

## Reviews

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Claire Newell, Katherine Rushton, Sophie Barnes, Janet Eastham, and Jack Leather. “Call Bethel.” Produced by *The Telegraph*, London, UK, June 21–July 12, 2022. Podcast. Available on YouTube’s *The Telegraph* channel.

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### *Introduction*

Between June 21 and July 12, 2022, the British daily *The Telegraph* released four episodes of the podcast “Call Bethel” and four companion articles. The series described how the Jehovah’s Witnesses handle allegations of sexual abuse. It claimed that they tend not to report abusers to the police, focusing on two United Kingdom cases concerning two British ex-Jehovah’s Witnesses who were convicted of sexual abuse of children called Peter Stewart and Clifford Whitely, and on a case in the United States, in Montana.

*The Telegraph*’s series also revamped the sensational allegations, launched in an article published in the United States by *The Atlantic* in 2019, that the Jehovah’s Witnesses keep one or more “secret databases” with the names of their members accused of sexual abuse (Quenqua 2019). The implication is that if this list was given to the authorities or to lawyers representing the victims, perpetrators who otherwise escape prosecution would be identified, punished, and prevented from harming other children.

I will examine the Stewart, Whitely, and Montana cases in detail, and discuss the database issue. Preliminarily, however, I believe it is necessary to put *The Telegraph*’s series into context. Unbeknownst to the journalists who produced it, in the same months when they were preparing their podcast many scholars of

religions were busy debating an issue that is central for the series: should the legal protection of the confessional privilege be eliminated in cases of sexual abuse of children? This discussion started in the decade of the 2010s, when Ireland passed in 2015 a law called “Children First Act” and in 2017 the final report of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse was released (Royal Commission into Institutional Response to Child Sexual Abuse 2017).

More recently, the academic community has discussed in sessions organized at several leading scholarly conferences the comprehensive book *Religious Confession and Evidential Privilege in the 21<sup>st</sup> Century*, edited by British barrister Mark Hill and by A. Keith Thompson, professor and associate dean at the University of Notre Dame Australia School of Law, which includes chapters about several countries and religions (Hill and Thompson 2021).

I have reviewed the book myself (Introvigne 2022a), and would shortly summarize the discussion here. The Catholic Church and the Eastern Orthodox Churches regard auricular confession, where penitents report their sins to a priest to receive absolution, as a sacrament. They consider the secret of the confession sacred and inviolable. Priests cannot reveal secrets learned in confession to anybody, including their bishops or secular authorities, under penalty of excommunication. While Protestants in general were critical of auricular confession, the Anglican and some Lutheran Churches maintained it, although its practice is now comparatively rare.

European states protected the secrecy of confession based on their recognition of, or agreements with, national churches. For instance, English law protected the secret of confessions to the Anglican Church but did not offer the same protection to Catholic priests who heard confessions. Although a special protection for national churches still exists in several countries, the Hill-Thompson book describes an evolution that started in the 19<sup>th</sup> century and led democratic countries to protect a “confessional privilege” for all religious organizations where devotees confessed their sins to the organizations’ authorized personnel.

As the book demonstrated, in the United States and elsewhere courts noted that the Catholic model where the penitent confesses to one priest is not the only possible form of confession. They protected the secrecy also of confessional practices when more than one authorized minister or elder receives the

confession, notes may be taken, and they may be confidentially shared with the upper echelons of the religious organization for advice or stored. This happened in cases concerning Reformed denominations and the Church of Jesus Christ of Latter-day Saints, popularly known as the Mormon Church. As we will see, this is very much relevant for *The Telegraph's* story.

This movement to extend the confessional privilege was somewhat reversed in the 21<sup>st</sup> century, with the scandals of the pedophile clergy in the Catholic Church and other denominations. Voices were heard that the legal protection of the confessional privilege should be eliminated in cases of sexual abuse of children. Laws were passed to this effect in Ireland in 2015, in most Australian states and territories, in some states of the U.S., and elsewhere in the world. These laws mandate that even when revelations about sexual abuse of children are received in confession, priests or other religious personnel should immediately inform the police.

As also detailed in the Hill-Thompson book, both the Catholic Church and the main Orthodox Churches reacted by instructing their priests to violate these laws and, if necessary, go to jail rather than breaching the secret of the confession. The same book presents different opinions and the arguments of the critics of the anti-confession laws, who argue that they violate religious liberty, open a breach that would eventually destroy the protection of confession also in fields other than sexual abuse of children, and are of little practical effect, because criminals would not confess their crimes to priests or other religious ministers if they know that they may be reported to the police.

