

EDWARD N. PETERS\*

## Video Communications Technology and the Sacramental Confessions of Deaf Catholics

This article examines the possibility that d/Deaf<sup>1</sup> Catholics may use modern video communications technology to approach remote confessors, accuse themselves of sin, and receive absolution validly and licitly, notwithstanding considerable sacramental and canonical scholarship that holds against the use of communications technology in the sacrament of penance. We shall examine the possibility of using advanced video technology to make possible "confession-at-a-distance" in several steps.

After briefly recalling the basic right of all the faithful to celebrate the sacrament of penance and outlining the special difficulties faced by deaf Catholics who wish to access this sacrament, we will present two recent important developments with special relevance for our question—one a "human" development found within the Church and the other a "technological" development found within the Deaf community. In light of these two developments we will then reevaluate the cogency of the older canonical and sacramental objections to recognizing confession-at-a-distance as aided by video technology. Finally, to the extent that a

\* Edmund Cardinal Szoka Chair, Sacred Heart Major Seminary, Detroit, MI.

1. In keeping with the Woodward convention (1972), the word "deaf", when spelled with a lowercase "d", refers to the physiological condition of major hearing deficit, while the word "Deaf", when spelled with an uppercase "D", refers to various cultural realities that tend to arise among deaf persons over time. The categories of "deaf" and "Deaf" are not mutually exclusive, but only in this first appearance of the term is the potential overlap of these categories underscored by the orthography.

persuasive case for accepting the use of video communications technology in the context of Deaf confessions will have been made, we will conclude by offering some preliminary practical suggestions toward making prudent use of such technology in the pastoral care of Deaf Catholics.

### 1. Basic Right of the Faithful To Access the Sacrament of Penance

A complex of canons protects the fundamental right of the faithful to participate in the sacramental life of the Church.<sup>2</sup> Canon 214, taken from among those norms setting out "The Obligations and Rights of All the Christian Faithful", asserts the right of the faithful "to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments", and canon 843 §1, located among the first provisions regulating the sacramental life of the Church, forbids ministers from withholding sacraments from those faithful "who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them."<sup>3</sup> Specifically with regard to penance, canons 959 and 988 encourage the frequent reception of this sacrament by those striving for Christian perfection; canons 986 and 991 require confessors to make themselves available to penitents in necessity, regardless of their ritual Church membership; and canon 989 requires confession (at least annually) by those conscious of grave sin. Beyond question, then, facilitation of the Christian faithful's access to

2. Sound pastoral theology makes similar provisions, of course. See, e.g., *Catechism of the Catholic Church*, 2nd ed. (Rome: Libreria Editrice Vaticana, 1997) [hereafter CCC] nn. 1455-1458 and 1469-1470; John Paul II, Adhortatio apostolica *Reconciliatio et poenitentia*, December 2, 1984: AAS 77 (1985) 185-275 [herein, John Paul II, *Reconciliatio*], *passim*; and Colman O'Neill, *Meeting Christ in the Sacraments* [1964], rev. ed. by R. Cessario (New York: Alba House, 1991) esp. 267-270.

3. Text and translations of the Johanno-Pauline Code from *Codex Iuris Canonici, auctoritate Ioannis Pauli PP. II promulgatus*, published in AAS 75/2 (1983) 1-320, as corrected and amended; English translations from *Code of Canon Law, Latin-English Edition, New English Translation* (Washington DC: Canon Law Society of America, 1999). Text of the Pio-Benedictine Code from *Codex Iuris Canonici, Pii X Pontificis Maximi, iussu digestus, Benedicti Papae XV, auctoritate promulgatus*, published in AAS 9/2 (1917) 11-521, as corrected and amended; English translations from Edward Peters, *The 1917 Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus* (San Francisco CA: Ignatius Press, 2001). This article examines canonical and sacramental questions from the perspectives of the Roman rite only.

sacramental penance is an important pastoral value that is protected in the law. Unfortunately, however, despite numerous canonical and pastoral expressions of the importance of penance in Christian life, not all the faithful have, in fact, adequate access to this sacrament. Among those who face especial obstacles in celebrating the sacrament of penance are deaf Catholics.<sup>4</sup>

## 2. Unsatisfactory Options for Penance by Deaf Catholics

Currently, deaf Catholics have only two inadequate options for making their sacramental confessions. First, deaf penitents trying to access sacramental penance may write out their sins and present the list to a confessor.<sup>5</sup> Written confession, however, is onerous and confessors are not permitted to demand writings from those unable to express their sins orally with the normal specificity. As the 19<sup>th</sup> century moralist Gury, responding to suggestions that persons bereft of speech but who knew how to write should be *required* to express their sins in writing,<sup>6</sup> said:

4. See, e.g., Anne Bamberg, "Passions autor des signes et confession du sourd: enquête à partir de manuels de morale en tradition catholique," *Praxis Juridique et Religion* 15 (1998) 97-155 [hereafter Bamberg, "Passions"] at 97 where she remarks: "La confession du sourd a toujours posé quelques problèmes." While the focus of this analysis is on deaf Catholics who use sign language, it should be noted that some *hearing* persons who are deprived of speech might also utilize sign language as their primary means of communication. See, e.g., "Speech disorders," in *The American Medical Association Encyclopedia of Medicine*, ed. C. Clayman (New York: Random House, 1989) 926.

5. Over the years, some have tried to facilitate the written confessions of the deaf by providing printed forms that could be filled in by a deaf penitent and presented to a confessor. See, e.g., a two-page flyer titled "Penance for the Adult Deaf," Archdiocese of Detroit, 11 December 1956, discussed in Dolores Beere, *History of the Catholic Deaf: St. John's Center* (Detroit MI: Archdiocese of Detroit, 1984) 17. A variation of this approach features multilingual parallel lists of sins on which literate penitents, deaf or otherwise, could check-off sins in their language whereupon confessors would trace the marker to a language that he could read. See, e.g., E. J. Mahoney, "Q. 127, Penance in a foreign language," *Priests' Problems* (London: Benziger, 1958) 169-170. While such printed forms did not overcome the deficiencies of written confession in general (e.g., the possible need for later reiteration of mortal sins by kind and number to a confessor who understood the penitent's language, a feat, by the way, often unachievable by the Deaf, as discussed below), they at least evidenced some awareness of the special needs of the Catholic Deaf community.

6. For the argument that "educated" deaf should be obliged to confess their sins in writing, see S. Klopfer, "The Penance of Deaf-Mutes," *American Ecclesiastical Review* 57 (1917) 78-82, published despite obvious editorial disagreement with Klopfer's thesis. Klopfer's

"The more common opinion is against this, given the danger of revelation and because writing is an extraordinary measure which the Church has never held as obligatory . . . moreover, such a method is public in that writings are public . . . While it can be permitted, care should be taken that any writings are immediately destroyed."<sup>7</sup> Even for those penitents willing to use writings, however, the pastoral deficiencies of this approach are many: besides the risk that neglected notes might find their way into the hands of others, there is, for example, little chance for the penitent to develop potentially relevant circumstances surrounding his or her behavior or to ask additional questions of the confessor. Confessors, in turn, are severely limited in the number and depth of questions they can pose to penitents and in the quality of the personal advice they can offer to the faithful. Finally, absolution in these cases is witnessed (if at all) by the penitent as a series of unspecified gestures (e.g., what appears to be a simple sign of the cross, visually indistinguishable from a common blessing); the penitent leaves shriven but with an impoverished sense of the salvific power of Christ in the sacrament.

