

POPE JOHN PAUL II ADVISES LAWYERS & JUDGES TO REFUSE DIVORCE CASES

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Abstract: On January 28, 2002, Pope John Paul II declared that Roman Catholic lawyers and judges should refuse divorce cases. Rather, lawyers and judges should assist clients in reconciling with their estranged spouses. This pronouncement was not unique in its message, for the Pope has long maintained that the family unit should be preserved.

The Speech to the Roman Rota

Pope John Paul II presented his speech regarding divorce cases to the Tribunal of the Roman Rota, a church tribunal that hears marriage annulment cases.¹ The Pope emphasized that the Tribunal constitutes the “institutional expression of the solicitude of the Church in judging, according to truth and justice, the delicate matter of whether or not a marriage exists.”² The mission of the Tribunal “belongs to the whole area of the pastoral service to marriage and family life.”³ Thus, according to the Pope, the Tribunal has an obligation to develop “more fully the truth about marriage and the family” in order to best administer justice.⁴

Moving on to the role of professionals in the field of law, the Pope stated that legal professionals “should avoid being personally involved in anything that might imply a cooperation with divorce.”⁵ The Pope declared that lawyers “should always decline the

¹ Melinda Henneberger, *John Paul Says Catholic Bar Must Refuse Divorce Cases*, THE N.Y. TIMES, Jan. 29, 2002, at www.nytimes.com (last visited Feb. 2002).

² *Address of John Paul II to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota*, Jan. 28, 2002, www.vatican.va/holy_father/john_paul-ii/speeches/2002/January/documents.html, Para. 1 (last visited Mar. 2002).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at Para. 9.

use of their profession for an end that is contrary to justice, as is divorce.”⁶ By assisting clients in reconciling, lawyers “truly serve the rights of the person and avoid becoming mere technicians at the service of any interest.”⁷

In regard to judges, Pope John Paul recognized that such a clear-cut refusal to handle divorce cases is impossible for judges since they cannot exempt themselves from executing divorces.⁸ He stressed, however, that judges “must seek effective means to encourage marital unions, especially through a wisely handled work of reconciliation.”⁹

In support of his stance on the indissolubility of marriage, Pope John Paul pronounced that “the good of indissolubility is the good of marriage itself; and the lack of understanding of its indissoluble character constitutes the lack of understanding of the essence of marriage.”¹⁰ The Pope noted his concern over the increasing divorce rate in modern society and observed that divorce “has devastating consequences that spread through the social body like a plague.”¹¹ Instead of assisting married couples with divorces, he instructs clergy and members of the Church to help them positively resolve

⁶ *Id.* Pope John Paul observed that lawyers “can only cooperate in this activity when, in the intention of the client, it is not directed to the break-up of the marriage, but to the securing of other legitimate effects that can only be obtained through such a judicial process.” *Id.* (citing to *Catechism of the Catholic Church*, n.2383) (italics omitted).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (italics omitted).

¹⁰ Address of John Paul II, Para. 4, *supra* note 2 at 1 (italics omitted). Pope John Paul considers marriage to be a “divine and natural plan” and when a couple “[rebels] against that loving plan: then returns the ‘hardness of the heart.’” *Id.*

¹¹ *Id.* at Para. 8.

their marital difficulties.¹² According to Pope John Paul, combating divorce “is indeed worth the effort!”¹³

The Pope’s Stance on Divorce

Historically, the Pope has not wavered with regard to lifting the ban on divorce in the Roman Catholic Church. But, it is clear that the Pope has long considered divorce to be contrary to the church’s teachings.¹⁴ For instance, in a speech in February, 2001, the Pope counseled his priests to support their congregants, some of which may be “fragile families threatened by the social plagues of divorce.”¹⁵ Additionally, the Church has previously maintained, “[d]ivorce attacks the very institution of marriage and of the family.”¹⁶

Reaction in the Legal Community

Obviously, Roman Catholic lawyers have voiced concerns and disagreed with the Pope’s pronouncement. In Italy, several Catholic lawyers found the Pope’s directive to be intolerant and were concerned over its application to all divorce cases, and not just Catholic divorces.¹⁷ Thomas F. Portelli, vice-president of the American Catholic Lawyers

¹² *Id.* at Para. 5.

¹³ *Id.* at Para. 8 (italics omitted).

¹⁵ Address of John Paul II to the Catholic Pastors of the Caucasus on their “Ad Limina” Visit, Feb. 9, 2001, at www.vatican.va/html (last visited Feb. 2002).

¹⁶ Charter of the Rights of the Family, Oct. 22, 1983, Roman Catholic Church, Art 6(b).

Association, doubts that the Pope's directive will have much effect on lawyers.¹⁸

Attorney and former president of the New Jersey chapter of the American Academy of Matrimonial Lawyers, Robert Durst, "doubt[s] that in this day and age it would have any impact" on the American legal arena.¹⁹ Furthermore, John DeBartolo, a Roman Catholic and vice-chairman of the Family Law Section of the New Jersey Bar Association, was surprised by the Pope's remarks.²⁰ He emphasized that "in many cases, reconciliation is impossible," especially in situations of domestic violence where it would be unjust for a lawyer to refuse a divorce case.²¹

Moreover, as to the speech's direct impact on Roman Catholics in the United States, some lawyers have pointed to the selective nature of Roman Catholics in the United States when it comes to adherence to Roman Catholic doctrine and the like. One Roman Catholic lawyer, Tom Winter, stated that "American Catholics are used to listening and heeding the work of the Pope and sorting out what works best for themselves."²² Only time will tell how the Pope's Address to the Roman Rota will

²⁰ *Id.*

²¹ *Id.* Indeed, Marc Spindelman, assistant professor of law at the Ohio State University Law School, expressed his concern over women in violent marriages. Mary Mogan Edwards and Tiffany Y. Latta, *Speech Won't Reduce Divorces, Experts Say*, THE COLUMBUS DISPATCH, Feb. 1, 2002. He stated that "[t]reating marriage, without exception, as an unbreakable bond may respect the dignity of marriage, but at the expense and the dignity and equality of women as well as their safety, their freedom and their lives." *Id.*

affect the handling of divorce cases by Roman Catholic lawyers and judges in the United States.