*The Telegraph's* series presents the issue, which was at the center of the Montana case, whether the confessional privilege should suffer exceptions in cases of sexual abuse of children, as if it was something peculiar to the Jehovah's Witnesses. They are described as a uniquely stubborn organization when it comes to defend the confidentiality of information obtained in contexts similar to confession.

In fact, as we have seen, the matter has been one of the most debated among scholars of religion and law in recent years, a context *The Telegraph* completely ignores. Had it considered it, *The Telegraph* might have compared the position of the Jehovah's Witnesses to other religions, including the Roman Catholic and Eastern Orthodox Churches.

While the latter order their priests to violate any law that would ask them to report information about sexual abuse of children obtained in confession and suffer the legal consequences—which are declared preferable to excommunication and ultimately eternal damnation—the Jehovah’s Witnesses instruct their elders to comply with the laws of the land.

Where the confessional privilege was granted without exception—the situation discussed in the Montana case—, they relied on it as did other religious organizations. When the laws call for mandatory reporting in cases of sexual abuse, they obey the laws. Today, Jehovah’s Witnesses go one step further, and instruct their elders, when children are at risk, to report credible allegations of child sexual abuse to the police even in jurisdictions that do not have mandatory reporting laws (“Jehovah’s Witnesses Scripturally Based Position on Child Protection” 2020 [2018], no. 5; see also Introvigne 2021a, 67–73).

Two other methodological problems negatively affect the reliability of *The Telegraph*’s series. The first is that it relies almost exclusively on information received by apostate ex-members and their lawyers. “Apostate” is not an insult. It is a technical term used by sociologists to designate those ex-members who become militant critics of the religious organizations they have left. Most ex-members are not “apostates,” but only apostates talk to the media. Of course, they often offer partial and biased accounts (Introvigne 2022b).

*The Telegraph*’s podcast includes less than thirty seconds where Zoe Knox, a well-known scholar, shortly refers to some beliefs of the Jehovah’s Witnesses, but neither she nor any other academic is interviewed about the criticism at the core of the series. After the very short guest appearance of Knox, the narrator expresses *The Telegraph*’s beliefs that “Aside from academics, the people who are really experts on this are those who’ve lived it: former Jehovah’s Witnesses.” By “former Jehovah’s Witnesses” *The Telegraph* means the apostates, a common media fallacy.

The reporters’ excuse for talking only to the apostates (and their lawyers) is that “It’s hard to speak frankly to people who are still Jehovah’s Witnesses, because they think everyone else is worldly and could be doing Satan’s work.” Scores of academic scholars who have written books about the Jehovah’s Witnesses and interviewed hundreds of them may testify that it is not true that “speaking frankly with them” is impossible.

By working with apostates and, as they admit, “press clippings,” the reporters made mistakes they might have easily avoided. In the podcast, they repeat three times that the Royal Australian Commission “discovered” records of “1,800 sexual abuse cases” among the Jehovah’s Witnesses in Australia (with 1,006 perpetrators) and claim that “in almost every case” the incidents were not reported to the police. This is false.

As Holly Folk, a professor of religious studies at Western Washington University who has studied the issue of Jehovah’s Witnesses and sexual abuse, explained, the Royal Commission figure “reflects the sum of all disciplinary reports and referrals, proven and unproven, that had been submitted to the Jehovah’s Witness organization in Australia over a 65-year period.” The “vast majority” of these cases referred to incest and other instances of abuse in the family, rather than in any religious institutional setting (Folk 2021).

“The accusation that there was a cover-up is also not true,” Folk wrote. “Of the 1,006 case files that the Jehovah’s Witnesses provided to the Royal Commission, 383 had been reported to the police at the time they had happened, and 161 had resulted in convictions. The notion that the Jehovah’s Witnesses had hidden information, or had not cooperated with law enforcement, or that these cases had not been brought to justice when they were reviewed and regarded as believable, is simply not true” (Folk 2021).

A final remark is that laws protecting children against sexual abuse and the social sensitivity about the issue evolved in time. Judging cases of the 1960s with the standards of the 2020s is unfair with respect to the Jehovah’s Witnesses and any other organization. The podcast mentions this point, but then somewhat forgets it.

In September 2021, the Independent Inquiry into Child Sexual Abuse, a statutory inquiry for England and Wales, published its report on “Child Protection in Religious Organisations and Settings” (Independent Inquiry into Child Sexual Abuse 2021). While including some criticism, the report also emphasized the positive aspects of the child protection policy set in place by the Jehovah’s Witnesses, and mentioned its historical evolution and improvements (see Introigne 2021b).

