

SOUTHEAST LAW INSTITUTE™

A. ERIC JOHNSTON
President
General Counsel

3800 Colonnade Parkway, Suite 545
Birmingham, Alabama 35243
E-mail: AEJ@SoutheastLawInstitute.org
Telephone: (205) 968-0900
Facsimile: (205) 968-6534

HARRY O. YATES
Executive Director
Associate Counsel

June 2002

Dear SLI Supporter:

There was a time in America when lawyers filed lawsuits for clearly delineated wrongs, in good faith, seeking proper restitution. In recent years, lawsuits with questionable legal theories and certainly without legal precedent, such as the tobacco litigation, have been filed. Perhaps, you have seen reports on recent claims concerning obesity and other health problems related to unhealthy foods.

Legislation was introduced in California proposing increased taxes on soft drinks in order to help control obesity, Connecticut plans to remove an exemption from the general sales tax for candy sold in schools, and the Federal Government may permit tax deductions related to obesity. Claims against fast food chains, dairies, and candy makers may proliferate. Are these suits really justified? Don't we have some responsibility for our actions?

Similarly, at one time it was *verboten* to sue churches. However, they too have become fair game for lawyers and special interests. There are many similarities between the genesis of tobacco-type litigation and lawsuits against churches. But, there are also some differences.

Protection of religious freedom is one of the primary purposes of SLI. For years, we have strived to protect the religious rights of individuals and the sanctity of churches. However, if the church, like big business, fails to properly fulfill its mission, it too may find itself in the sights of the legal system. This month's educational update discusses problems within the Catholic Church and how this may effect the legal standing of churches in general and now it certainly effects the standing of churches in the community.

The Free Exercise of Religion Clause of the First Amendment is not a "hide out", but a "shelter". It is a shelter that protects the church from the vulgarities of the world. It cannot be a hide out for the church when it is guilty of vulgarity.

As SLI strives to protect religious rights, both in the courts and in the legislature, we must have liberty and truth in the scriptural sense as our backbone; otherwise, we cannot achieve our goals of protecting religious freedom. Please be in prayer for the very serious events going on in America today and for SLI's efforts to work through these difficult circumstances.

We appreciate your continued prayerful and financial support of SLI. Please remember, these are the summer months and our work must go on. Please be faithful in your commitment to us, as we are to you.

Yours Very Truly,

A. Eric Johnston

AEJ/sh

The Southeast Law Institute™ is a 501(c)(3) organization providing legal counsel on constitutional and public policy issues.

**AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.**

To: SLI Supporters
From: A. Eric Johnston
Date: June 2002
Re: Sin and the Church: Should Government Regulate?

For, brethren, ye have been called unto liberty; only use not liberty for an occasion to the flesh, but by love serve one another. Galatians 5:13

The source of all liberty is the Word of God. Honest scholars admit the biblical foundations of America, such as the Ten Commandments and other laws found in books of the Bible, *eg.*, Deuteronomy. The liberty we have is truth and purity, but if we misuse that liberty for selfish and unscriptural activities, we do harm to not only the culture, but more importantly, the church itself.

SCANDAL IN THE CHURCH

A case in point is the current sex scandal in the Catholic Church. The scandal has nothing to do with committed, Bible-believing Catholics. It has to do with leadership in the church which has acclimated itself to the culture, rather than the culture to the church. This effects its theology and ultimately the mission of the church. When the church engages in activities which violate secular law, it must expect the magistrate (Romans 13) to intervene with its sword of punishment.

The real issue in the Catholic Church appears to be one of homosexuality. Because homosexuality is politically correct, there have not been many media reports from that perspective. The charges are always described as "sexual abuse" leaving the observer to vaguely assume the sex may have been with women and men. However, the reality appears to be that, while there may be some pedophilia, uncelibate priests were not so much after children or women as they were young men.

Catholic Priest, Rev. Richard John Neuhouse, of the Institute of Religion and Public Life, has said, "It is no secret that there has been a certain moral laxity and that a significant number of active homosexuals entered the priesthood in the last twenty or thirty years." George Weigel, a Catholic biographer, suggests there is a homosexual web of alliances in the church referred to as the "Lavender Mafia".

Catholic journalist, Michael S. Rose has recently written a book, *Good Bye, Good Men, How Liberals Brought Corruption into the Catholic Church*. There he explains that "orthodox" priests have been discouraged and that homosexual policies have prevailed resulting in false teaching and covering up of civil wrongs. This raises the question of whether certain important leaders in the Catholic Church have permitted the church, or at least significant parts of it, to wander away from the truth, thereby abusing liberty, and exposing not only the Catholic Church, but all churches to more state regulation. State regulation is a bane for the church and an agent against which we constantly struggle.

INTERVENTION OF THE LAW

As a result of the scandal, Manhattan District Attorney, Robert Morgenthau, has suggested that "all religions" should be required to report sexual abuse. A lawsuit has been filed in Minnesota under the Racketeer Influenced and Corrupt Organizations Act ("RICO") against Catholic Bishop Anthony J. O'Connell, alleging sexual abuse and that the church paid the victim to keep quiet. These actions suggest the church cannot be trusted any longer and the state must look over its shoulder to regulate its activities. Otherwise, our children will not be safe within the stained glass walls.

In Alabama, the church has remained free of state regulation because of the trust we have in the church as an institution. Recently, when there were efforts to pass the teacher and daycare worker criminal background check laws (§§ 16-22A-1 and 38-13-1, *1975 Code of Alabama*), we were able to include an exemption for ministers, priests, rabbis and such from state regulation. Similarly, clergymen are not required to report child abuse, as is

The Southeast Law Institute™ is a 501(c)(3) organization providing legal counsel on constitutional and public policy issues.

required of healthcare workers. See § 26-14-3, *id.* What is historically known as the "Priest-Penitent Privilege" (visions of the confessional cubicle come to mind), now widely known as the "clergyman's privilege" (See Rule 505, *Alabama Rules of Evidence*), protects confidential spiritual communications between the clergyman and his parishioner from all inquiry, by courts or otherwise.

Will these laws now be changed? Our argument has been: the church should police itself. During the 2002 Regular Session of the Alabama Legislature, an amendment was passed to the teacher criminal background check law to require checks on current employees. We again inserted the clergyman exception. We were fearful the exception would be stricken because of the priest scandal. This did not happen, both because of the Alabama Legislature's respect for the church, and as a more practical matter, a criminal background check would not reveal, for example, priests who had clandestine sexual relations with young men. Nevertheless, the events of the times gave rise to a justified concern.

CONCLUSION

If the church is guilty of crime, it, or appropriate persons within it, should be punished. The promiscuous climate of America, in this instance the growing acceptability of homosexuality, can destroy the church. We have seen the disintegration of the family as an institution, and we may yet see the disintegration of the church as an institution. Then, only one institution is left -- government, in all its regulatory glory.

The ramifications of a failing church cannot even be imagined. And lest we misunderstand, it is not just the Catholic Church that is failing in its mission. All churches (the church) must be concerned with the culture. The church must condemn sin, witness to the lost, and serve the needy, while regulating itself. The church must learn a lesson from these current events. If it does not, rather than protect the freedom of religion and the sanctity of the church, the law will be pursuing the church as a wrongdoer. The ultimate significance of this is that even those churches which remain true to God's Word will be threatened.