

# Rights of religious belief and practice hang in the balance

*The Archdiocese of Los Angeles' court case involving 21 pages in two priests' files highlights important constitutional questions concerning religious freedom.*

— Fourth in a series. —

Confidentiality. In today's put-everything-out-there society, confidentiality is not a very appealing notion. Indeed, when persons or institutions assert a privilege of confidentiality to protect their privacy or other important rights, they are almost immediately accused of "covering up" something.

Yet, when one examines the issue more carefully, one realizes that confidentiality is a vital component in many personal and institutional relationships. Without confidentiality, key relationships that help us and our society to function properly would simply vanish. Without confidentiality, doctor-patient conversations would be impeded, and anonymous sources would not speak openly with journalists. Without confidentiality, no bishop would be able to exercise proper oversight of the priests he ordains to share in his ministry of serving the faithful.

It is this last example that is at the heart of the Archdiocese of Los Angeles' ongoing court case involving 21 pages of documents in the personnel files of two priests who have been accused of sexual abuse. The Archdiocese believes that the documents in dispute are protected by the Religion Clauses of the First Amendment, which assures the free exercise of religion, and that revealing them to a grand jury would be an unwarranted intrusion into the Catholic Church's religious practice.

## Who is protecting what?

There has been much confusion over exactly what and why the Archdiocese is asserting confidentiality. The two accused priests have asserted that the entire contents of their files are confidential. The Archdiocese, on the other hand, is only asserting confidentiality over a handful of documents that are narrowly focused on private communications between a bishop and priest. The Archdiocese believes that protecting the privacy of the bishop-priest communication allows the bishop to perform his ministry as a pastoral leader according to centuries-old church tradition, law and practice. Violation of this privacy would cause the bishop-priest communication to cease, creating a void between the bishop, his priests and the parishioners whose pastoral care the bishop entrusts to the priests.

In the Catholic Church, our unity binds us from parish to Archdiocese to Holy Father. Preserving and protecting this reality that defines us as "Catholic" is one of primary reasons why the Archdiocese believes that any attempt by the government to infringe upon this unity must be resisted, even if the object of that attempted infringement appears relatively small and non-threatening --- like 21 pages of paper. Indeed, the Archdiocese is considering an appeal to the U.S. Supreme Court because it believes that the religious rights it is asserting are already protected by the U.S. Constitution's First Amendment.

## Cooperating with civil authorities

As mentioned at the beginning of this article, our society doesn't look kindly upon assertions of confidentiality. Neither do members of the news media, although they are willing to go to jail, as one journalist put it recently, "to defend my right as a journalist to protect a confidential source, the same right that enables lawyers to grant confidentiality to their clients, clergy to their parishioners, and physicians and psychotherapists to their patients."<sup>1</sup>

Despite their protestations that confidentiality is critical to journalistic freedom, some members of the news media in Los Angeles have frequently railed against the Archdiocese for asserting any right to confidentiality whatsoever. In fact, these very same members of the media have yet to do one — one — story that focuses directly on the Constitutional issues underlying the Archdiocese's claim of confidentiality.

Instead, news reports never seem to go beyond simply accusing the Archdiocese of "covering up" and "hiding" information that the authorities could use to prosecute the two accused priests. The truth is that the documents in these two priests' files have been seen and reviewed by various judges. And, the Archdiocese has repeatedly offered the Los Angeles County District Attorney the factual information necessary for them to prosecute these two cases without giving over the actual documents in question. This type of information, combined with reports that authorities obtain from witnesses and other sources, typically has resulted in successful prosecution of other cases of abuse. The D.A. has consistently refused this offer. So, far from hiding information, the Archdiocese has sought to produce useful information to civil authorities without surrendering its rights to confidentiality that are protected by the Constitution.

## At a glance: The Documents

—21 pages of confidential bishop-priest communication involving two priests.

—Church law, tradition and practice assume that bishop can supervise and talk candidly with priests he entrusts with ministry.

—Giving pages to grand jury would destroy future confidential communication between bishop and priest.

—Destruction of bishop-priest communication would have profoundly adverse effect on church structure and operation.

—Impeding religious faith and practice is prohibited by U.S. Constitution.

—Archdiocese is considering appeal to U.S. Supreme Court over order to surrender 21 pages.

## What happens next?

The Archdiocese is considering an appeal petitioning the U.S. Supreme Court to hear its case. The attorney for one of the priests whose files are being sought has also said he will file a brief with the court. Lawyers for the Archdiocese and some legal experts believe that the Constitutional questions raised by the case will cause it to be taken up by the Court.

The Archdiocese continues to press forward in this important Constitutional matter. At the same time, the Archdiocese continues its comprehensive efforts aimed at ensuring the safety of all the church's ministries. More than 23,000 parents, teachers, priests and volunteers in the Archdiocese have been trained in abuse prevention programs like "VIRTUS." All teachers, priests and volunteers who have regular contact with children in our parishes are required to undergo fingerprinting and criminal background checks. And, our Assistance Ministry Office continues to reach out pastorally to victims of sexual abuse to help them heal.

1. Judith Miller, New York Times, Nov. 10, 2005.