

# SOUTHEAST LAW INSTITUTE™

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March, 2002

Dear SLI Supporter:

As I considered what to prepare for this month's educational memo, I found I had too many choices. Last month, I attended the Conservative Political Action Conference (CPAC) in Washington, DC. I came away with information on a multitude of issues and was reminded of just how much needs to be done about the attacks on our culture. However, we promised to give a report on the activities in the Alabama Legislature. Since there has been a significant decision by the Alabama Supreme Court on the issue of homosexuality, it is important we report this information to you right away. You will find our report on that issue in this month's educational memo and we will return to other issues in the coming months.

As a nation, we are still contending with the war on terrorism and as laypersons we are just now beginning to realize what President Bush has been saying all along...the war is just beginning. One of the most important things that you as a citizen can do in that war is to vote intelligently. Since the last presidential race was so close it should be more apparent than ever just how important a single vote can be in determining an election and, ultimately, the policies which govern our activities as a nation.

While SLI does not participate in campaigns, I have still felt an unusual burden to say that we should all participate in the upcoming elections and vote for good leaders. It is not a presidential election year, but we have congressional, statewide and local races. These offices are the backbone of our political system. Whether or to what extent good laws get passed, such as those mentioned in the accompanying educational memo, will depend upon these elected officials.

I was rudely awakened to the realization of the impact of bad leadership recently through a comment made by my son. We had just seen the movie "Black Hawk Down". The movie is accurate to a point, but the book upon which the movie is based, *Black Hawk Down: Leave No Man Behind*, explains that had the Clinton administration provided appropriate equipment and authority for the ground forces it is probable that 18 men would not have died. I asked my son what he thought about the movie and he simply said, "If it hadn't been for Bill Clinton, they would not have made the movie".

The election of Alabama Supreme Court Chief Justice Roy Moore is an example of putting a good man in a leadership position. Our second educational memo deals with his recent ruling on the issue of homosexuality as it relates to parental rights. When I contemplate the effects of bad leadership vs. good leadership I just have to wonder when our nation will wake up to the need to elect good people and then assume the responsibility to ensure that they enact good laws?

As we have previously mentioned, we often wish we had enough funds to commit ourselves 100% to this work. The more funds we have the more resources we have to commit to these efforts. Since that is not a reality, we always must remind you of our continuing financial needs. Please continue to support us. We are grateful for your steadfastness.

The Southeast Law Institute,

A. Eric Johnston

AEJ/dcw

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

**To:** SLI Supporters  
**From:** A. Eric Johnston  
**Date:** March 2002  
**Re:** *HH v. DH* - An Alabama Supreme Court Decision on Homosexuality

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For a number of years, there have been cases in the courts dealing with the issue of whether a homosexual parent in a divorce custody situation should have an equal right to the custody of his or her child. There have been a number of cases decided in the lower courts and a few cases have been appealed, although no controlling decision has been made. The case of *HH v. DH* was decided on February 22, 2002 representing a significant, though not final, decision on the issue.

Briefly, the facts were that the mother and father were divorced in California in 1992 with joint legal custody of their children. In 1996, the mother began a homosexual relationship and she asked the father be given custody since he had moved to Alabama in the meantime. In 1999, however, the mother sought to regain custody of her children. The case ended up in the Alabama courts.

The mother argued the father was abusive and there were present many of the usual factors in a custody case. However, the evidence was clear and without opposition the mother had been engaged in an active, open, homosexual relationship. The trial court weighed the evidence and ruled in favor of the father on the basis that he was not abusive and he was the appropriate custodian. However, on appeal, the Court of Civil Appeals adopted the mother's arguments without providing contradictory evidence for its decision and reversed the trial court giving custody to the mother.

On appeal, the Alabama Supreme Court applied the *ore tenus* rule which required the Court of Civil Appeals to presume the correctness of the trial court's findings in the absence of specific facts which would require reversal. Therefore, the Alabama Supreme Court reversed the Court of Civil Appeals and placed custody in the father. All of the judges joined that opinion. Chief Justice Roy Moore, however, wrote a separate opinion addressing in detail Alabama's law which does not permit homosexuality to be recognized as any type of right and specifically would preclude a divorced parent who is actively engaged in a homosexual relationship from gaining custody of a minor child.

Courts do not usually decide law in cases when the specific issue is not involved. The *ore tenus* rule was violated by the Court of Civil Appeals and that was the basis for the Supreme Court's reversal. The homosexual custody issue was in the case, but was not the basis for the court's ruling. Therefore, what Chief Justice Moore explained is not law, but is a clear exposition of what the law is. It is likely his reasoning will be adopted when the appropriate case comes before the Court.