The report acknowledged that (1) Jehovah’s Witnesses now have a policy to report allegations of abuse to the statutory authorities “if a minor is still in danger

of abuse,” even when it is not mandated by local laws, and “even if there is only one complainant and no other corroborating evidence” (Independent Inquiry into Child Sexual Abuse 2021, 65, par. 6.3); (2) Jehovah’s Witnesses provided evidence to demonstrate that the policy is applied in practice (Independent Inquiry into Child Sexual Abuse 2021, 64–6, par. 6.1–6.9); and (3) Jehovah’s Witnesses are one of the few religious organizations which have an internal disciplinary process which can lead to the expulsion of congregants who have committed child abuse (Independent Inquiry into Child Sexual Abuse 2021, 71, par. 30). Of course, this strictly ecclesiastical process is independent from reporting the abusers to the authorities, and secular courts cannot interfere with it.

### *The Peter Stewart Case*

To prove that the Jehovah’s Witnesses have a bad habit of not properly warning their members against sexual abusers of children, *The Telegraph* focuses at length on the case of Peter Stewart (1929–2001). This is understandable, because on June 19, 2015, the London High Court of Justice found that the Jehovah’s Witnesses were negligent in handling the case and had to pay damages to one of Stewart’s victims (High Court of Justice, Queen’s Bench Division 2015). The decision concluded that the local elders knew of Stewart’s problems and failed to adequately inform and warn their congregation, and in particular the victim’s mother, about him.

It would seem that here *The Telegraph* has its smoking gun proving that its general theory is true. However, the fact that the 2015 decision of the High Court has been published is actually very useful. It allows a study in contrast of how Mr. Justice Globe, in his decision, assessed the facts and the behavior of the Jehovah’s Witnesses, as opposite to how *The Telegraph* presented them.

Understandably, a journalistic podcast privileges drama, and there is nothing wrong about it—unless drama is used to slander a whole religious community. *The Telegraph* introduces us to Daria (not her real name) who in the late 1980s was a small girl living with her Jehovah’s Witness mother after her father had left them. A well-liked and gentlemanly Jehovah’s Witness came to their home to offer spiritual guidance. Daria, now in her thirties, tells in graphic details the

story of how she was abused and raped for years by this man, Peter Stewart, and was too terrorized to inform anybody, including her mother.

In 1994, Daria heard that Stewart had been arrested for his sexual abuse of another girl. She still kept silent. Then, in 2000, she claims she saw Stewart at the back of the Jehovah's Witnesses' Kingdom Hall during a meeting, and she finally told her mother of the abuse. The mother wrote to Stewart and he wrote back, admitting his guilt and expressing repentance. He called himself a "pervert" and told Daria's mother that he was undertaking "mechanical operations" that would prevent him from abusing other children. Daria's mother informed first an elder and then the police. When the latter moved to investigate the case in 2001, the agents found Stewart dead in his home.

Another woman then appears in the podcast, "Michelle." She describes her emotion when she learned about the case of Daria, as she had also been abused by Stewart. Reportedly, she told the elders about the abuse and their immediate reaction was that she had misconstrued what happened. However, she later learned that Stewart had been investigated and demoted from his position as ministerial servant. She blames the Jehovah's Witnesses for not having taken harsher action against Stewart on her case and informed immediately the police, which might have protected Daria. Michelle testified before the already mentioned Independent Inquiry into Child Sexual Abuse (IICSA), and blamed in particular an elder called Alan Orton (1937–2020).

According to *The Telegraph*, the story of Peter Stewart proves "what elders in the Jehovah's Witnesses do when someone in their community is accused of sexually abusing a child. The system's a closely guarded secret." *The Telegraph* understands that its use of the present simple ("what elders... do") is problematic. It notes that, "The Jehovah's Witnesses told IICSA that Michelle's abuse took place more than 30 years ago and is not a reflection of its current child safeguarding policies. But that's small comfort to Michelle."

Here, the lack of context emerges again. As mentioned earlier, today the Jehovah's Witnesses's policy is that "even if the elders have no legal duty to report an accusation to the authority," they should "report the matter if a minor is still in danger of abuse or there is some other valid reason" ("Jehovah's Witnesses Scripturally Based Position on Child Protection" 2020 [2018], no. 5). That policies were different in the 1980s or 1990s is not only true for the Jehovah's Witnesses. It is also true for the Roman Catholic Church, the Church of England,

or secular organizations such as the Boy Scouts. Simply, the social awareness and the understanding of sexual abuse of children was not what it is now.