The second option available to deaf penitents who know sign language is to make confession through an interpreter per canon 990.<sup>8</sup> It is well-recognized, however, that confession through an interpreter poses a variety of psycho-emotional difficulties and that practical problems with this approach are many. Dom Augustine, commenting on the predecessor norm of the current canon 990, namely canon 903 of the

---

position has attracted no modern following (I think for the reasons set out above) and need not detain us. But see fn. 18.

7. Joannes Gury, *Compendium Theologiae Moralis*, 2 vols., 5<sup>o</sup> ed., rev. by Ferreres (Lugduni: Eugenius Pontificius, 1910) [hereafter Gury, *Compendium*] 2: 315, n. 503: "Communior sententia negat, tum ob periculum revelationis, tum quia scriptura est medium extraordinarium, quod nunquam in Ecclesia habitum est velut praescriptum, tum etiam quia . . . talis modus confessionis de se et publicus, quum scriptura sit de se publica . . . Permitti tamen id potest; at curandum, ut statim scriptura obleatur." See also Eduardus Regatillo, *Ius sacramentarium*, 4<sup>o</sup> ed. (Santander: Sal Terrae, 1964) [hereafter Regatillo, *Ius*] at 319, n. 539 wherein: "Nec tenetur [confessarius] interrogare et responsa exquirere scripto; nec poenitens ea sic dare; nam est medium odiosum."

8. Canon 990. Nemo prohibetur quominus per interpretem confiteatur, vitatis quidem abusibus et scandalis atque firmo praescripto can. 983 §2. *English translation*: No one is prohibited from confessing through an interpreter as long as abuses and scandals are avoided and without prejudice to the prescript of can. 983 §2.

Pio-Benedictine Code,<sup>9</sup> spoke for the overwhelming majority of commentators when he said "Confessing through an interpreter is extraordinary and, considering human reluctance in matters of conscience, a very burdensome means. Therefore it cannot be held that God meant to impose such an obligation on men."<sup>10</sup> Commentators on the Johanno-Pauline Code are of the same mind: the use of interpreters cannot be required of those wishing to make penance.<sup>11</sup>

But even for those deaf Catholics who would be willing to use sign language interpreters for penance, the logistical problems associated with interpreted confessions are many. Besides the obvious discomfort most people feel in expressing their sins not simply to a priest, but before a stranger (or, as is more likely, a family member) serving as interpreter,<sup>12</sup>

9. Canon 903 of the Pio-Benedictine Code stated "Qui aliter confiteri non possunt, non prohibentur, si velint, per interpretem confiteri, praecavendo abusus et scandala, firmo praescripto can. 889 §2." *English translation*: Whoever cannot otherwise confess is not prohibited if they want from confessing through an interpreter taking care against abuse and scandal with due regard for the prescription of Canon 889 §2.

10. Dom Augustine (Charles Bachofen), *A Commentary on the New Code of Canon Law*, in 8 vols., (New York: Herder, 1918-1922) 4: 340. See also Stanislaus Woywod, *A Practical Commentary on the Code of Canon Law* [1925], 2 vols., rev. by C. Smith (New York: Wagner/Herder, 1957) 1: 509-510, n. 821, wherein: "The case will rarely occur that a penitent wants to make use of this extraordinary means of making his confession;" and Regatillo, *Ius* at 379, n. 646, wherein he observed that confession through an interpreter "est medium extraordinarium et periculosum." This analysis can in fact be traced back earlier than the 1917 Code. Gury, for example, writing two generations before Dom Augustine *et al.*, was concerned that penitents using interpreters were vulnerable to exposure, derision, and other negative reactions. See Gury, *Compendium*, 2: 315, n. 504, wherein: "confiteri per interpretem est onus gravissimum et multis periculis obnoxium, e. gr. revelationis, irrisiois, etc." Indeed, the refusal of the Church to impose the obligation of using interpreters for confession can be dated back at least to the 17<sup>th</sup> century. The source for Canon 903 of the Pio-Benedictine Code was a declaration by the Congregation for the Propagation of the Faith (dated September 6, 1630) upholding the right of penitents to use interpreters in confessions, but firmly stating that the use of interpreters can never be required. See Doc. 4444, in *Codicis Iuris Canonici Fontes*, ed. Petrus Gasparri and Justinianus Serédi, 9 vols. (Rome: Typis Polyglottis Vaticanis, 1923-1949) 7: 6.

11. See, e.g., Frederick McManus, commenting on Canon 990, in *New Commentary on the Code of Canon Law*, ed. John P. Beal et al. (New York/Mahwah, NJ: Paulist Press, 2000) 1172 [hereafter McManus, *CLSA New Comm.*] wherein: "The canon permits, but does not require, that a penitent make use of the service of an interpreter. . . .", or Giuseppe Damizia, commenting on Canon 990, *Commento al Codice di Diritto Canonico*, ed. Pio Pinto (Rome: Urbaniana, 1985) 590 [hereafter Damizia, *Commento*], wherein: "Non è obbligatorio ricorrere all'interprete."

12. The personal complications occasioned by the deaf having to use family members as interpreters, in confession or otherwise, are many. See generally Paul Ogden, *The Silent Garden* (Washington DC: Gallaudet, 1996) [herein Ogden, *Garden*] 75-79. Additional complications

interpreters would have to be scheduled for the precise time the priest and penitent wish to meet. The interpreter's skill level (which is easy for hearing people to over-estimate)<sup>13</sup> must be adequate to the task, and the possibility of professional fees must be considered.<sup>14</sup> It must be clear to all involved that interpreters understand the gravity of the obligation of confidentiality they incur; those concerned must be reasonably confident of the interpreters honoring it.<sup>15</sup> Finally, as McAreavey cautions, even with an interpreter "the confessor will be seriously handicapped in discerning the state of the soul of the penitent and in giving the necessary advice and counseling."<sup>16</sup> These factors, individually and in combi-

can arise when the interpreters, especially non-professional interpreters, of Deaf confessions become uncomfortable communicating the specific admissions or descriptions of certain sins, a situation that might result in the interpreter having to withdraw, albeit awkwardly, from the service. See, e.g., Registry of Interpreters for the Deaf, Code of Ethics (rev. 1995), no. 2, as discussed in Melanie Metzger, *Sign Language Interpreting: Deconstructing the Myth of Neutrality* (Washington DC: Gallaudet University, 1992) [herein, Metzger, *Interpreting*] at 208.

13. See, e.g., Anne Bamberg, "Culture sourde, droit canonique, et déontologie professionnelle: réflexion à partir des interprètes pour Sourds," *Ephemerides Theologicae Lovaniensis* 81 (2005) 200-213, [hereafter Bamberg, "Culture"] esp. 209-210, relating an example of confusion between French Sign Language and signed French with consequently pastorally erroneous and even embarrassing mistranslations, and A. Molina Meliá in *Código de Derecho Canónico Edición bilingüe, fuentes y comentarios de todos los cánones*, ed. Antonio Benlloch Poveda, 8<sup>th</sup> ed. (Valencia: Edicep, 1994) [hereafter Benlloch Poveda, *Código*] 446, who makes the disquieting observation that: "Basta que el intérprete conozca suficientemente la lengua común a confesor y penitente. *No se requiere titulación alguna.*" Emphasis added.

