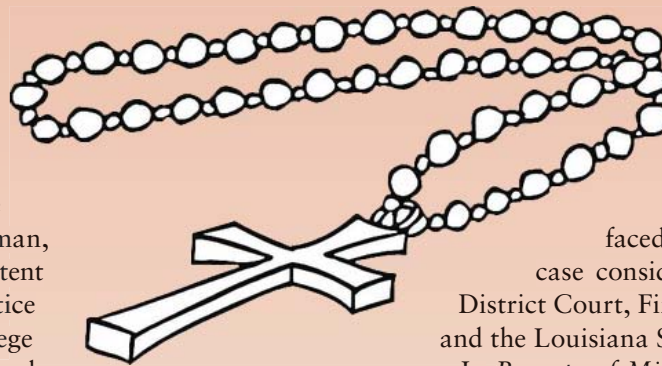


Breaking the Seal of Confession:

Examining Louisiana's clergyman privilege in light of *Mayeaux v. Charlet* BY GRANT J. GUILLOT



Certain communications with a clergyman are legally protected from further disclosure by a rule known as the clergyman, clergy, pastoral or priest-penitent privilege. Supreme Court Chief Justice Warren Burger said this privilege is “rooted in the imperative need for confidence and trust. The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return.”¹ Furthermore, as explained by another court, “[s]ecrecy is of the essence of penance. The sinner will not confess, nor will the priest receive his confession, if the veil of secrecy is removed”² Several Louisiana statutes recognize the importance of the clergyman privilege. For example, Louisiana Code of Evidence article 511(B) provides that “[a] person has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.”

In the Roman Catholic religion, the “seal of confession” refers to the secret a priest is required to keep regarding the sins his penitents have confessed to him.³ “This secret, which admits of no exceptions, is called the ‘sacramental seal,’ because what the penitent has made known to the priest remains ‘sealed’ by the sacrament.”⁴ The penalty a priest must pay for breaking the seal — automatic excommunication — is the most severe form of punishment used by the Roman Catholic Church.⁵ In addition, any lay members who overhear a confession, such as a translator, are also bound by the seal,⁶ though they are not automatically subject to excommunication for violating the privilege.⁷ In any event, a priest who refuses to disclose confidential communications made during a confession may sacrifice his ability to defend himself against allegations made by a disgruntled penitent who

has chosen to waive the privilege. This was precisely the dilemma faced by a local priest in a recent case considered by the 19th Judicial District Court, First Circuit Court of Appeal and the Louisiana Supreme Court.

In *Parents of Minor Child v. Charlet*,⁸ two parents filed a lawsuit in which they alleged that their daughter, Rebecca Mayeux, had been subjected to sexual abuse at the hands of George J. Charlet Jr., a well-known, longtime parishioner and active member of Our Lady of the Assumption Catholic Church in Clinton, Louisiana.⁹ The Mayeuxs also sued Charlet Funeral Home (of which Mr. Charlet was the alleged president); Reverend M. Jeffery Bayhi (Fr. Bayhi), for allegedly being a mandatory reporter (as defined by the Louisiana Children’s Code) who failed to report the allegations of sexual abuse; and the Roman Catholic Church of the Diocese of Baton Rouge (the Church), which the Mayeuxs alleged was vicariously liable for Fr. Bayhi’s purported misconduct in failing to report the abuse, as well as for negligently training and supervising Fr. Bayhi.¹⁰

In their petition, the Mayeuxs claimed that Fr. Bayhi negligently advised Rebecca, who was 14 years old at the time, during the sacrament of confession on at least three separate occasions that she needed to resolve the situation with Mr. Charlet on her own; in addition, the Mayeuxs asserted that Fr. Bayhi, as a mandatory reporter pursuant to Louisiana Children’s Code article 603(15)(c), negligently failed to immediately report the sexual abuse to law-enforcement personnel and to Rebecca’s parents, as he was allegedly required to do pursuant to Louisiana Children’s Code article 609.¹¹

The Church filed a motion in limine, seeking to prevent the Mayeuxs from “mentioning, referencing, and/or introducing evidence at trial of any confessions that may or may not have taken place” between Rebecca and Fr. Bayhi.¹² The 19th Judicial District Court denied

the Church's motion, finding that Rebecca's testimony was relevant to her claims and that Rebecca, as the holder of the privilege, was entitled to waive the privilege and testify.¹³

On supervisory writ, the First Circuit reversed the trial court's denial of the motion in limine and granted its own peremptory exception of no cause of action,¹⁴ explaining,

[b]ecause we have concluded that the priest is not a mandatory reporter, there can be no private or civil cause of action against him for any breach of a statute inapplicable to him; thus, any evidence or testimony, by anyone, regarding the occurrence of a confession, or the subject matter thereof, is wholly inadmissible, irrelevant, and nonprobative. Accordingly, the motion in limine, seeking to exclude all such evidence, should have been granted.¹⁵

In a *per curiam* opinion, the Louisiana Supreme Court reversed and vacated the First Circuit's judgment in its entirety, thereby rendering judgment reinstating the judgment of the trial court and remanding the matter for further proceedings.¹⁶ The Court explained,

we find the appellate court erred in dismissing plaintiffs' claims with prejudice as the question of duty/risk should be resolved by the factfinder at trial, particularly herein where there exists material issues of fact concerning whether the communications between the child and the priest were confessions *per se* and whether the priest obtained knowledge outside the confessional that would trigger his duty to report.¹⁷

On remand, the 19th Judicial District Court declared Children's Code article 609 unconstitutional.¹⁸ That article provides, in pertinent part,

A. With respect to mandatory reporters:

(1) Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report in accordance with Article 610.


