Letter To Colorado Legislator

February 1, 2006

Dear Colorado Legislator:

Three bills have recently been introduced in the Colorado legislature that would either remove or modify statutes of limitation in cases of child sexual molestation committed by someone who works for a private institution (the sponsors are Senator Joan Fitz-Gerald and Representative Alice Madden, Senator Paula Sandoval and Representative Rosemary Marshall, and Representative Gwyn Green). Furthermore, these bills would allow private institutions to be prosecuted if they are held to be "vicariously libel." Exempt from these measures are public institutions. Public schools, for example, are shielded under the provision of sovereign immunity, and there is nothing in any of these bills that would eliminate this glaring inequity.

These bills are not only discriminatory in both intent and practice, they unfairly tip the scales of justice against the accused. Indeed, the bill by Fitz-Gerald and Madden also permits a civil action "against a defendant who is deceased or incapacitated." In other words, Fitz-Gerald thinks that priests who died when Jimmy Carter was president—or those who are currently suffering from Alzheimer's—should be eligible to stand accused of a crime even though it is impossible for them to defend themselves. And if this doesn't work, then the Catholic Church should be eligible for a massive lawsuit under the provision of vicarious liability. But if the accused is a public school teacher, then sovereign immunity should protect both him and the public school industry from prosecution.

It's actually worse than this. In their joint statement on this issue, Colorado's three bishops—Archbishop Charles Chaput, Michael Sheridan and Arthur Tafoya—say that "Under

Colorado law, *even if there were no sovereign immunity* (their italics) the victim of a public school teacher's misconduct must initiate his or her claim by filing a formal notice no later than 180 days after the incident. Moreover, the damages for such claims against government defendants are capped at $150,000."

But under these three bills, if the alleged abuser is a parochial school principal, the accused will be given two years to file suit even if the alleged crime occurred a generation ago. However, public school principals who are accused of the identical crime at the identical time are purposely allowed to get off scot-free. And unlike the public schools, there is no cap on damages that parochial schools might have to pay—the sky's the limit. The "deep pockets" of the parish—or perhaps the diocese—might even be subject to vicarious liability.

As if all this weren't enough, the three bills are premised on the assumption that child sexual abuse is worse in parochial schools than in public schools. The empirical evidence, however, shows just the opposite is true.

Arguably the nation's leading student of sexual abuse in the schools is Professor Charol Shakeshaft of Hofstra University. A few years ago, she was commissioned by the U.S. Department of Education to review all the studies that have been done nationwide on this problem. Her report, "Educator Sexual Misconduct: A Synthesis of Existing Literature," was released in 2004.

Shakeshaft's conclusion: nearly 10 percent of American students are the victims of unwanted sexual attention by public school employees—ranging from sexual comments to rape—in their school years. When asked how these statistics compared to priestly sexual abuse, Shakeshaft said, "the sexual abuse of students in schools is likely more than 100 times the abuse by priests." Get the point? None of the

bills under consideration target the very venue where the sexual abuse of children is most rampant!

By way of analogy, consider the following. Would it make sense to crack down on gambling by targeting church bingo but not the numbers racket? Would it make sense to crack down on drugs by targeting cigarettes but not cocaine? Would it make sense to crack down on street crime by targeting jaywalkers but not muggers?

According to a March 31, 2002 news story in the *Denver Post*, 84 teachers in Colorado were found guilty of either child sexual assault or child abuse between the years 1991 and 2002. Yet under these three bills, not one of these teachers will face prosecution, nor will any of the molesting teachers since 2002 be brought up on charges. As a matter of fact, the entire public school establishment will escape being prosecuted for vicarious liability.

State Senator Paula Sandoval, who co-sponsored one of the bills, was recently asked why public institutions should be exempt from the reach of her legislation. Her candor was refreshing: "I think the law should apply to everybody," she said, "but my guess is there would be probably a lot of opposition by the CEA (Colorado Education Association)."

Colorado lawmakers have a moral and legal obligation to treat all parties equally. Either these bills should be amended to blanket all institutions, or they should be rejected as discriminatory. Unequal justice is injustice, and it is profoundly un-American, as well.

Sincerely,

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President