In the court case of “Daria,” Mr. Justice Globe acknowledged that different experts who testified before him agreed on three points. First, “The level of understanding of child sex abuse in 2015 [when the case was decided] is very different to [sic] the level of understanding in the late 1980s and early 1990s.” Second, “In the late 1980s and early 1990s there was an emerging awareness of child sexual abuse, which was a long way short of a developed understanding of the complexity of the issue.” Third, “The Jehovah’s Witness organisation could be viewed as ahead of its time in terms of its educative publications addressing the issues of child sexual abuse” (High Court of Justice, Queen’s Bench Division 2015, paragraph 116). This is not the position of the Jehovah’s Witnesses only, which *The Telegraph* derisively dismisses as being of little comfort to the victims. This is the conclusion of the court. Judging cases of the 1980s and 1990s with the standards of today is not only unfair. It does not make sense.

The court decision also adds details not mentioned by *The Telegraph*, and helps reestablishing a correct chronology. As the court reconstructs the case, in 1990 an elder was informed that Stewart had molested a young girl (the one *The Telegraph* calls Michelle) “by touching her through her underwear” (High Court of Justice, Queen’s Bench Division 2015, paragraph 29). Stewart admitted this was true. “The judicial committee decided that, because he was remorseful and genuinely repentant, he should not be disfellowshipped. Instead, he was given scriptural reproof and counsel admonishing him that he should never be alone with children in any circumstances and was removed as a ministerial servant” (High Court of Justice, Queen’s Bench Division 2015, paragraph 30). The congregation was informed that Stewart had been disciplined (but not for what reason, as usual among the Jehovah’s Witnesses), and warned to watch their children against possible abuse. The two announcements were not directly connected, and whether those who heard them would be able to make the connection is a matter of dispute.

Meanwhile, unbeknownst to the elders and to everybody else except him and the girl, Stewart was routinely abusing Daria since 1989. He continued until 1994 when he was “arrested and later convicted of and imprisoned for sexually abusing a young female relative and a young boy in the congregation” (High Court of Justice, Queen’s Bench Division 2015, paragraph 25). On January 7,

1995, Stewart disassociated himself as one of the Jehovah’s Witnesses. Still, Daria did not mention to anybody that she had been abused by Stewart until she “found out about his imminent release. It affected her badly and eventually she told her mother what had happened” (High Court of Justice, Queen’s Bench Division 2015, paragraph 26). This was in 2000, and at that time Stewart was no longer a Jehovah’s Witness, as he had disassociated himself in 1995.

Daria sued based on the claim that, had the elders disfellowshipped Stewart rather than simply demoting him, and personally warned her mother and other relatives about what was going on, she would have been saved from further abuse. Daria was awarded damages based on the current British laws, and precedents concerning the Catholic Church. The judge derived from them that the elders had been negligent in not advising Daria’s family specifically and unequivocally about the threat represented by Stewart.

Does this mean that *The Telegraph* reported the story correctly? Not exactly. We only hear the voices of Daria and Michelle, and of a lawyer, Kathleen Hallisay, described as “a thorn in the Jehovah’s Witnesses’ side.” Clearly, the *Telegraph* reporters root for her. “In a way, Kathleen’s job mirrors ours in the investigation team. She has been trying to Hoover up every detail she can about the Jehovah’s Witnesses, collecting documents, speaking to survivors. We have been doing the same.”

One who tried to be fairer was Mr. Justice Globe in Daria’s case. One can even perceive a certain reluctance in rendering a decision in her favor, as if he knew beforehand it would be used to tarnish the reputation of the elders, who would be presented as protecting abusers and mistreating victims.

This was not the impression the judge had of elder Alan Orton, who looks so much like the villain in the podcast, and his colleagues. “I found them,” wrote Mr. Justice Globe, “all to be honest, upright, loyal, and devout men for whom being a Jehovah’s Witness is and has been for many years a way of life for them and their families. In that there were differences of recollection between them or hesitation in their answers, it was not borne out of any ulterior motive. All are horrified by the sexual abuse that occurred and are extremely remorseful that a Jehovah’s Witness should have caused such harm to the claimant” (High Court of Justice, Queen’s Bench Division 2015, paragraph 121). The judge also mentioned Orton’s “obvious honesty,” and characterized him as a “completely honest” man (High Court of Justice, Queen’s Bench Division 2015, paragraph 35).