14. "One issue that must be considered [by parishes] is that of paying interpreters [for the Deaf] . . . Some interpreters may consider interpreting in church as a personal ministry and so willingly interpret on a volunteer basis . . . However, interpreting is a profession and a livelihood for many interpreters; it may not be fair or just to expect them to donate their services . . . If interpreters are to be paid, they should be paid by the parish community." Anthony Schuerger, "Making parishes accessible to Deaf persons," *Church* (Fall, 1989) 28-33, at 30.

15. See Bamberg, "Culture," esp. 207 and 209, and canons 983 §2 and 1388 §2 for expressions of the canonical obligation of confidentiality of confession and consequences for violating it. Damizia suggests that it is the obligation of the confessor to admonish the interpreter about the gravity of the canonical obligation to observe secrecy: "Se il penitente sceglie l'interprete, il confessore lo deve ammonire sul grave obbligo che assume di conservare il segreto a norma del can. 983 §2." Damizia, *Commento*, 590. In addition to confidentiality obligations arising from canon law, professional interpreters are bound by professional norms on the confidentiality of communications and fidelity of translations. Besides the kind of Code of Ethics requirements referenced in fn. 12, above, see also Janice Humphrey and Bob Alcorn, *So You Want to Be an Interpreter: An Introduction to Sign Language Interpreting* (Salem OR: Sign Enhancers, 1995) esp. 255-289. Of course, the great majority of persons actually serving as interpreters for Deaf confession are not likely to be professionals trained in canonical or professional confidentiality obligations.

16. See John McAreavey, commenting on Canon 990, in *The Canon Law: Letter and Spirit*, ed. Gerard Sheehy et al. (Collegeville, MN: Liturgical Press, 1995) 539. At least part of this

nation, make confession by the Deaf through sign interpreters an inadequate solution to a serious pastoral problem.

Indeed, the problems associated with both written and interpreted confessions are so serious that all modern authors agree that Catholics limited to these two options for confession are excused from the normal requirement expressed in canon 960 of the Johanno-Pauline Code that confession be "integral", that is, from the requirement that penitents confess their grave sins according to species and number.<sup>17</sup> But, while such an exception in regard to integrality of confession, encountered on an occasional basis by, say, a penitent traveling in a foreign land, raises no serious or on-going pastoral problems, routine resort to this accommodation as must be made by *deaf* Catholics poses an alarmingly different situation: indeed, it is not uncommon for deaf Catholics, whose deafness is a permanent condition that will not be allayed by, say, return to familiar territory, to go their entire lives without a single integral confession.<sup>18</sup> One must therefore ask, should an exception to such an important sacramental characteristic as "integral confession" be allowed to morph into,

---

difficulty in assessing the "state of the soul" of the penitent might arise from unavoidable interpreter-bias. As Metzger notes, "In discussions of the issue of [sign-language] interpreter neutrality, the anecdotes that interpreters and laypeople share suggest that the traditional perceptions of the interpreter's role as a neutral conduit of language is at odds with people's real-life experiences. . . . Recent sociolinguistic analysis of interpreted interactions indicate that the role of interpreters is not as neutral as much of the literature has either assumed or prescribed." Metzger, *Interpreting*, 1 and 3, and reiterated at 204.

17. For some Johanno-Pauline commentators making this observation, see McManus, *CLSA New Comm.*, 1172 wherein "If the penitent is unwilling to use the services of an interpreter, the integral confession of sins may be morally impossible in accord with canon 960", and Benlloch Poveda, *Código*, 446 wherein: "en cuyo caso excusa la confesión o su integridad." Among Pio-Benedictine commentators making this same point, see, e.g., Heriberto Jone, *Commentarium in Codicem Iuris Canonici*, 3 vols. (Paderborn: Officina Libraria F. Schönigh, 1950-1955) 2: 143, wherein "Qui confiteri potest solummodo per interpretem, excusatur ab integritate confessionis" (original emphasis), and Pietro Palazzini, "Interpres," in *Dictionarium Morale et Canonicum*, ed. Pietro Palazzini, 4 vols. (Rome: Officium Libri Catholici, 1962-1968) 2: 787-788, at 787 wherein: "grave incommodum . . . est causa impotentiae ad integritatem servandam in confessione."

18. The few older authors who, like Klopfer, seemed to encourage non-speaking penitents to write out their confessions, took their position, I think, out of an understandable concern that the consciences of deaf Catholics would, over time, as a result of the chronic lack of integrality in the confessions, go unformed. See, e.g., Eduardus Genicot and Ioseph Salsmans, *Institutiones Theologiae Moralis*, 2 vols., 17<sup>th</sup> ed. (Brussels: Édition universelle, 1951) 2: 171, n. 258. One need hardly add that integral sacramental penance is, according to traditional moral-sacramental analysis, contingently necessary for salvation, making the possibility of achieving coherent expression of sins by species and number in such cases all the more important.

not simply a common, but the almost invariable practice within a given group of the faithful?

However unsatisfactory these two above methods for sacramental penance are, they were, until quite recently, the only two options available to Deaf Catholics desirous of celebrating the sacrament of penance. Recently, however, some dramatic developments in Deaf life and ministry have occurred, developments that offer the possibility of major improvements in the ability of Deaf Catholics to access the sacrament of penance under pastorally favorable circumstances. One of these developments I will call "human" and occurred within the Church, the other I will term "technological" and arose within the Deaf community.

### 3. Recent Developments Portending Greater Access to Penance for Deaf Catholics

A) **The human development.** The first development, a "human" one occurring within the Church, has been the recent ordination of Deaf priests for active ministry. Since 1977, several Deaf priests have been ordained in the United States and are currently engaged in regular pastoral ministry to the Deaf.<sup>19</sup> Deaf Catholics with local access to Deaf priests (or to the relatively few hearing priests who are competent in sign)<sup>20</sup> can confess in sign language, thereby achieving immediate, accurate, and confidential communication with a confessor who can reply in that language with equal clarity and ease. A Deaf penitent's hearing loss, otherwise such a pervasive factor in his or her relations with the world, is

19. See generally Edward Peters, "Canonical and cultural developments culminating in the ordination of Deaf men during the twentieth century," *Josephinum Journal of Theology* 15 (2008) 427-443 [herein Peters, "Developments"], esp. 427-430. Deaf clergy now also minister in Great Britain, Spain, France, Brazil, and South Korea. See also Edward Peters, "The ordination of men bereft of speech and the celebration of sacraments in sign language," *Studia Canonica* 42 (2008) 331-345 [hereafter Peters, "Sign"] at 333, fn. 7 therein.

20. See generally Peters, "Developments," at 439, fn. 32 therein. Reliable figures are not available on the number of hearing priests who are sufficiently skilled in sign language to the point where they can celebrate the sacraments in sign, nor does one's ability to offer Mass in sign language necessarily equate to one's having sufficient skill to celebrate the sacrament of penance in sign, nor are all signing priests available for full-time ministry with the Deaf. In any case, the number of priests, Deaf and hearing, competent in sign language is not adequate to meet the current ministerial needs of Deaf Catholics, let alone is that number sufficient for the pressing demands for Deaf evangelization facing the Church.



rendered irrelevant by celebration of the sacrament with a priest skilled in sign language, and the rich range of personal exchanges that should be possible between confessors and penitents—which kinds of communications hearing Catholics take for granted—can finally be made available to the Deaf.

**B) The technological development.** The second development with implications for our question, the “technological” development, arose within the Deaf community in several rapid stages. During the same decades in which small but growing numbers of Deaf priests began to make their appearance in ministry, the technological revolution that more lately has marked society as a whole has had a particular impact on the Deaf. As Paul Ogden has observed, “Deaf people now have access to problem-solving devices that prior generations never dreamed of.”<sup>21</sup> In hardly two generations, using technology for communications has become second nature to the Deaf.

