

## World &amp; Nation

## Church officials welcome malpractice suit dismissal

By Julie Asher

WASHINGTON (NC) — The chief legal adviser for the U.S. bishops and a priest-lawyer praised a California Supreme Court ruling that church pastors could not be held liable for the suicide of a despondent young man to whom they had given spiritual counsel.

The lawsuit, widely followed by church leaders across the country, was brought by the parents of Kenneth Nally, who shot himself to death in 1979 and who had had years of church counseling.

The Nallys contended he was a victim of clergy malpractice.

The court was unanimous in dismissing the case. It also issued a 5-2 ruling that church counselors, or others who are not licensed psychotherapists, have no legal duty to refer a person to psychiatrists or other mental health professionals, even if they believe that person may be suicidal.

The two dissenting justices said the defendants did have a legal duty of care but that the evidence showed the pastors never breached it or contributed to Nally's death.

Mark E. Chopko, general counsel of the National Conference of Catholic Bishops, said Nov. 30 he liked the opinion and that "it insulates the non-professional from the same scrutiny that applies to the therapeutic world."

"The result, and I think the correct result, is that voluntary organizations and their members who provide aid, counseling, spiritual comfort are not providing psychological care," he said. "Pastors anywhere can take comfort."

Father Ronald P. Stake, who is a lawyer and an associate pastor of St. Barnabas Church in Chicago, said Dec. 1 he welcomed the decision and that it should "allay a lot of fears."

Chopko noted that the court recognized there could be "a problem of potential constitutional dimensions" involving the First Amendment question of freedom of religion in setting standards for church counselors.

But Chopko said the court did not attempt to resolve those questions nor did it need to in order to dismiss the case.

In the lawsuit, Walter and Maria Nally of Tujunga, Calif., who are Catholic, sued the 10,000-member Grace Community Church of the Valley for \$1 million in a wrongful death suit.

The younger Nally became a Protestant while a college student and in 1974 began attending Grace Community Church, the largest Protestant church in Los Angeles County, where he received counseling for several years.

His parents contended that four pastoral counselors at the church had been negligent in failing to refer their son, who suffered depression and whom they knew was suicidal, to licensed psychotherapists.

But the majority opinion said that imposing a duty on clergy and others to make sure those they counsel are under the care of licensed professionals could keep those most in need of help "from seeking treatment out of fear that their private disclosures could subject them to involuntary commitment to psychiatric facilities."

Setting up standards of care and to whom those standards would apply would be impractical given all the religions in California and their different philosophies, it said.

It also would be "quite possibly unconstitutional to impose a duty of care on pastoral counselors," it said.

Father Stake, who is chaplain of the Catholic Lawyers Guild of Chicago and a member of the Illinois bar, did note that he wondered how well church leaders can judge competence in counseling.

He said that seminary training he received was much different than that given 20 years earlier and that without continuing education it was difficult to maintain.

The Nally case was the first of its kind to reach the California high court. Lawyers for both sides said they were unclear if any appeal to the U.S. Supreme Court was possible.



AP/Wide World Photos  
Katie Barenberg (left) and Valerie Shaw of Wichita Falls, Texas, use the shamash to light the first candle marking the beginning of Hanukkah, which started at sundown on Saturday, Dec. 3. The menorah holds eight candles, one for each day of the holiday.

It was dismissed twice by the trial judge and reinstated both times by the California Court of Appeals. It was the church's appeal from the last ruling that brought the decision by the state Supreme Court.

A few other state supreme courts have handed down decisions on clergy malpractice suits.

The most recent was an Oct. 17 ruling by the Colorado Supreme Court rejecting such a suit as a basis for suing the Catholic Diocese of Colorado Springs. The suit involved charges that a priest counseling a married couple had entered into an adulterous relationship with the wife. The marriage ended in divorce.

## Bishop Larkin resigns, cites health

WASHINGTON (NC) — Pope John Paul II has accepted the resignation for reasons of health of 65-year-old Bishop W. Thomas Larkin of St. Petersburg, Fla.