These “honest, upright, loyal and devout men” acted by the Jehovah’s Witnesses’ standards of 1990, more than thirty years ago, which, while being “ahead of their time” with respect to other religious and secular organizations, cannot be compared to those of 2022. Orton and his colleagues navigated between protecting the confidentiality of their ecclesiastical judicial proceedings and warning congregation members they should protect their children. They testified that in fact they did warn the parents privately. However, the judge concluded that either their recollections of events that happened decades before the court case were not accurate, or they had not given a clear enough warning. As a consequence, Daria got her damages. However, those who present men of “obvious honesty” as evil protectors of pedophiles are themselves not honest.

### *The Clifford Whitely Case*

*The Telegraph’s* podcast claims that the Jehovah’s Witnesses do not effectively protect their children from sexual abusers who are members of their congregations, and in fact their main concern is to hide the abuse cases to protect their reputation. The case the podcast devotes more time to concerns Peter Stewart, an old case where the inadequate handling of the incident the Jehovah’s Witnesses were accused of dates back to 1990.

The Jehovah’s Witnesses can easily answer that this was more than thirty years ago, before their new Child Protection Policy was enacted in 2018/19. Inadequate handling of sexual abuse in 1990, while not uninteresting, would not be particularly newsworthy now. To generate interest for its podcast, *The Telegraph* had to argue that the Jehovah’s Witnesses are still failing to protect their children and hiding abuse today.

The IICSA noted that the Jehovah’s Witnesses provided evidence to demonstrate that the 2018/19 policy is applied in practice (Independent Inquiry into Child Sexual Abuse 2021, 164–66, par. 6.1–6.9). By looking at a case that had already been discussed by the IICSA, however, *The Telegraph* tries to prove that in 2019 the Jehovah’s Witnesses were still not cooperating with the police.

As *The Telegraph* presents the story, in 2019 a 21-year-old woman introduced as “Lacey Jones” told her mother that her stepfather, Clifford Whitely (spelled “Whiteley” in some documents), had abused her when she was 11. The mother

confronted the man, who ended up admitting this had happened once, when he was drunk (although he was later sentenced for three counts of sexual abuse, not one only). The wife reported him to the elders, to whom he repeated his (partial) confession. This was enough to have him disfellowshipped. Lacey's sister, who had left the Jehovah's Witnesses, went to the police, and an investigation started.

According to *The Telegraph*, Detective Philip Endzor of West Midlands Police, who appears in the podcast as a man having little sympathy for the Jehovah's Witnesses, asked the two elders who had received Whitely's confession to sign written statements. They asked Detective Endzor to put his request in writing and explained that they had concerns about the confidentiality of Whitely's confession. In the podcast, Endzor reports his impression that in fact the elders "were flatly refusing to cooperate in any shape, form or fashion."

After several months, Endzor wrote that he "needed the elders notes of Clifford Whitely's confession. Once again, the elders said they were willing to help, but because the notes were confidential religious communication, they'd need Clifford Whitely's permission, or Detective Endzor would have to get a court order." He did get a court order, with which the Jehovah's Witnesses complied.

Eventually, Whitely was sentenced to nine years in jail. In *The Telegraph's* podcast, we hear Detective Endzor stating, "I do find it difficult to comprehend why they were almost deliberately trying to obscure a legitimate investigation from a young lady who had been sexually assaulted. I've got to say, this is probably the most awkward of organisations to deal with."

With some dramatization, this is the story Endzor had told the IICSA before. However, the IICSA also heard one of the elders involved, Rudi Dobson. The IICSA did not question his veracity. As in the Stewart case, the chronology presented in the podcast is somewhat confused, and the two statements by Dobson to the IICSA (Dobson 2020a, 2020b) help clarify it.

On February 25, 2019, Dobson was informed by Lacey's mother of her daughter's accusations against Whitely. He and another elder visited the girl's home, offered comfort, and informed her and her mother that they had the absolute right to inform the police. Dobson repeated it to Lacey and her sister in a phone conversation that night. On February 26, he was informed they had contacted the police. On February 27, Whitely was arrested and released on bail.

The national Branch Office of the Jehovah's Witnesses advised the local elders not to proceed against Whitely immediately, not to interfere with the police's activities. On March 19, an ecclesiastical judicial committee examined the confession Whitely had rendered to the elders and disfellowshipped him.