Beginning in the 1960s, text-teletype machines (TTYs) and telephone communication devices for the deaf (TDDs) allowed the Deaf to use telephone lines to communicate with other persons via short digital text messages (sometimes printed on narrow rolls of paper), while in the 1980s telecommunications relay services enabled Deaf with TTYs to communicate with hearing persons through professional interpreters voicing their messages to those not possessed of TTYs, greatly expanding communication options for the Deaf.<sup>22</sup> Quite recently, however, and most importantly for our purposes, the advent of affordable video communications technology (videophones, picturephones, webcams, Skype, Facetime, and so on) has made possible direct, real-time, fully-visual communication between persons whose primary language is sign. If one has not used a videophone—and the great majority of hearing persons have not had such an experience—the depth of the visual communication experience is unlikely to be fully appreciated.

21. Ogden, *Garden*, 248. An excellent overview of the history of staggering advances in deaf communication technology is available in the PBS/WETA documentary, “Through Deaf Eyes” (2007).

22. See generally Ogden, *Garden*, 190–191, 248–249; Peters, “Developments,” 437–438; and Gabriel Grayson, *Talking with your hands, Listening with your eyes* (Garden City Park NY: SquareOne, 2003) 8.

People communicating in the visual language of sign through modern video communications technology can see each other clearly. Both parties to the conversation directly perceive mutual appearances, demeanor, affect, dress, and so on, in brief, everything detectable about the other person outside of physical touch, and all of this is accomplished *without* the use of interpreters (even qualified and/or anonymous ones), and without resort to writing. Video communication technology represents perhaps the most significant breakthrough imaginable in distance communications options for the Deaf. Thus, in regard to sacramental penance of the Deaf, these two factors, the human and the technological, come together to present a question of first impression for canon law and sacramental theology: never before in Church history has there been an appreciable number of Deaf (and hearing) priests competent in sign language to begin to address the pastoral needs of Deaf Catholics, and never before has communication in sign language been possible at a distance of more than a few yards. From these two very recent and important developments, our question directly arises: may Deaf penitents and priests competent in sign-language use modern video communication technology to celebrate the sacrament of penance? Investigation of this question must proceed by careful stages for, as we shall see, considerable scholarly opinion would appear to hold in the negative. We begin, of course, by consulting the text of the law.

#### **4. Neither Canon Nor Liturgical Law Excludes the Use of Technology for Penance**

No explicit provision of Western canon or liturgical law requires that a confessor and a penitent be situated in close physical proximity to each other for the valid or licit celebration of the sacrament of reconciliation, and the very few norms that address the actual setting of sacramental confession (such as canon 964 §1 indicating churches or oratories as proper places for confessions) expressly permit penance to be celebrated *anywhere* for just cause (canon 964 §3, emphasis added).<sup>23</sup> Given, then,

23. Interestingly, the needs of deaf and, more specifically, hard-of-hearing penitents were among the earliest factors leading ecclesiastical authority to recognize the possibility of confessions being heard in places other than in traditional confessionals, such as in sacristies

that there is no sacramental need for, and often no possibility of, physical touch between penitent and confessor, and that instead, what is of crucial importance for the sacrament of penance is effective *communication* between penitent and priest, it is appropriate to observe that modern video communication technology achieves precisely this kind of communications possibility for Deaf Catholics. In short, no purely *canonical* objection can be raised to the use of video communication technology that makes possible full, present-time, confidential communication between Deaf priests and penitents.<sup>24</sup> But, notwithstanding the indifference shown by codified *law* to the mechanics or setting of sacramental confession, several authors have raised *sacramental disciplinary* objections to the celebration of confession-at-a-distance. Moreover, some of these objections seem to go not simply to the liceity but, according to some, even to the validity of the sacrament attempted under such circumstances. These objections must be forthrightly considered.

##### 5. Outline of *Academic* Objections to Using Technology for Penance

Among the various authors who could be quoted in opposition to confession-at-a-distance as aided by technology, I would take Felix Cappello,

---

or designated rooms out of ear-shot of third parties. See, e.g., Francis Fazzalano, *The Place for the Hearing of Penances*, Canon Law Studies 301 (Washington DC: Catholic University of America, 1950) [herein Fazzalano, *Place*] 75 and 99; Caspar Schieler, *Theory and Practice of the Confessional*, Clarke-Heuser trans., 2d ed., (New York: Benziger, 1905) 202–203; and Regatillo, *Ius* at 378, n. 646.

24. I offer this conclusion aware, of course, that some might cite Apostolic Penitentiary, circular letter *L'uso dei mezzi tecnologici*, October 23, 2002: *Enchiridion Vaticanum* (Bologna: Edizione Dehoniane, 2002) 21: 930–931 against it. A few observations on this letter seem in order. First, in expressing its concerns over the use of technology in matters of conscience, the dicastery addresses only *written* communications (*fax, Internet, posta elettronica, ecc.*), not the visual communication systems as proposed herein. Concerns about using writings in the context of Confession, however, are not new (see fn. 7 and accompanying text) nor have they ever been understood as precluding the use of writings in the celebration of the sacrament. Visual communications, in contrast, leave no physical memorial of the exchange, and so seem even less problematic in terms of confidentiality than would be written materials. Second, the dicastery limits its normative language to communications with the dicastery itself (*nelle comunicazioni alla Penitenziaria apostolica*) and offers no norms regarding the use of technology, visual or otherwise, in the actual celebration of the sacrament.

esteemed for learning and holiness alike,<sup>25</sup> as the most important. His writings on the use of technology in sacramental Confession are thoughtful and, for their day, adequately informed.<sup>26</sup> Moreover, Cappello balances appreciation of the fact that the sacraments are made for man, not man for the sacraments, with devotion to guarding the divine will behind the institution of the sacraments. In brief, to answer Cappello's objections to confession-at-a-distance would be, I suggest, to answer the concerns of the most important opponent of the use of communication technology for sacramental penance.

Cappello's opposition to confession-at-a-distance rests on two closely related points: first, the alleged inability of communication technology to establish a true human voice (specifically, that of the confessor in absolution), and second, the supposed inability of confession-at-a-distance to establish a "moral presence" between the penitent and the priest. Although Cappello's concerns for the role of the human voice in a sacrament and about the necessity of "moral presence" between ministers and recipients seem distinguishable, Cappello himself did not always observe that distinction, so neither can my responses to his concerns. I will consider first Cappello's concerns for the role of the human voice in sacramental penance.

#### 6. The Human Voice for Confession and Absolution

In light of the law permitting the use of interpreters and the common opinion allowing one to make a self-accusation of sin in writing, Cappello could not but concede the possibility of penitents *confessing* (that is, performing the act of self-accusation) without using a human voice. "It does not go to the validity of the sacrament that confession be *vocal*. Nor is there a divine precept that confession be carried out *in words*."<sup>27</sup> Pro-

25. On the high regard Cappello enjoys in ecclesiastical scholarship, see e.g., Lawrence Wrenn, "In diebus illis: some canonical giants in days of yore," *Studia Canonica* 35 (2001) 485-514, at 512-514.

26. I draw chiefly from Felix Cappello (Roman Jesuit, 1879-1962), *Tractatus canonico-moralis de sacramentis iuxta Codicem juris canonici*, 5 vols. (Rome: Marietti, various editions and years), vol. II *De Poenitentia* (4<sup>th</sup> ed., 1944) [hereafter, Cappello, *De Poenitentia*].

