

BUCKINGHAM REPORT

**AN IN-DEPTH CRITIQUE BY AMERICA'S FOREMOST
CHRISTIAN ANALYZER OF THE ISSUES, PEOPLE, &
EVENTS AFFECTING TODAY'S SPIRIT-LED LEADERS**

ANALYSIS #3: A SPECIAL FEATURE OF THE BUCKINGHAM REPORT

PASTORS AND CHURCHES DRAGGED INTO COURT

The long-standing precedent that churches are exempt from lawsuits and legislation infringing on their religious freedom has gone the way of the nickel candy bar and the two-bit shave and haircut. We have become, in the words of Paul Harvey, a "nation of suers." Now it is imperative for the church to carry large amounts of insurance to cover directors and officers, as well as for general liability. Ten years ago, most parishioners who had conflicts with their churches simply withdrew in anger and joined another church. No reputable lawyer would have taken their case anyway. Now that has changed. In 1981 the Christian Legal Society estimated 200 church-related lawsuits. Last year that number had doubled. Who's suing?

* John R. Kelly, a longtime member of Christian Community Church in San Jose, California, is seeking \$5 million, charging the church and its elders with malpractice, invasion of privacy and conspiracy. He also says one of the elders, a licensed marriage and family counselor, released confidential information about his sexual and marital life.

* Marian Guinn, reprimanded and excommunicated by the Church of Christ in Collinsville, Oklahoma, for her open affair with the town's former mayor, won \$390,000 on an invasion-of-privacy suit. The case is now on appeal to the Oklahoma Supreme Court.

* A woman denied ordination as a Seventh-Day Adventist minister is suing the church on grounds of sex discrimination.

* Two former Lutheran missionaries are suing, saying the church did not prepare them for the rigors of missionary life in Papua New Guinea.

* The Rev. John Elder, a 60-year-old Episcopal priest removed from his post in Oakland, New Jersey, is suing the Episcopal Diocese of Newark, charging age discrimination.

What's happening? Part of it has to do with greed. Then there's the fact churches have grown impersonal—and although people still believe in God, the credibility of the church is approaching the dark ages level. The **Wall Street Journal** summed it up in a front page article on April 9, saying people "identify less with the institution than with their own ideology." As a result, secular courts are moving in to govern and regulate affairs once assigned to God and His people.

CASE STUDY

In June 1979 the First Orthodox Presbyterian Church in San Francisco was sued by a young man who had been fired from a \$10 a week job as church organist because it had been discovered he was

homosexual. Not only was the church named in the lawsuit, but so were the pastor and the presbytery, which is made up of about 10 churches. Constitutional lawyer John Whitehead defended the church and in 1980 the judge ruled in their favor. Two other churches were also sued but settled out of court. Even though First Orthodox Presbyterian won their case, the process cost the church more than \$100,000.

One of the lessons Pastor Charles McIlhenny learned is the church would have been on safer legal footing if the by-laws called for all employees to be members of the church. That way no one could say, as the homosexual did in their case, "I'm just an employee. I'm not bound by church standards."

THE GROWTH OF CLERGY MALPRACTICE SUITS

It is now as necessary for a pastor (and the pastoral staff) to be covered by clergy malpractice insurance as it is for a physician to be covered by medical malpractice. Especially is this true in these days of accelerated church growth, for as churches grow there is less and less personal contact between pastor and parishioner, making it easier for a church member to sue his pastor—who never was his friend anyway.

CASE STUDY:

On February 22 Lloyd and Taye Ruth and their 16-year-old daughter filed a \$2.5 million lawsuit against Pastor William Hill and the First Baptist Church of Sunset, Louisiana. The suit contends that in a meeting of the congregation on Wednesday night, January 9, the pastor made accusations concerning the Ruth girl's character and sexual activities. The Ruths say the accusations invaded their daughter's privacy and that publicizing her character was of "no legitimate concern" to the congregation. Hill says the suit questions "the right of a congregational church to discipline its members. The day the suit was filed in the district court in Opelousas, Louisiana, the judge granted a court order allowing the Ruths' attorney, two St. Landry Parish sheriff's deputies, and the Sunset chief of police to seize and copy the church's membership records, business meeting minutes and deacons' meeting minutes. They also seized the church's checking and savings account numbers. The father is seeking damages of \$650,000 because he lost his deacon's post and his church membership, and was threatened with arrest if he returned. The mother is seeking \$350,000 because she was "embarrassed and humiliated."

Most clergy malpractice cases involve a pastor who has seduced a counselee. There is currently a case in a California court where a Navy captain and his wife are suing an Assembly of God church in Southern California. Their daughter and several other teenage girls were allegedly seduced by the youth pastor. The daughter is currently a patient in the Menninger Clinic with a poor prognosis of future emotional stability. The reason for the lawsuit: the youth pastor had been immoral before in the same church. The pastor and church board did not take the issue seriously—although they did dismiss the youth pastor after the second offense. However, by then it was too late.