Detective Endsor first contacted Dobson on March 1, asking for a written statement about the incident. Dobson asked Endsor to put his request in writing, as there might have been questions of confessional privilege and data protection, which he needed to examine with the Branch Office. As Dobson told the IICSA, "The next communication I had with DC Endsor was a telephone call in early to mid-July 2019. Rather than providing me the list of questions, as I had asked for on 1 March 2019, DC Endsor proceeded to threaten and intimidate me, ridiculing my faith and my activity as a religious minister. He told me that I should resign as a religious minister so that I could then reveal confidential information. When I told him I would not do so, he said: 'how can you sleep at night?' I found his actions and threats to be offensive and disturbing" (Dobson 2020b, 2, no. 9).

After this stormy conversation, on July 24 Endsor wrote to the elders asking to release all documents about Whitely's confession and disfellowshipping. On August 2, the elders replied that these documents were privileged and they can release them only with Whitely's own consent; they will however comply with a court order. On October 1, Endsor obtained his court production order, and on October 3 the elders gave him the requested documents.

Although British data protection laws were mentioned, this is also a case of dealing with documents protected by the confessional privilege. Substantially, Whitely had rendered a confession to the elders. However, as mentioned earlier, there is a difference between the Catholic and the Eastern Orthodox Churches and the Jehovah's Witnesses. The former believe that the secret of confession is of such a high theological status that their priests are instructed that they should not comply with laws or court orders asking them to release confessional material, and face the consequences. The Jehovah's Witnesses believe they should respect the laws of the land. As a consequence, even if the material about Whitely was intrinsically of a confessional nature, they gave it to the police once a court order was issued.

They complied with the order within 48 hours. In the podcast, Endsor claims that the case was delayed by the Jehovah's Witnesses' tactics. In fact, it was delayed by his own prejudices against the Jehovah's Witnesses, non-

understanding of the laws on data protection and confessional privilege, and attempts to bully the elders by threatening and screaming rather than following a normal procedure. He was asked to formulate his requests in writing, and it took Endorsor four months to do it. Endorsor was told the Jehovah's Witnesses would have complied with a court production order, but he got it only seven months after he had started his investigation.

The Whitely case does not prove that the Jehovah's Witness do not respect their own policy on cooperation with secular authorities in cases of sexual abuse of children. It just proves that the religious prejudices of certain police officers may delay the very cases they are investigating.

### *The Montana Case*

*The Telegraph's* podcast, also discusses cases in the United States. In particular, we hear the voices of the plaintiffs in a case in the American state of Montana, where they obtained a verdict of \$35 million against the Jehovah's Witnesses. The verdict was reversed by the Supreme Court of Montana on January 8, 2020 (Supreme Court of Montana 2020), which affirmed that the Jehovah's Witnesses were excepted from Montana's mandatory reporting laws in cases of sexual abuse of children because the information obtained by the elders was protected by the confessional privilege.

The podcast includes an ironical comment by one of the plaintiffs after the Supreme Court decision: "Congratulations Watchtower. You won the right to keep sexual abuse secrets. You know, that's a little [messed] up, if you ask me." The impression created is that, for some arcane American legal technicality, the Jehovah's Witnesses were authorized to "keep sexual abuse secrets" and shield the abusers from legal prosecution.

This is a typical case where what was at stake was the confessional privilege. In fact, the Supreme Court of Montana examined precisely whether what the Jehovah's Witnesses had been accused of not having disclosed to the secular authorities was information obtained during a "confession."

The Montana case was about a man called Maximo Nava-Reyes, who in 1994 married a fellow member of a Jehovah's Witnesses' congregation in Thompson Falls, Montana. The woman had two daughters and one son. One daughter and

the son revealed to the congregation's elders that they had been sexually molested by Nava-Reyes. In 2004, they convened an ecclesiastical judicial committee, obtained his confession, and disfellowshipped him.

One year later, he managed to persuade the elders that he was genuinely repentant and determined to change his ways, and was reinstated as one of the Jehovah's Witnesses. Unbeknownst to the elders and other members of the family, however, he was now molesting a small girl. His wife had two daughters. One had accused Nava-Reyes of abuse; the other was the mother of a young girl nicknamed "Lexi."

In 2016, Lexi and her aunt, who had also been molested, sued the Jehovah's Witnesses claiming that, had they reported to the secular authorities Nava-Reyes's wrongdoings and confession in 2004, he would have been stopped and prevented from causing further damage.

In 2004, the current policy instructing Jehovah's Witnesses elders to report to the police, when a minor is in danger, instances of sexual abuse even when reporting is not mandatory under local laws was not yet in force, although the elders were instructed to comply with mandatory reporting laws where they existed.