27. "Unde non pertinent ad valorem sacramenti quod confessio sit *vocalis*. Neque ullum existit praeceptum divinum de confessione *verbis* instituenda." Cappello, *De Poenitentia*, 122, n. 136.

vided that, for liceity, there is just cause for a non-vocal self-accusation of sin, and provided that the integral character of the manifestation be preserved to the extent possible, Cappello held that penitents may communicate their sins to the confessor in any coherent way.<sup>28</sup>

But Cappello took a very different position when it came to weighing the necessity of the human voice of the *confessor* in conferring *absolution*. "It is not simply a matter of liceity," Cappello wrote, "but for the validity of sacramental absolution, it is required that sacramental absolution be conferred by mouth."<sup>29</sup> Now, besides its obvious implications for the use of technology in conferring absolution, Cappello's position here raised more fundamental questions about the ability of non-lingual priests to offer absolution *at all*. For that matter, it raised questions about *hearing* priests using only sign language to confer absolution on the Deaf, for in such situations hearing priests frequently do not "voice" the form of absolution,<sup>30</sup> but only sign it.

In any case, regarding Cappello's more basic question about the validity of absolution conferred in sign language only (and not orally), I have dealt thoroughly with this question as part of the wider questions of sacramental form following in the wake of the recent ordinations of Deaf, non-speaking, men to the priesthood.<sup>31</sup> Summarizing here the conclusions of that article, those redoubtable authors, including Cappello, who asserted the necessity of "vocalization" of sacramental form, were, in short, completely unaware of the *linguistic* character of sign languages,<sup>32</sup>

28. "At *ex consuetudine Ecclesiae*, quae vim legis profecto habet, confessio fieri debet oretenus ab eo, qui loqui potest nisi iusta causa ab hac obligatione excuset, e. g. verecundia, impedimentum linguae, etc." Cappello, *De Poenitentia*, 122, n. 136.

29. "Non solum ad liceitatem, verum etiam *ad valorem* absolutionis sacramentalis requiritur, ut *ore* proferatur." Cappello, *De Poenitentia*, 65, n. 68, original emphasis.

30. Signing and voicing simultaneously is not impossible, but it is difficult even for the most skilled persons and, when it is done, it usually involves some distortion of the syntax of either the spoken language or the signed. See generally, Peters, "Developments," 435 and 437. Note that Cappello's position would not call into question the signed *confessions* of the Deaf made to *hearing* (specifically, lingual) confessors in sign language, because *absolution* could still be conferred by confessors orally without the Deaf hearing it. Indeed, most commentators noted that absolution need not be *heard* by any penitent, depending on the conditions under which sacramental confession was celebrated. See, e.g., Cappello, *De Poenitentia*, 65, n. 68, and 149, n. 168, and Regatillo, *Ius*, 293-294, n. 493.

31. See Peters, "Sign," *passim*.

32. See Peters, "Sign," 338-344. The linguistic character of sign languages (specifically American Sign Language, but the conclusions thereon are applicable to many other sign languages around the world) precisely as languages was not persuasively asserted until the

but, had these authors known about the *linguistic* character of sign languages, I have argued, they would not have phrased the unquestionable requirement that sacramental form be *expressed* concomitantly over the matter as specifically requiring that sacramental form be *voiced* over the matter.<sup>33</sup> Sacramental form conveyed in sign language is as completely communicated to, and is as thoroughly comprehensible by, anyone who knows sign language, as sacramental form in, say, Latin or English is as completely communicated to and understandable by anyone who knows Latin or English. In brief, *absolution* conferred in sign language is, we may say now, a valid and licit means of expressing the form of sacramental confession, and Cappello's specific insistence on a human *voice* itself for expression of sacramental form (in penance or otherwise) is no longer sustainable.<sup>34</sup>

But, even beyond his demand that a human *voice* be used for conferring absolution, (and before we move to Cappello's concerns about "moral presence" in the sacrament of penance), Cappello made other assertions about the use of technology as a vehicle to transmit the human *voice* that might raise questions for the use of technology to convey human *signs*. For example, regarding the use of a telephone, Cappello wrote: "As they say, conversation by telephone is an *artificial* means

---

early 1960s with the appearance of William Stokoe's landmark studies of American Sign Language. See Peters, "Developments," 434 and 437 and Peters, "Sign," 339-340. See also Jerome Schein & David Stewart, *Language in Motion: Exploring the Nature of Sign* (Washington DC: Gallaudet University, 1995) 23; and more generally C. Valli, et al., *Linguistics of American Sign Language: An Introduction* [1992], 4<sup>o</sup> ed. (Washington DC: Gallaudet University, 2005). Stokoe's original essay, "Sign Language Structure: an Outline of the Visual Communication System of the American Deaf," appeared in *Studies in Linguistics, Occasional Papers* 8 (1960).

33. See Peters, "Sign," 341-345.

34. Note that the same cannot be said about the requirement that absolution not be conferred *in writing*. It is one thing for a penitent to express his sins in writing, even in a writing delivered in advance to the confessor, who simply averts to it when conferring absolution orally to the penitent when he or she appears before him. But it is quite another to confer absolution in writing. Cappello spoke for the overwhelming majority of authors in repudiating absolution conferred in writing. See Cappello, *De Poenitentia* 72, n. 76, rejecting absolution conferred by telegram. I think Cappello's position against *written* sacramental form is correct. Writing is not a language, but rather, a code for representing a language, specifically, a spoken language. See Peters, "Developments," 433, 435 and 344. Moreover, written representations of languages do not, of themselves, offer the certainty that they represent a simultaneous expression of form over matter, and they seem open to abuse by way of forgery, mistake, and so on. Of course, none of these objections would apply to the use of sign language, which communicates *vivis manibus* with the same linguistic immediacy which with an oral language communicates *viva voce*.

of speaking with another person, in that a *human voice* is not transmitted, but rather, a new production of sounds arises in some sort of electrical medium, rather as in a phonograph. From the principles of science today, this is beyond controversy. Where a human voice is lacking, so too would be *vocal* absolution.<sup>35</sup> Similarly in regard to absolution conferred by (two-way) radio, Cappello wrote that the objections to the use of a telephone for absolution "apply even more so to absolution conferred by a radio transmission. A *truly human voice* or *oral* pronouncement is obviously lacking; indeed, there is here nothing more than a sonic reproduction achieved by a special instrument."<sup>36</sup> Of course, if a *human voice* itself turns out not to be necessary for the expression of sacramental form, Cappello's concerns about how such a voice might be transmitted are mooted; nevertheless, if only to the degree that Cappello's objection to technology's alleged inability to *transmit* a *human voice* might also apply to technology's alleged inability to *transmit* *human signs*,<sup>37</sup> how might one respond? I think as follows.

Basically, we must recognize that Cappello's concerns about the character of electronic communications are quaint today.<sup>38</sup> Perhaps during the infancy period in radio (namely, in the first third of the 20<sup>th</sup> century, precisely when Cappello's major works were being drafted and published),<sup>39</sup> people needed reminding that the voice they heard coming from, say, the "Marconi device" was not *actually* the voice of a speaker

35. "Collucutio, aiunt, per telephonicum est modus *artificialis* loquendi cum alio, ita ut non ipsa vox *humana* transmittitur, sed fiat nova productio sonorum per electricitatem aliudve medium sicut fit in phonographo. Quod ex principiis scientiarum hodie extra controversiam est. Deest igitur vox humana, atque proinde absolutio *vocalis*." Cappello, *De Poenitentia*, 70, n. 73. Cappello's analogy between a "voice" on a phone and a "voice" on phonograph seems fatally flawed, however, in that the first "voice" is *viva voce*, while the other is but a recording.