SLI has participated in several of the cases which did not matriculate to the level of a controlling decision. We have a very excellent brief prepared which we will use in the appropriate case. It details, similar to Chief Justice Moore's opinion, Alabama's history when it became a state in 1819, finding that homosexuality, sodomy, or by whatever other name it may have been known, was a crime and was adopted from the common law which existed in England before the founding of America. Sodomy was not only a crime, but was grounds for a divorce. In later years, the Alabama Legislature continued to make strong statements about Alabama's public policy against homosexuality, including prohibiting the use of college funds by homosexual groups (1992) and prohibiting same sex marriages (1998). The U.S. Supreme Court upheld the constitutionality of a Georgia law making sodomy a crime in *Bowers v. Hardwick* (1986) and numerous Alabama Court decisions have upheld our criminal laws prohibiting sodomy.

Consequently, Alabama's history is unblemished in its opposition to unnatural and deviant sexual practices. Chief Justice Moore's latest opinion is completely in line with that public policy, although he has received a great deal of adverse comment in the media. Our culture continues to change. However, it changes for the worst unless we do something about it. Chief Justice Moore's opinion is simply standing for what has been legally, historically and morally correct.

Contemporary pressures to recognize "alternative" lifestyles should not prevail. For example, there have been bills for the last several years in the Alabama Legislature, including one this year, to recognize sexual preference as the basis for a hate crime. These types of bills may appear to be innocuous, but they would be the opening of the door to a recognition of something that has never been legal, permissible or even thinkable in the State of Alabama.

The pressures for change are great. Pray for leadership like that of Chief Justice Moore, leaders in the Alabama Legislature, and SLI as we hold the line on such an important issue.

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

**To: SLI Supporters**  
**From: A. Eric Johnston**  
**Date: March 2002**  
**Re: Legislation Pending in the 2002 Regular Session of the Alabama Legislature**

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When the year began, we explained there would be several bills of importance, but it would be difficult to know where the session would go, since it is an election year. Well, things started out very well, but now there is a great deal of uncertainty of where things are going. The general talk around the State House is that the budgets will be done, since that is absolutely necessary, but little else will be accomplished. Everyone wants to go home and begin campaigning for the coming elections. Curiously, no gambling bills have been filed, but there are several others we have been working on.

WOMAN'S RIGHT TO KNOW ACT

The proposed Woman's Right to Know Act was first introduced in 1990. It was expanded and clarified in 1992 after the important U. S. Supreme Court decision of *Planned Parenthood v. Casey*. Until now, this bill has never made it out of committee in order to be considered by the Senate. At the time this memo is prepared, the bill has made it out of a Senate Committee and, if the Rules Committee permits, it should be debated and then voted on by the Senate. We expect no problem in the House.

For the first time in 12 years, there is the chance that meaningful pro-life legislation will be passed. The Woman's Right to Know Act provides a number of important things to insure that a woman considering an abortion has informed consent. These include requiring 24 hours advance information to the woman concerning medical risks, the father's obligations, alternatives to abortion, and non-judgmental scientific printed materials prepared by the state health department. Prior to the abortion, the woman must be told the physician's name who will do the abortion, the probable gestational age and anatomical characteristics of her child and other important medical information. An ultrasound must be available for her to view her unborn child, if she desires. To violate the law is a crime. Enforcement of this Act would result in a decreased number of abortions and better health care for women.

**HISTORIC DOCUMENTS ACT**

There has been a lot of debate in recent years about where to display the Ten Commandments. In 1982, the U. S. Supreme Court ruled in the case of *Stone v. Graham*, that the Ten Commandments could not be placed in a public school. Several efforts to find a way around the ruling have failed. However, we believe we have found a very good method of assuring students have some exposure to important principles.

The proposed Historic Documents Act requires the Ten Commandments, the Magna Carta, the Declaration of Independence, and the Bill of Rights be posted in all public schools. By requiring these four important documents, we avoid the Ten Commandments being singled out as a religious document which would violate the establishment clause of the U. S. Constitution.

The Ten Commandments have provided an important guide to important moral principles in the establishment of our laws. Similarly, in 1215, the Magna Carta was signed by King John which established many legal principles that formed our individual rights, freedom of religion, age of majority, protection from the state and other rights. Finally, America declared her independence by stating important principles by which it would be based and then passed ten amendments to the U.S. Constitution which protect individual rights.

SLI is pleased to have drafted this bill. In the event there is a judicial attack, we believe it will withstand legal scrutiny.

## **OTHER LEGISLATION**

There are proposed amendments to the school employee criminal background check law. Sponsors of the legislation have accepted our suggestions that protect church schools by taking them out from under direct state regulation.

Sexual preference amendments are suggested to the existing Alabama Hate Crimes Law. That is, the criminal penalty is enhanced if the motivation was because of, among other things, sexual preference. This is a step towards recognizing homosexuality as a right in Alabama. This is mentioned again in the additional educational memo this month.

## **CONCLUSION**

These are important bills. SLI does not lobby for the bills, but provides legal information. If you have preferences on this legislation, we suggest you contact your Representative and your Senator in the Alabama State House. We realize the information we give here is only limited, but if something is of interest to you and you want more information, please let us know and we will be glad to supply that to you.