In 2004, the Jehovah's Witnesses interpreted Montana law to the effect that reporting was mandatory in principle, but statements received as confessions should not be disclosed under the confessional privilege. Montana law stated that, "A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice" [§ 41-3-201(6)(c), of Montana's Mandatory Child Abuse Reporting Statute (MCA)].

The Supreme Court's decision is important because it deals with the argument that if a confession is rendered to more than one priest or elder and notes are taken there is no confessional privilege. Statutes protecting the secrecy of confession were passed with the Catholic model in mind, but it was later recognized that restricting the confessional privilege to the Catholic one-on-one confession would unjustly favour the Catholic Church over other religious organizations where confessions are received by committees rather than by a single minister.

As mentioned earlier, American courts in cases concerning the Church of Jesus Christ of Latter-day Saints and other denominations had already stated that a communication can be a “confession” and remain protected by the confessional privilege even if the sinner confesses to more than one priest or elder, if notes are taken of the confession, and these are shared with others in the religious organizations’ hierarchy, provided confidentiality remains guaranteed throughout the process.

As early as 1917, in the case *Fred Reutkemeier v. Ben Nolte*, the Supreme Court of Iowa extended the confessional privilege to a “confession of sin” made by a Presbyterian woman to her pastor and three congregational elders (Supreme Court of Iowa 1917). In 1994, the Supreme Court of Utah concluded that confessions made to a Latter-day Saint bishop (the equivalent of a parish priest) did not lose their privileged status because the bishop later transmitted them for review to a Stake (the equivalent of a diocese) High Council Court (Supreme Court of Utah 1994).

Other decisions reached the same conclusion (e.g. Supreme Court of Montana 1998; Court of Appeals of Washington 2007), with a federal appeals court stating in 1990 that excluding from privilege confidential communications that reached more than one minister of the same religious body would risk “restricting the privilege to Roman Catholic penitential communications” only, which would be constitutionally impermissible (United States Court of Appeal for the Third Circuit 1990, 385).

The Supreme Court of Montana agreed. The plaintiffs had argued that since Nava-Reyes’ confession was known by multiple local elders and had been forwarded to the New York-based headquarters of the Jehovah’s Witnesses, it was not truly a confession and was not protected by the confessional privilege. The Supreme Court, however, noted that among the Jehovah’s Witnesses the process of receiving confessions necessarily “involves multiple elders and congregation members” and this is not inconsistent with its confidentiality (Supreme Court of Montana 2020, 13–4, no. 25).

While Lexi’s attorney claimed that a confession can only be “a communication between two people” (and not more than two), the Supreme Court agreed with the Jehovah’s Witnesses that “imposing a narrow definition of confidentiality impermissibly could discriminate between different religious beliefs and practices, protecting confidentiality of reports made in a confession from a

parishioner to priest, like the traditional Catholic practice, while offering no protection to a congregant's disclosures to a committee of elders using a process like that followed by the Jehovah's Witnesses" (Supreme Court of Montana 2020, 16, no. 30). This is consistent with previous U.S. case law.

*The Telegraph's* podcast presents the Montana case outside of the ongoing debate on the confessional privilege. It fails to explain that what was at stake was the secrecy of confession, and that American courts for more than one hundred years have maintained that restricting the protection of confession to the Catholic one-on-one model would create a constitutionally impermissible discrimination between different religions.

Not being told of this context, those who listened to the podcast might only conclude that the Jehovah's Witnesses exploited some strange loopholes of American law to protect a sexual abuser—while in fact what they protected was the principle that the content of confessions to religious ministers should not be disclosed, and the devotees' trust that it will not.

### *The "Secret Databases"*

*The Telegraph's* podcast is structured as a crescendo leading the audience to the most sensational revelation of them all. It is alleged that the Jehovah's Witnesses maintain in several countries "secret databases" with the names of all their members who have been accused of sexual abuse. We are told that they refuse to disclose them to the authorities, with *The Telegraph* implying that if they did so they would save countless potential victims.

In fact, the podcast argues that it is not the authorities only who may have a legitimate interest in obtaining these lists. It presents as a hero an American lawyer who managed to subpoena the lists for his country, included in cardboard boxes, although under a protective order he was not authorized to exploit them for chasing potential clients, and ultimately had to give them back pursuant a settlement.

This makes for an exciting story: secrets, sex, and mysterious boxes that include "the truth" but whose content cannot be revealed. As every good story, there are villains, i.e., the Jehovah's Witnesses who do not want the truth to be revealed, and a hero, the American lawyer who explains that "there are emotional

benefits for victims in fighting their abusers in court.” What benefits, emotional or otherwise, there are for the lawyers, who in American sexual abuse cases often work on contingency and pocket the largest parts of the damages, is not explained.