36. "... a fortiori applicantur absolutioni concessae ope transmissionis radiophonicae. Vox *vere humana* seu prolatio *oralis* deest plane; habetur quippe dumtaxat reproductio sonitus ope peculiaris instrumenti." Cappello, *De Poenitentia*, 71, n. 74.

37. To be clear, Cappello's fundamental objection to the radio being used for absolution, namely, that it does not convey a *human voice*, fails if his supposition that the *human voice* is needed for absolution is itself infirm, and I have shown that such a "voice" requirement in the sacraments is unsustainable. But we are asking now whether Cappello's *other* objections to radio have any implications for the use of video communication technologies, even though these are technologies that Cappello could scarcely have imagined.

38. As an aside, one might wonder how the Apostolic Penitentiary's distrust of "technology" in regard to written communications (see fn. 24) and its insistence on so-called "snail mail" letters will strike observers in the not-too-distant future.

39. See generally, Anon., "Scripta R. P. F. M. Cappello S.I.," *Periodica* 48 (1959) vii-xxiv.

mysteriously carried through the "ethers" as if through some ephemeral tube, but today no one suffers from such confusion. Indeed, if today one were to listen to, for example, the president's State of the Union Address and remark to others that "What you hear is not really the president speaking. It's only vibrations in the air set up by electronically instigated agitations in a diaphragm within a receiver that are in turn being caused by the impulses of electromagnetic waves emanating from a transmitter, etc., etc.," one would be regarded as slightly odd. Or again, while a husband might well say to his wife, "Your mother called up and wants to talk you", he would be regarded as pretentious at best if he said, "Today I heard a sequence of electronically occasioned sounds waves emanating from the telephone ear-piece that made me think of your mother and implied to me a desire on her part to communicate with you via a similar technological process." Today we easily recognize that there is nothing imaginary, false, magical, or supernatural about immediate communication between live persons using simultaneous audio or even video technologies. Modern two-way electronic communications by radio, telephone, or video communication technology provide real-time, authentic, accurate, human communications in every relevant way. This is not to argue that just *any* of these methods can be used for sacramental confession, but only to put to rest Cappello's objections to using modern communication technologies for confession based on their supposedly "artificial" natures.<sup>40</sup>

But beyond these sufficient replies to Cappello's concerns about technology usage in the sacrament of penance, there is, I suggest, evidence that even Cappello himself might have left open the possibility that electronic technology *could* be applied to make possible sacramental

40. Although it goes beyond the scope of this article, it seems worth noting, too, that complex, real-time, human messages from a sender, regardless of the manner employed to convey such messages (e.g., audibly through ears, visually through the eyes, tactilely through Braille or Morse Code, and so on), are all eventually reduced to electro-chemical phenomena in the brain of the recipient for purposes of perception. Now, exactly *how* such messages reach the brain of the recipient (through the ears, through the eyes) seems of less importance than *whether* such messages are perceived accurately. This fact in turn argues in favor of recognizing the sufficiency of (and for accepting as sacramentally licit), human communications whether those communications are conducted audibly or visually, since both kinds of messages, whether oral or visual, are eventually reduced to electro-chemical events for perception. I am indebted to Fr. Thomas Margevicius of the Saint Paul Seminary School of Divinity for suggesting this consideration to me.



penance under circumstances that he imagined as rare, but which, in fact, are common place in the Deaf Catholic community. Upon closer examination, it seems, in short, that even Cappello did not *entirely* rule out the use of technology for the conferral of absolution.

Cappello duly warned, for example, that confessors using telephones to receive confessions and to confer absolution might be mistaken or misled about the true identity of penitents or about their dispositions, and he expressed reasonable concerns for security of the seal.<sup>41</sup> But he also wrote "This method of absolution is certainly illicit, indeed gravely so, *except perhaps in a case of extreme necessity when it is the only method which one can try.*"<sup>42</sup> Similarly, with regard to absolution conferred by two-way radio, Cappello wrote: "Therefore, all things being considered carefully, absolution conferred by radio-telephonic transmission must be considered invalid and entirely illicit. Nevertheless, if the distance were not notable and moral presence could be achieved in some other way, [then] in the case of true necessity, e.g., during hostile invasions, conditional absolution might be licit."<sup>43</sup> These two concessions by Cappello regarding the possibility of confession-at-a-distance being aided by technology under unusual circumstances contain the seeds, I think, from which springs a persuasive argument for upholding the liceity of video communication technology in the confessions of the Deaf, that is, among Catholics who are chronically cut-off from the normal avenues of penance and are constantly in need of an alternative: If *hearing* people can, under some circumstances, make use of technology to facilitate

41. See Cappello, *De Poenitentia*, 69-70, n. 73. It was perhaps somewhat "unfair" of Cappello to point out the dangers of deception in regard to penitent's identity and/or disposition when using the telephone for confession, but not to concede that the very same risks could be associated with anonymous confession in a confessional, or even with face-to-face confession celebrated with an unknown penitent. One may ask, in any case, exactly what is the concern *for the sacrament* here? If I get my brother to go to confession for me, pretend to be me, and receive absolution, who doubts but that I have not thereby been to confession or that I have not been absolved?

42. "Huiusmodi absolutio est certe *illicita* et quidem graviter, excepto forte casu extremae necessitatis, quando hic modus sit unicus, qui tentari possit." Cappello, *De Poenitentia*, 69, n. 73, my emphasis.

43. "Itaque, omnibus accurate consideratis, absolutio concessa per transmissionem radiophonicam invalida atque *illicita* omnino dicenda est. Tamen, si distantia non esset notabilis et moralis praesentia aliquo modo haberetur, in casu verae necessitatis, v.g. tempore incursionum hostilium, absolutio conditionata licita foret." Cappello, *De Poenitentia*, 71, n. 74. Cappello's recognition of liceity here necessarily implies his recognition of validity.

their celebration of the sacrament of confession, then why cannot the *Deaf*, who face even greater and more persistent obstacles in celebrating the sacrament of penance, do likewise? The question, I suggest, answers itself.

At this point, we may turn to Cappello's second reason for rejecting confession-at-a-distance, an objection that rested on a related but distinct objection, namely, that confession-at-a-distance failed to establish a "moral presence" between penitent and confessor.

#### 7. Mutual "Moral Presence" of Confessor and Penitent

I have located no specific passage in Cappello that concisely explains what "moral presence" of penitent and confessor was, and instead I have found only passages that assumed its importance and argued for its maintenance accordingly.<sup>44</sup> In large part, however, it seems that Cappello grounded his demand for a "moral presence" between penitent and confessor on his prior assumption that the human voice was the only way to express sacramental form, as follows: "Given that absolution must be conferred *vocally*, it is quite obvious that it cannot be conferred except on one who is *present*, specifically, to one who, in the normal and ordinary way of talking and acting, can hear the words or to whom the confessor is able to talk."<sup>45</sup> But of course, as discussed above, Cappello's prior demand that absolution be conferred *orally* cannot itself be sustained, and his objections to the use of technology for "vocal" confession are vitiated by his own acceptance of the use of communications technology for confession under certain circumstances; thus Cappello's demand that penitent and confessor be in the same "proximity" is already greatly weakened. But, even if some other basis for requiring "moral presence"

44. The Apostolic Penitentiary, too, in its circular letter (see fn. 24), referred to the importance of "physical presence" (*immediatezza fisica dei soggetti*) but did not define that presence or explain what about it was special.