The trial court judge opined that "in analyzing Children Code Article 609 (A)(1) as it could be applied to Fr. Bayhi in this case, and analyzing it in the manner mandated by the legislature in the preservation of the Religious Freedom Act, I must find that this article

violates Fr. Bayhi's right to the free exercise of his religion guaranteed to him by Article 1, Section 8, of the Louisiana Constitution."¹⁹

On direct appeal, the Louisiana Supreme Court vacated on the grounds of prematurity the trial court's judgment declaring Louisiana Children's Code article 609 unconstitutional.²⁰ In doing so, the Court acknowledged the "widespread confusion that has arisen over [the Court's] holding in *Charlet* and recognize[d] a need to both clarify and resolve the legal questions left unanswered therein" ²¹ The Court expressly noted that it "never conclusively determined whether a priest in administering sacramental confession is a 'mandatory reporter' under the provisions of Louisiana Children's Code article 609 and, thus, subject to the mandatory duty to report under Louisiana Children's Code article 609 in such circumstances."²²

Exercising its supervisory authority, the Louisiana Supreme Court explained that "priests in regards to sacramental confessions are not 'mandatory reporters' under the explicit" language of Children's Code article 603(15)(c), which provides that a member of the clergy "is not required to report a confidential communication, as defined in Code of Evidence Article 511(A)(2), from a person to a member of the clergy who ... under the discipline or tenets of the church, denomination, or organization has a duty to keep such communications confidential. In that instance, he shall encourage that person to report the allegations to the appropriate authorities in accordance with Article 610."²³ Therefore, the Court ruled that in accordance with article 603, priests who are receiving confidential communications during the sacrament of confession are not required to report such communications pursuant to article 609(A)(1) because they are not mandatory reporters.²⁴ As a result, the Court determined that "there is no need to declare Louisiana Children's Code article 609 unconstitutional because a priest under these circumstances is not a mandatory reporter."²⁵

In summary, the Louisiana Supreme Court in *Mayeux* clarified its previous ruling by reestablishing that a priest cannot under any circumstances (including child abuse cases) be compelled to report confidential information he obtains from a penitent during the Sacrament of Confession. However, the priest cannot prevent the penitent from disclosing such communications because the penitent alone has the right to waive the privilege. Thus, Fr. Bayhi faces quite the predicament — he must either refrain from discussing the contents of Rebecca Mayeux's confession and risk losing the chance to defend himself against her allegations, or he must set forth his version

of the events and face automatic excommunication from the Catholic Church. While it seems certain Fr. Bayhi will remain strong in his resolve, one cannot envy the “canonical” conundrum in which he has been placed. 

¹*Trammel v. United States*, 100 S.Ct. 906, 913 (1980).

²*Mockaitis v. Harcleroad*, 104 F.3d 1522, 1532 (9th Cir. 1997), citing *People v. Phillips*, N.Y. Ct. Gen. Sess. (1813).

³*Catechism of the Catholic Church* § 1467.

⁴*Id.*

⁵1983 Code of Canon Law c. 983, 984, 1388.

⁶*Id.* at c.984 § 2.

⁷*Id.* at c.1388 § 2.

⁸13-2879 (La. 4/4/14), 135 So.3d 1177.

⁹*Id.* at 1178.

¹⁰*Id.* at 1178-79.

¹¹*Id.* at 1180-81.

¹²*Id.* at 1179.

¹³*Id.*

¹⁴*Parents of Minor Child v. Charlet*, 13-0316 (La. App. 1 Cir. 10/21/13), 135 So. 3d 724.

¹⁵*Id.* at p. 16, 135 So. 3d at 735.

¹⁶*Charlet*, 135 So.3d 1177. Subsequently, the Louisiana Supreme Court denied the Church’s rehearing application, *Parents of Minor Child v. Charlet*, 13-2879 (La. 5/23/14), 139 So. 3d 519, and the United States Supreme Court likewise denied certiorari, *Roman Catholic Church of the Diocese of Baton Rouge v. Mayeux*, 135 S.Ct. 1154 (2015).

¹⁷*Charlet*, 135 So.3d at 1181.

¹⁸*Mayeux v. Charlet*, 16-1463 (La. 10/28/16), 203 So. 3d 1030.

¹⁹*Id.* at 1034.

²⁰*Id.* at 1035.

²¹*Id.*

²²*Id.*

²³*Id.* at 1038.

²⁴*Id.*

²⁵*Id.*

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