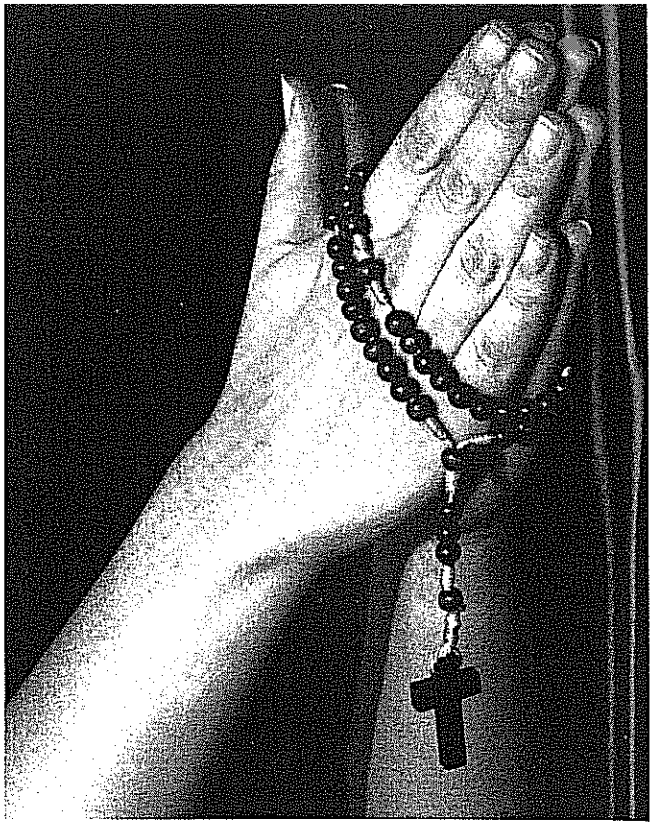
The First Amendment Conflict and Roman Catholic Clergy

Twin Challenges of Secularization and Scandal



By Sally A. Roberts

In recent years, clerical sexual abuse has been exposed as a problem of startling proportions, touching and impacting nearly every American diocese. According to one study commissioned by the American Catholic Bishops, over the last 52 years, 4 percent of priests have been involved in sexual abuse.[1] As a result of the increased awareness of sexual abuse, parishioners are suing religious institutions in record numbers.

In Connecticut, there has been much publicity over the transgressions of Father Stephen Foley, a Roman Catholic priest. In *Noll v. Hartford Roman Catholic Diocesan Corporation*,[2] the plaintiff alleged that, at a time when he was about 15 years old, Foley befriended him at a convenience store, and sexually abused him on a trip and at the priest's quarters. In *Sutherland v. Roman Catholic Diocesan Corporation*,[3] the allegations were that Foley befriended the plaintiff when he was 11 years old, and sexually abused him while on an overnight trip. The rulings in *Noll* and *Sutherland* were on motions for summary judgment filed by the archdiocese and church. In nearly identical decisions, the trial court held that the Archbishop retained the fundamental authority to supervise, train, control, and provide education for the priests, but that the local churches operated as separate corporations. The parish corporations, however, had no authority to promulgate policies, programs, or rules as to the personal conduct of priests. The negligent count failed because the complaint did not specifically mention the duty of the church. Neither the church nor the archdiocese could be held liable under the theory of *respondeat superior* as the alleged abuse was not undertaken to benefit the church, or conducted in furtherance of the church affairs.[4]

Parishioners have brought these suits under various theories—clergy malpractice, breach of fiduciary duty, negligent hiring, supervision and retention, vicarious liability, and several intentional torts, including intentional failure to supervise clergy, and intentional infliction of emotional distress. In civil suits against clergy, however, religious institutions have repeatedly asserted immunity based on the Free Exercise and Establishment Clauses of the First Amendment, and moved to dismiss complaints on the grounds that resolution of these issues would involve the internal ecclesiastical decisions of the Roman Catholic Church required by canon law.