45. "Eo ipso quod absolutio *vocaliter* proferri debet, manifesto liquet dari non posse nisi *praesenti*, ei nempe qui, iuxta communem et ordinarium loquendi atque agendi modum, potest verba audire vel ad quem confessarius potest loqui." Cappello, *De Poenitentia*, 66, n. 69. Original emphasis.

between penitent and confessor could be adduced,<sup>46</sup> one need simply ask whether video communication technology is able to establish such presence? We may begin to answer this question by looking at other sacraments for the degree to which they might require "presence".

It is certain that four sacraments (baptism, confirmation, holy orders, and anointing of the sick) require not simply a "moral presence", but actual physical *contact* between minister and recipient for valid and licit celebration.<sup>47</sup> These sacraments *cannot* be celebrated outside of the physical presence of minister and recipient because they demand physical contact between minister and recipient for their execution. A fifth sacrament, Eucharist, although not requiring a recipient for valid consecration, is universally regarded as requiring that the matter (bread and wine) be within easy reach of the priest expressing the form.<sup>48</sup> In regard to the notion of "presence" between minister and recipient, then, these five sacraments undoubtedly require *physical* proximity for their valid and licit celebration and could not be celebrated at a distance. But can the same be said about the two remaining sacraments, namely matrimony and penance? We consider matrimony first.

The physical presence of the ministers/recipients (bride and groom) is certainly *not* required for valid and licit celebration of matrimony (canon 1104 §1). The most that can be required is the physical presence of the *proxies* of the ministers/recipients, which presence in turn one might cast as the "moral" presence of the contractants to the marriage. Now, while obviously no one wishes to suggest that absolution could be conferred on a penitent represented by a proxy, the fact that matrimony *can* be celebrated by ministers and recipients who are *not* in each other's physical presence proves that at least some sacraments can be so celebrated, at least if something we may call "moral presence" can

46. Some of John Paul II's reiterations of the importance of "individual and integral confession" (canon 960) over, say, easy resort to general absolution, perhaps get at the importance of "moral presence" between priest and penitent albeit in different words. See John Paul II, *Reconciliatio*, 31 IV, and 32-33. Of course, confessions offered through modern video communications technologies would be "individual and integral".

47. For baptism, the water poured by the one expressing the Trinitarian formula must flow on the skin of the recipient (Halligan, *Sacraments*, 34); for confirmation, the minister must anoint the forehead of the recipient (Halligan, *Sacraments*, 84); for holy orders, the bishop must lay his hand on or directly over the ordinand (Halligan, *Sacraments*, 372); for anointing of the sick, notwithstanding the risk of contagion or physical aversion (which risks, interestingly, can be minimized by using an instrument to extend one's reach), the minister must apply the oil of the sick to the body of the recipient (Halligan, *Sacraments*, 345).

48. See Halligan, *Sacraments*, 103-104, and Regatillo, *Ius*, 116, n. 172.

be established. Our question can at last be squarely raised, then, as to whether penance, which does not of itself demand physical contact between minister and recipient, can be celebrated at an extended distance if suitably aided by technology.

Various analogical models for understanding the sacrament of penance have been proposed over the centuries, notably that of "accused-and-judge" and "patient-and-physician".<sup>49</sup> But, however common might be the physical proximity of subjects to their judges or patients to their physicians, neither analogate *demand*s physical proximity between relevant persons for the effective exercise of judicial authority or medical advice respectively. The routine pronouncement of judicial sentences by diocesan and appellate tribunals over persons who never set foot in those tribunals, and the increasingly common possibility of practicing various medical arts through remote communication technologies, seem sufficient to demonstrate this point, though many other examples could be adduced. Thus, the need for a *physical* presence between penitent and priest cannot be demonstrated either by resort to the rite of penance itself or by invocation of the traditional analogies offered for the sacrament. Indeed, Cappello himself, as we saw above, allowed that "moral presence" could be established in some other way beside physical proximity in the case of confession by radio in times of necessity. But, whatever might be understood as constituting "moral presence" for valid and licit celebration of the sacrament of penance, one may fairly suggest that modern video communication technology accomplishes *precisely* that kind of presence among the Deaf who, as explained above, with the aid of video communications technology, can perceive all the sensory input necessary for personal communication in sign language.

Finally, Cappello's other concerns about, say, the possible deception of priests hearing confessions over the phone would vanish when sacramental penance by videophone is considered. His worries about possible confusion over a penitent's affect, demeanor, sincerity, and so on, would

49. Canon 978. §1. *Meminerit sacerdos in audiendis confessionibus se iudicis pariter et medici personam sustinere ac divinae iustitiae simul et misericordiae ministrum a Deo constitutum esse, ut honori divino et animarum saluti consulat. English translation.* §1. In hearing confessions the priest is to remember that he is equally a judge and a physician and has been established by God as a minister of divine justice and mercy, so that he has regard for the divine honor and the salvation of souls.

have been allayed (indeed, astoundingly allayed) had he ever witnessed human communication over modern video technology. Indeed, the ability of a priest to assess the person of a penitent confessing over a videophone would actually be *higher* than that of a priest hearing confessions anonymously through a grill. The ability of a signing priest to ask important questions of a Deaf penitent over a videophone would be *higher* than that of a priest receiving Deaf confessions in writing or through an interpreter. And finally, the ability of Deaf penitents to present more information relevant to their confessors, and to receive more detailed advice for the direction of their souls, would be *higher* with video communication technology than with interpreted, to say nothing about written, confessions. Beyond even these factors, the number of Deaf Catholics willing and able to confess directly to a signing priest (Deaf or hearing) over a videophone would unquestionably be higher than the number of those willing and able to confess through interpreters (assuming they were able to confess at all given the great distances that exist between most Deaf and their priests).<sup>50</sup> These factors, considered individually and as a whole, strongly suggest that Deaf penitents and their confessors would be, and would perceive each other to be, in each other's "moral presence" when celebrating the sacrament of penance over a videophone. Deaf and other penitents bereft of speech would thus be much more likely to celebrate the sacrament of penance than they would, or even could, without video communication technology.

The conclusion now seems clear: most Deaf Catholics live in a perpetual state of necessity in regard to accessing the sacrament of penance in their natural language of sign. If no less a defender of canonical tradition than Cappello can sanction the use of communications technology to enable hearing Catholics, when faced with grave obstacles in approaching the sacrament of penance, to approach remote confessors, then it seems that similar accommodation should be accorded Deaf Catholics to enable them to approach remote confessors for purposes of celebrating the sacrament.

50. More than speculation supports this assertion; priests in Deaf ministry report to me many requests from would-be Deaf penitents to celebrate the sacrament of Reconciliation via videophone, requests that, however, at present are being painfully declined over concerns in some circles about the use of technology in that sacrament.

### 8. Some Practical Considerations

Whenever a significant change in the manner of celebrating a sacrament is proposed, one must proceed cautiously and with ample opportunity for discernment of related concerns. Broadly speaking, two groups of Catholics, namely, Deaf and hearing, could be impacted by recognizing the possibility of celebrating penance with video communication technology. I think the concerns raised by the advent of video penance *among the Deaf* would be relatively few.