The announcement of his resignation was made in Washington Nov. 29 by Archbishop Pio Laghi, apostolic pronuncio to the United States. Bishop Larkin was named apostolic administrator of the St. Petersburg Diocese until a successor is named.

Bishop Larkin cited advice from his physician as the reason for his early retirement but mentioned no specific illness. Bishops may serve until age 75.

Bishop Larkin was named the second bishop of St. Petersburg by Pope John Paul and was ordained a bishop by the pope at St. Peter's Basilica May 27, 1979.

He was appointed vicar general and official of the St. Petersburg Diocese in 1978. He was associate pastor of Holy Family Church, North Miami, Fla., from 1950 to 1954 and pastor of Christ the King in Jacksonville, Fla., from 1954 to 1967. He was pastor of St. Cecilia, Clearwater, Fla., from 1967 until he was named bishop of St. Petersburg.

Bishop Larkin was born March 31, 1923, in Mt. Morris, N.Y., and was educated at St. Andrew's and St. Bernard's Seminary in Rochester, N.Y. He studied at the Angelicum University in Rome, where he was a classmate of Pope John Paul II from 1947 to 1949.

He was ordained to the priesthood May 15, 1947, for the Diocese of St. Augustine, Fla.

Bishop Larkin has been a member of the National Conference of Catholic Bishops' Committee on Priestly Life and Ministry for six years. He chaired an NCCB subcommittee that prepared a statement on the changing role of pastors.

This fall Bishop Larkin called for donations of food and clothing to assist migrant workers in his diocese whose earnings were reduced by the drought in the Midwest this summer.

Earlier this year the bishop spoke out against the movie "The Last Temptation of Christ" and urged protests of the movie because, he said, it "makes a mockery of our blessed Lord and thus ridicules the very foundation of our faith."

## Bishop Vaughan serves single-night jail term



Charles F. Sibre/NC News  
Bishop Austin Vaughan prepares to start his two-day jail sentence.

By Tracy Early

NEW YORK (NC) — "I had no trouble sleeping."

Auxiliary Bishop Austin B. Vaughan of New York, perhaps the first U.S. bishop to serve a jail sentence, said his night in jail in Chester County, Pa., Nov. 28 gave him no sense of guilt.

"I had even more than a clear conscience," he said in a telephone interview after his release. "I was there with a purpose."

Along with several others, the bishop was in jail for refusing to pay fines imposed when they blocked an abortion-clinic in Paoli, Pa., July 5 under the auspices of Operation Rescue.

Although Bishop Vaughan said he knew of no previous Catholic bishop in the United States serving jail time, he described the possibly historic event as in itself routine.

"I don't think you can judge historical moments until at least 10 or 20 years later, according to how they have had an effect," he said.

Arriving at the jail with Father Peter Byrne of North Tarrytown, N.Y., who was jailed

the same day, Bishop Vaughan and other Operation Rescue participants were put in a holding area with other inmates there for more typical offenses.

"Some of the other prisoners were startled to see Father Byrne and me dressed as priests," Bishop Vaughan said. "They were even more startled when they heard some of the others in our group were talking to me and they realized that I was a bishop."

The bishop had to check his belongings and put on prisoner's garb. To jail officials he became "Mr. Vaughan."

The officials were not expressing any hostility, he said, and did not subject him to any special treatment, favorable or unfavorable. "The dealings were all pretty formal," he said. "It was just a job for them."

His cellmate was a Protestant minister from New Jersey, the Rev. Richard Doran.

Bishop Vaughan, who is New York archdiocesan vicar for the prison apostolate, said now that he has served a sentence himself, worn the prisoner's dress and spent a night locked in a cell, he has a few new ideas about the inmate's experience.

But he emphasized that his experience was quite different from an ordinary prisoner's in many significant ways.

"We had all the things the others didn't have in terms of support," he said. "It is very easy for the others to feel lonely, but I probably had more people praying for me than were ever praying for me before in my life."

Bishop Vaughan also noted that he knew he would be released on the second day while ordinary prisoners endure a lot of uncertainty about their future.

Bishop Vaughan said he had made no decision on what future protest actions he might take. "I go one step at a time," he said. "In the same circumstances, I would unquestionably do it again."

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