historically held to the principles to which it has held, and why those principles still apply to today's world and in today's legal environment.

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" (Ap VII/VIII:28, McCain, p. 147). When a penitent confesses his sins to a pastor, then, 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... (Ap XII:40-41, McCain, p. 162)

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, ESV); "I will remember their sins and their lawless deeds no more" (Hebrews 10:17, 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. And when the penitent is someone who has committed sexual assault or sexual abuse, there will certainly be much that needs to be worked through and discussed. But a pastor will not think of or treat an absolved sinner – even an absolved sex criminal – as someone who still stands as *guilty* of the repented-of sin – either before God or in the pastor's own mind.

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. (Fritz, pp. 115-16)

C. F. W. Walther's highly respected *American-Lutheran Pastoral Theology* – on which Fritz's work is based – provides direct quotations from respected Lutheran authorities over the centuries that demonstrate that Fritz's position is indeed the historic and Biblical Lutheran position. And Walther himself summarizes this position when he writes that

> 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. (Walther ALPT, p. 194).

In Fritz's statement that the courts do not "expect or demand" a pastor to reveal confessional secrets, he 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 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. (HHS, p. 1)

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

> Most States do provide the privilege... 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. (HHS, p. 2)

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. (Quoted in HHS, p. 16)

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.

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 1540 Table Talk conversation:

> 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.'" (LW 54, pp. 395-96)

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. A few 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 mandated reporter (North Carolina, Oklahoma, Rhode Island, and Texas) also deny clergy-penitent privilege in child abuse cases. (HHS, p. 2)

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).

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. A pastor divulging a confessed sin would also be a 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" (LC I:270, McCain, p. 390).

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" (AC XI:1, McCain pp. 35-36). 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. A Lutheran – or someone willing to speak to a Lutheran pastor – who has committed a sex crime, would certainly be well-advised to tell the pastor precisely what he has done, not because the Lutheran doctrine of the keys requires it, but because the demands of his own conscience, and his desire to be helped in avoiding such transgressions in the future, should require it. As Luther explains in a 1531 Easter sermon,

> 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... (quoted in WLS, p. 331).

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" (SC V, McCain, p. 342). 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 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.

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, the seventeenth- and eighteenth-century Lutheran theologian Johannes Fecht states plainly that "not only the Roman but also our whole Lutheran Church commands that this confidentiality be kept holy" (quoted in Walther ALPT, p. 195). One area, however, 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" (Fritz, pp. 116-17; emphasis in original).

For Lutherans, then, the seal of confession, and the bond of pastoral confidentiality, do not 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 apply in all respects to a sin or pattern of sin that *began* in the past but that is, in effect, still taking place – especially when such a sin or pattern of sin presents a current and future danger to other people and to the larger community. 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" (Fritz, 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, or that he was a serial rapist 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 raped a woman *in the past*, and was deeply remorseful over this past sin. *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.

Walther summarizes the normative centuries-old Confessional Lutheran standard concerning this matter when he writes that

> 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 proper authorities (without names, if this is enough to avert the danger; however, where this is not the case, then also by naming names). (Walther ALPT, p. 196)

Pedophiles, serial rapists, and people with similar compulsions, are – as a category – 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 such pathological behaviors approaches a pastor and voluntarily admits what he has been doing, that in itself indicates that this person is not a typical 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 or serial rapist 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 course, and to reach its proper conclusion. But this pastoral counseling process would likely never be initiated in the first place, if a sex criminal 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 crimes to the authorities. He wouldn't *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 such a pattern of sin, a Lutheran pastor can indeed be expected to figure out a way of persuading the offender to turn himself in to the authorities as a proper fruit of repentance – especially if these were relatively recent offenses. At the very least, a Lutheran pastor who is dealing with such a case can be expected to figure out a way of preventing any possible future occurrences of such abuse or assault if there is a danger of this. And a Lutheran pastor can also be expected 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 such sins to the authorities when they are confessed to him, then those who have committed them 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 and women 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 abuse or assault, 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. (Chemnitz LT, p. 707)

In an article on "Law and Gospel and the Proper Distinction in Their Use in the Life of the Church," 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). (WLQ 69:3, pp. 180-81)

It is, therefore, not a reflection of the proper distinction of law and gospel for a pastor to think or say that he will refrain from absolving certain sins or crimes that are confessed to him until a certain fruit of repentance has been manifested.