Most Deaf persons in developed nations take real-time electronic communications for granted, this indeed, as way of a life, and not simply as a convenience or novelty. The mechanics, and even the etiquette, of using video technology for communication would not need to be explained to them. Moreover, awareness of this option for sacramental celebration would spread rapidly within the Deaf community, a community traditionally tightly-knit and very quick to spread information of use to its members.

Certainly, lest the ease of video communications make Deaf priests (and hearing priests competent in sign) subject to interruptions round-the-clock, confessors for the Deaf should be able to establish regular times for receiving such calls from penitents, in rather the same way that hearing parishes have established fixed times for penance.<sup>51</sup> Moreover, I think that a confessor for the Deaf would be within his rights to decline celebrating penance by video with a Deaf penitent who could, with moderate effort, appear in person for the sacrament. Emergency requests for confessions by the Deaf could be handled the same way that emergency requests for confession among the hearing are handled, that is, on a case-by-case basis. Finally, given that confessions of the Deaf celebrated by video communications technology would likely involve penitents from many jurisdictions and a priest in yet another, the place of the

51. Practical experience is likely the best guide here as video communications might well take place, for example, across different time zones, making premature attempts at regimentation of video confession something especially to be avoided. Confessors celebrating Penance by video should, I suggest, wear the purple stole symbolic of jurisdiction where such usage is observed for confessions of the hearing to help all distinguish this sacramental communication from other personal exchanges, however confidential or spiritual they might be.

confessor conferring absolution should probably be regarded as the place of the confession for any juridic purposes.<sup>52</sup>

Turning to the wider *hearing* Catholic population, particularly among those populations with access to video communications technology (e.g., family members of deaf Catholics), approval of video communications for penance of the Deaf might raise questions about the possibility of their using video communications for penance of the hearing as well. Realistically speaking, and recalling Cappello's openness to technology in sacramental penance under certain circumstances, I cannot imagine how the recognition of the validity of sacramental penance over video communication technology for the Deaf would *not* result in requests that such an option be made available among hearing persons, and this, not without good reasons in some cases.<sup>53</sup> I do not want to anticipate how the Church might eventually want to rule on such requests in a future that portends the continued expansion of communications technologies. For all one knows, it might be that the introduction of video penance for the Deaf will serve as a *locus theologicus* for the wider Church's adoption of technology in celebrations of this sacrament.<sup>54</sup> Then again, perhaps not. But the questions about what use the Church might eventually want to make of video communication technology for the *hearing* need not be settled before recognizing its use by the Deaf. Indeed, one would hope that concerns about how this option might be applied to hearing persons

52. For example, cases of alleged delicts related to confession (such as solicitation in confession or the absolution of an accomplice, per canons 1378 and 1387) should regard the place of the confessor as the place of the delict for purposes of canon 1412. For all of the reasons that scholars oppose absolution in writing (chiefly, that writing is not a language but rather a representation of a language and because writing does not guarantee contemporaneousness of one's present intention to seek or confer absolution, per fn. 34 above), there should be no question but that confession by videophone must be "live" for validity of the celebration and that taped absolution would be invalid, this, without any need for a declaration of invalidity. Indeed, the attempt to record (visually or audially) confessional exchanges renders one susceptible to penal consequences under the terms of Congregation for the Doctrine of the Faith, "Decretum quo," (no date), AAS 80 (1988) 1367, authorizing the excommunication *latae sententiae* of those who, among other things, record (*captat*) sacramental confessions.

53. Besides the usual difficulties most penitents have in reaching confessors, more specialized cases are easy to imagine: for example: a spiritual *directee* has developed a fruitful relationship with a specific confessor, and one or the other is required to relocate. Could the *directee* continue to make confession to the confessor via videophone?

54. On the possibilities of the Deaf Catholic community serving as *locus theologicus*, see Marcel Broesterhuizen, "Faith in Deaf culture," *Theological Studies* 66 (2005) 304-329, at 325, and Peters, "Sign," at 345, fn. 45 therein.

would not adversely impact the consideration accorded to the option for the Deaf. The pastoral needs of deaf Catholics in regard to penance are severe, well-documented, and of long-duration. Not so among the hearing faithful.

In any case, a canonical mechanism for restricting the possibilities of hearing people seeking video confession, at least until such time as the ramifications of permitting this option within Deaf Catholic circles have been adequately explored, is readily at hand: consider faculties for absolution under canon 966 and following.

Briefly, the faculties for absolution that any given priest might enjoy now should be understood to apply to penances celebrated in the physical presence of the penitent.<sup>55</sup> To maintain this understanding (long implicit in the current practice, but now to be made explicit) with regard to oral celebrations of penance by hearing persons requires no action on the part of ecclesiastical authority. But, the grant of faculties to Deaf priests (and to hearing priests competent in sign) to celebrate the sacrament of penance with the Deaf by video communications technologies can, and probably should, be accomplished by a specific granting of faculties, issued in writing by the competent superior to the specific confessor in question (canons 966, 968, and 973), enabling the priest to celebrate the sacrament with Deaf Catholics using video communications technologies. Without such a *specific* grant of faculties to a priest (Deaf or hearing) to celebrate penance for the Deaf over a videophone, such attempted celebrations of the sacrament would certainly be illicit.

### Conclusion

For the first time in Church history, there is a small but significant number of priests (Deaf and hearing) available for celebrating the sacramental penances of the Deaf in sign language, and for the first time in social history there is available a safe and reliable technology enabling Deaf Catholics to communicate in real-time with remote confessors who are fluent in their language of sign. Examination of canon and liturgical law

55. The norms on jurisdiction for confessors have been greatly simplified over what obtained under the Pio-Benedictine Code, so that today a confessor with faculties from a place or institute of incardination has faculties everywhere unless expressly restricted. See canon 967 §2.



shows no obstacles to the use of video communication technology in the context of sacramental penance by the Deaf, and a closer look at academic objections to the use of technology for confession shows that such objections arose largely from an ignorance of the linguistic character of sign languages and from an inadequate understanding of the potential of modern communications technologies. Moreover, older but noteworthy opponents of the use of communications technologies in the celebration of sacramental penance, such as Cappello, conceded the possibility of hearing people using communications technologies when circumstances prevented the normal celebration of the sacrament, and we have demonstrated that the Deaf face precisely these circumstances on a chronic basis. Finally, the canonical institution of faculties for absolution offers a practical way of permitting Deaf Catholics to make prudent use of video communications technology in their confessions without altering the usual ways in which hearing persons access this sacrament.

The propriety of Deaf Catholics using modern video communication technology to make their confessions and to receive absolution from properly authorized confessors can and should be recognized.

---

#### ABSTRACT

*This article outlines the urgent pastoral need to improve access to the sacrament of penance among Deaf Catholics and examines whether Deaf Catholics should, notwithstanding sacramental and canonical scholarship opposing the use of technology in the sacrament of penance, be allowed to use modern video communications technology to approach remote confessors, accuse themselves of sin, and receive absolution validly and licitly. The chief objections to using video technology in the sacrament of penance—especially in regard to the requirement of a “moral presence” between confessor and penitent—are assessed in light of recent ecclesiastical and technological developments that suggest modern video technologies can support said moral presence. Older arguments for allowing hearing Catholics to use communications technology in their celebration of penance under certain circumstances are applied to the current situation of Deaf Catholics. Finally, a canonical mechanism for regulating the video-enabled celebration of the sacrament of penance is offered.*

---