Sometimes these cases border on the bizarre. Ernie Gruen, pastor in Shawnee, Oklahoma, tells of a pastor in another town who came before his church and not only confessed adultery, but named the other woman.

The woman, in turn, sued the pastor for defamation of character. Now the pastor finds himself in the unsavory position of having to go to court to prove he actually committed adultery.

**CASE
STUDY:**

Four years ago an associate pastor on my church staff became romantically involved with a housewife he was counseling. He had been called into the case by the woman's husband who was struggling to hold his marriage together. When the pastor told me he was going to divorce his wife and marry the other woman (whom he was helping with a divorce), I first offered to help him if he would repent of his actions. When he refused, I dismissed him from the church staff. Two weeks later, while the divorces were in process, I received word that the woman's husband was going to sue the church for alienation of affection and for malpractice since the former pastor had a past record at another church of gross sexual misconduct. I sat down with the heart-broken man—who had a legitimate case—and explained the biblical position on vengeance, forgiveness and suits between Christians. He agreed it would be wrong to press charges.

Since then we have changed our pastoral structure. Our new senior pastor runs constant checks with each associate on all counseling cases. All long-standing counseling cases are reviewed in the open at weekly staff meetings. A local psychotherapist—who is part time on the church staff—sits in on all staff meetings and is apprised of all sticky counseling cases.

An interesting aside: Pastor Percy Burns of St. Giles Presbyterian Church, Charlotte, North Carolina, says (and this is confirmed by the Menninger Clinic) that a parishioner who has been seduced by her pastor suffers the same emotional effect as a daughter who has been seduced into incest by her father.

**CASE
STUDY:**

A young seminary student, Ken Nally, belonged to Grace Community Church in the Los Angeles Suburb of Sun Valley. In 1980, after several unsuccessful attempts to take his life, he moved into the home of senior pastor John MacArthur. While MacArthur was in Scotland on a ministry trip, Nally took his own life in the apartment of a friend. One year later Nally's parents sued MacArthur and Grace Community Church for clergy malpractice. The suit contained three points: (1) that MacArthur and other pastors persuaded and prevented Nally from seeking professional help; (2) that the church was negligent in training and hiring competent church counselors; (3) that Grace Church taught that Catholics were not Christians, which exacerbated Nally's pre-existing guilt and depression and therefore drove him to suicide.

When the case came to trial the court threw out all three charges and ordered the plaintiffs to pay \$5,000 in court costs. An appellate court then reversed that decision, bringing up a new charge: that Grace Community teaches suicide to be an acceptable and desirable alternative to living. The California Supreme Court tossed it back to the original court, and on May 16 the judge said the charges were groundless and dismissed the case.

All Churches Vulnerable

Most pastors do not seem to realize there is no way to prevent a lawsuit. I am convinced the current antagonistic attitude on the part of many pastors toward the authorities and toward those who might sue causes many of our problems. I maintain the best way to handle a potential enemy is over a prayerful cup of coffee. There is also a move toward making available an internal process of arbitration between members who have problems. On the other hand, Sam Ericcson, a practicing attorney on the huge staff at Grace Community Church, believes the best way to discourage potential suits is by letting it be known you will not settle out of court, that you are a fighter, and that if you win you will countersue for costs and damages. According to Ericcson, the number of medical malpractice suits has declined over the last couple of years since doctors started countersuing after winning their cases. Each pastor will have to determine the proper attitude—the attitude that God will bless.

THE PLACE OF PRIVILEGED INFORMATION

The second rash of court cases over the last year has to do with the right of a pastor to hear a confession and maintain confidentiality—despite orders from prosecutors and threats from judges on contempt of court. Since the foundation of our nation, the courts have honored the confidentiality between a pastor and someone he was counseling. However, in recent months this has changed—especially as it has to do with cases involving child abuse.

CASE STUDY:

Last fall an ex-policeman, suspected of sexually abusing a six-year-old girl, walked into the office of the Margate Church of the Nazarene in Miami and surrendered to Pastor John Mellish. Mellish heard his confession and accompanied him to the police station. The prosecutor later subpoenaed Mellish demanding he reveal what the suspect had told him. The public defender assigned to Mellish told him that unless he testified he could go to jail for six months. He was then brought before a judge who insisted he give a statement. Mellish refused, invoking the right to confidentiality for conversations with a counselee. The judge gave him the weekend to think it over. Mellish returned to court and once again refused to divulge what had been revealed to him in confidence. Such claims have normally been honored by judges in the United States, but Mellish was sentenced to 60 days for contempt of court, and immediately taken to jail where he spent the night. That same night the American Civil Liberties Union (ACLU) voted unanimously to cover Mellish's case. Since Mellish had no funds himself, he opted to go with the ACLU. The next morning his new lawyer appealed, and Mellish was set free on bond. An appellate court is now reviewing his case.