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. (Walther LG, pp. 206-07; emphases in original)

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. ... 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. (Walther LG, p. 207)

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 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*" (SC V, McCain, p. 342; emphasis added). In the 1569 *Church Order for Braunschweig-Wolfenbüttel* – prepared by Chemnitz and Jacob Andreae – the formula for public absolution is quite detailed in its description of the character and content of a sincere repentance. In this church order 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. (Chemnitz-Andreae, p. 85; emphasis added)

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" (Mueller-Kraus, p. 122; 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. 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.

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 as he helps the penitent work through these matters. 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.

If the abuse or assault that a sex criminal committed and confessed to me is a past offense, with no evidence of a pathological compulsion on his part to keep on committing this crime, it is very unlikely that I would think I have a reason to tell him that he must turn himself in for this crime. As with the Prophet Nathan, this is not a duty of my vocation. If, however, a law enforcement officer, according to *his* vocation, *does* someday figure out that my counselee committed this crime, and he is found guilty in a court of law, then he must be willing to accept the punishment that he deserves according to civil law.

In the meantime, though – as he continues to face up to the moral seriousness of what he has done, and to the pain he has inflicted upon others – he will need counseling oriented toward helping him to grow, more and more, into the image of Christ; and helping him to put on, more and more, the mind of Christ. This would be my role, as the pastor, whether the counselee is free in the community, or needs to be visited by me in jail or in prison. This is, of course, what I would try to do with *any* counselee who has committed almost any sin, because almost any sin hurts another person. But when a sin has hurt another person very seriously, the pastoral counseling must also be very serious.

If it is within my power to do something to help the victim or victims, I will certainly try to do so – yet only in ways that do not compromise the seal of confession, or that reveal how I found out about the abuse or the assault. But if I cannot help the victim or victims of the past, I *can* at least help the people who are in the counselee's life now, and who are members of his family now. As I apply God's Word to the counselee faithfully and diligently, I can help him become a more responsible, more caring, and more loving individual.

As a pastor also tries to overcome and suppress his personal revulsion at the sin that such a person committed in the past, and to function with his counselee according to the demands of his office and not according to his personal feelings, he would be well-advised to remember that there is a good reason why one of the prayers of confession that is often used among us guides penitents to confess, all over again, all the past sins they have ever committed, and not only the sins that have been committed since their last absolution. We pray: "O almighty God, merciful Father, I, a poor, miserable sinner, confess to You *all my sins and iniquities with which I have*

ever offended You and justly deserved Your temporal and eternal punishment." A deeply troubled conscience is easily tempted to believe that God has not actually forgiven grievous sins of the past. And so, for the relief of a troubled conscience, a pastor would encourage the counselee to confess those sins again. And he would absolve those sins again.

Conclusion

We pause now, at the end of this whole discussion, to hear these necessary healing words of Jesus, addressed to his disciples, and through them to us and to all whom we counsel:

> "I have said these things to you, that in me you may have peace. In the world you will have tribulation. But take heart; I have overcome the world." (John 16:33, ESV)
>
> "Come to me, all who labor and are heavy laden, and I will give you rest. Take my yoke upon you, and learn from me, for I am gentle and lowly in heart, and you will find rest for your souls. For my yoke is easy, and my burden is light." (Matthew 11:28-30, ESV)
>
> "Man, your sins are forgiven you." (Luke 5:20b, ESV)

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Phoenix, Arizona
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