While entertaining, the story is not exactly new, as similar references to “secret databases” have been made by American media in the last few years (see e.g. Quenqua 2019). But what are these “secret databases,” exactly? Are they a strange peculiarity of the Jehovah’s Witnesses only?

Several years ago, with other scholars, I was asked by the Holy See to participate in a closed-door conference and give advice on the plague of sexual abuse of children by Catholic priests. One of the suggestions we made was to establish a database including all credible accusations of sexual abuse of minors raised against Catholic priests throughout the world, and keep it with the Congregation for the Doctrine of the Faith in the Vatican. This suggestion was incorporated in 2011 in the same Congregation’s *Guide to Basic Procedures in Cases of Sexual Abuse* (Congregation for the Doctrine of Faith 2011). In fact, the centralized database was aimed at solving the problems of priests with a past of abuses who moved from one country to another, hoping that international communication between bishops would not work perfectly and their old sins would not be known in their new diocese.

The database in the Vatican is obviously confidential and is not shared with lawyers, journalists, or even secular authorities. Perhaps *The Telegraph* can call it “the secret Vatican database of sexual abusers.” However, when it was created, it was generally acknowledged by experts in the field that it served a useful purpose, and its introduction was applauded rather than criticized.

This Catholic example helps, once again, to put the question of the Jehovah’s Witnesses’ “secret databases” in context. The same valid reasons for centralizing the information about credible reports about sexual abuses in the Catholic Church in one office in the Vatican also apply to the idea of having reports about allegations of sexual abuse among the Jehovah’s Witnesses collected and indexed, at least nationally, in one central location rather than leaving them at the level of local congregations only. We live in times of mobility, and information would surely run a higher risk of being lost, forgotten, or not made available to those who need to know it if it remained at the local level.

The useful purposes of such records include checking the background of those proposed for certain positions within a religious organization, or confidentially warning congregations where somebody who has been accused of sexual abuse moves from a different location. There are, however, purposes for which these records are definitely not intended. They include allegations that, if reported, have been taken seriously, but are not necessarily true. If the content of these lists would not be kept under lock and key, it may ruin the reputations of some unjustly accused and cause enormous suffering. Of course, in the hands of greedy lawyers or unscrupulous journalists it may also cause a fishing frenzy without regards whether the allegations are true or false.

*The Telegraph*'s podcast clearly aims at creating the impression that if these "secret databases" would be shared with the police, and even the lawyers, instances of sexual abuse could be prevented. In fact, as it happened in the Australian Royal Commission case, the Jehovah's Witnesses when summoned by proper authorities did share their local lists. In Australia, this happened in 2017, and the Royal Commission reportedly forwarded 551 names to law enforcement. Five years later, in 2021, American scholar Holly Folk noted that "over the past five years, we have not seen in Australia a massive wave of arrests and prosecutions of Jehovah's Witnesses, as it should have happened had the Royal Commission 'discovered' a substantial number of 'hidden' cases" (Folk 2021). We can only guess what would have happened if the 551 names had been leaked to the media.

*The Telegraph*'s indignation at the existence of the "secret databases" is based on a confusion. Where there are mandatory reporting laws, the Jehovah's Witnesses and anybody else have a duty to report allegations of sexual abuse they become aware of to the secular authorities. Whether or not they also report these allegations to their national headquarters through what they call forms S-77 has nothing to do with the duty of reporting them to secular authorities. The two matters are separated and different. Sending forms S-77 to branch offices is an internal ecclesiastical procedure. The procedure is indeed useful to protect potential victims but even if it wasn't, as long as it complies with local laws on privacy, it is something secular authorities have no business interfering with. As far as England and Wales are concerned, questions based on media reports were raised by the Independent Inquiry into Child Sexual Abuse (IICSA). The

Jehovah's Witnesses explained their document retention policy, and the IICSA had nothing to object.

The sensational “secret databases” appear less sensational when examined more closely, just as the cases presented by *The Telegraph* appear slightly different when the actual court decisions are read. The only possible conclusion is that *The Telegraph's* podcast is a biased presentation of a number of serious issues, using almost exclusively hostile sources, and is aimed at damaging the reputation of the Jehovah's Witnesses. Clearly, all victims of sexual abuse deserve our sympathy and support. But so do religious minorities that are victims of slander, stereotyping, and generalizations.

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