What happened? The pastor's quandary resulted from growing public alarm over child abuse, which has led to numerous state laws requiring anyone who knows about such a crime to inform authorities. According to research done by Richard Ostling of *Time*, in at least 20 states "toughened child-abuse laws have eliminated the longstanding legal and societal recognition of the 'clergy-penitent privilege.'" Mellish would have had no legal troubles had the crime been murder or rape. But in Florida, clergy are forced to testify in the cases where there is abuse of a child, the aged, or the handicapped.

Sam Ericcson, who is also a director of the Christian Legal Society's Center for Law and Religious Freedom in Washington, D.C., points out that nearly all states now have laws which require individuals to come forward with information about abusers. Thirty-seven states, however, exempt the clergy. Florida is one that does not.

There are no easy answers. Child abuse is a horrible trauma committed by sick people. A good friend of mine, the former pastor of a large Baptist church in Florida, is serving a 40-year prison sentence in a nearby prison for sexually fondling several small children. He's not a criminal—but he is sick. Now, despite the harshness of his sentence, he's receiving help through a state program. In his case he was arrested, served time in jail, then received a probated sentence. When he "did it again," the judge threw the book at him.

So many child abusers, as in this case, continue the offense even while undergoing pastoral counseling. "You have a helpless third person who may suffer while counseling goes on," says Lynn Buzzard of the Christian Legal Society. "I got a call involving a pastor who had been told by a husband and wife that the husband had sexually abused their child. The pastor was torn. He was concerned about the child, but he also said, 'This is their first cry for help ever.' "

Recognize Your Counseling Limitations

Pastors need to develop a close relationship with a trained therapist who can give advice in such matters. Dr. Harvey Hester of the Melbourne Counseling Center serves part-time on our church staff (The Tabernacle Church, Melbourne, Florida) as an adjunct pastor. He sits in on our weekly staff meetings where tough situations are openly discussed. (Our pastoral staff has a policy that while confidentiality is maintained between pastor and counselee, this confidentiality does not exclude the pastor from discussing the situation in depth with another pastor, with all the pastors at the pastoral staff meeting, or with Hester.) Hester is also available to all pastors and counselors to advise on such cases as those concerning child abuse. Our staff, like most church staffs, is not equipped to handle certain cases. The presence of a trained counselor not only aids in the ministry, but provides the necessary advice as to when a person should be reported to law enforcement authorities for his protection and/or the protection of others.

Required by Law

Pastors and professional counselors are required by law to report to the law enforcement agencies all cases where the pastor suspects the counselee is dangerous to himself or to others—i.e., homicidal or suicidal. They are also required to report parents or others suspected of child abuse. Failure to do so may open the pastor and his church to serious lawsuits. However, the presence of a trained counselor does not guarantee safety from suit. In Berkeley, California, a psychiatrist's client confessed that he was going to kill a certain woman. The psychiatrist did not warn her. The woman was killed. The family sued and the court ruled the psychiatrist had a duty to warn the victim.

In a case closer to my home, a youth director washed his hands of a young man taking drugs who locked himself in a hotel room after threatening on a number of occasions to take his life. The youth director mentioned the incident in a staff meeting

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stating, "I can't help it if he does something to himself." That's true, but the law states that if a counselor has "prior knowledge" that a person is suicidal, and that person does indeed commit suicide, and the pastor had not informed law enforcement authorities or at least informed a professional counselor—then the church might be held liable.

However, despite the requirement by law not only to warn a potential victim but to report suicidal or homicidal threats to proper authorities, the matter of testifying on privileged information is another issue that most pastors and counselors hold to be sacred. Hester, who has on several occasions called the sheriff's department or (in the case of suspected child abuse) the department of Health and Rehabilitative Services (HRS) to report someone he has knowledge about, also says, "I never have, nor will I, violate the confidence of someone who has come to me seeking counsel."

The pastoral position draws upon a firmly based heritage established by the Fourth Lateran Council in the year 1215 which formally recognized the long-established clerical discipline of absolute secrecy for discussions during sacramental confessions. In fact, under canon law, a Catholic priest who breaks the confessional "seal" is automatically excommunicated. In the United States the privilege extends to pastoral counseling, which is recognized in most state laws. Exactly where the cutoff line remains fuzzy, however. Does it, for instance, mean that a non-ordained minister of music is exempt from testifying to privileged information he has received from one of his choir members? What about a church secretary who hears the anguished confession of a man who has stumbled into the church for help? Does it include the home church pastor who functions in the realm of the "priesthood of all believers"?

According to John Bush, author of **The Right to Silence: Privileged Clergy Communication and the Law**, in all U.S. legal history only about 100 cases have emerged involving efforts by the state to force clergy to abrogate the clergy-penitent privilege. Bush points out that no recognized pastor, accused of contempt of court for claiming the privilege, has lost if he fought for his rights and appealed to a higher court.

This much seems clear: pastors universally hold to the sacred right of hearing a man's confession in confidentiality. The question is not whether we should dishonor that privilege—even in the case of a man or woman who confesses to child abuse. (Even though we should report such cases to law enforcement officers.) The question is rather: how many of us will have to go to jail for insisting on this right and refusing to break the seal of confession?



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