Jurisdictions faced for the first time with the issue of whether the First Amendment bars claims against religious institutions of negligent hiring and negligent supervision will find conflicting precedent on the jurisdictional landscape.[5] There has been a mosaic of decisions in jurisdictions nationwide, with the majority of them reasoning that the cases do not implicate the Free Exercise Clause because the conduct sought to be regulated, that is, the Church defendants' alleged negligence in hiring and supervising, was not rooted in religious belief. Moreover, even assuming an incidental effect of burdening a particular religious practice, the parishioners' cause of action was not barred because it was based on a neutral application of principles of tort law.[6]

Courts have additionally refused to bar these cases on the basis of the Establishment Clause, stating essentially that: "[T]he Establishment clause does not bar these causes of action because the imposition of tort liability in this case has a secular purpose and the primary effect of imposing tort liability based on the allegations of the complaint neither advances nor inhibits religion. The core inquiry in determining whether the Church Defendants are liable will focus on whether they reasonably should have foreseen the risk of harm to third parties. This is a neutral principle of tort law. Therefore, based on the allegations in the complaint, we do not foresee 'excessive' entanglement in internal church matters or in interpretation of religious doctrine or ecclesiastical law."[7]

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."[8] Through the Establishment and the Free Exercise Clauses, the First Amendment stands for the notion that church and state should remain separate. However, it does not require that the separa-

tion be total. There are many instances in which the government and the courts may restrict conduct that might be characterized as religious practice. For example, in *Employment Division v. Smith*,[9] the Supreme Court upheld a law prohibiting the use of peyote during religious ceremonies. However, the Constitution conditions any such involvement upon courts applying neutral principles of law, avoiding excessive entanglement between church and state, and refraining from interpreting religious doctrine, polity, or practice.[10]

The Establishment Clause

The first clause of the First Amendment, the Establishment Clause, guards against "sponsorship, financial support, and active involvement of the sovereign in religious activity."[11] The main inquiry under the Establishment Clause was set down in *Lemon v. Kurtzman*.[12] The issue presented in *Lemon* was whether the religion clauses of the First Amendment were violated by state statutes providing state aid to church-related elementary and secondary schools and their teachers by reimbursing the cost of teachers' salaries, textbooks, and instructional materials in specified secular subjects. In *Lemon*, the Court stated that a governmental action is valid under the Establishment Clause if: (1) it has a secular purpose; (2) its primary effect is neither to enhance nor inhibit religion; and (3) the action does not foster an excessive government entanglement with religion.[13] The Court stressed that total separation of church and state is not possible and thus only excessive intrusions by the government into religion would be held unconstitutional.[14] Under the third prong of the *Lemon* test, to determine whether the entanglement is excessive a court must "examine the character and purposes of the institutions that are benefited, the nature of the aid that the statute provides, and the resulting relationship between the government and the religious authority."[15] Throughout the 1990s, the Supreme Court did not consistently apply this three-part test.[16] The Court more often turned to the concept of religious neutrality to guide its decisions.[17] However, the *Lemon* test has never been overruled and is still the predominant test.[18]

The Free Exercise Clause

In contrast to the Establishment Clause, the Free Exercise Clause "guarantees 'first and foremost, the right to believe and profess whatever religious doctrine one desires.'"[19] Moreover, the Free Exercise Clause protects against laws that discriminate based on religious beliefs, as well as ordinances that regulate or prohibit conduct undertaken for religious reasons.[20] However, the Supreme Court has not interpreted the Free Exercise Clause as an absolute protection of religious freedom.[21] In *Cantwell v. Connecticut*,[22] a case in which the defendants were arrested and convicted for distributing religious materials, the Court stated that although the clause protects an individual's freedom to believe and freedom to act, the freedom to act is not absolute, since regulations on conduct are necessary to ensure an orderly and safe society.[23] For instance, in *Cantwell*, the Court alluded to the fact that, although the state may not deny the right to preach or disseminate religious views, it may regulate the time, place, and manner of such events.[24] Cantwell, while on a public street, tried to interest passerbys in what he believed to be the true religion by playing a phonograph record describing the religion. The record contained a verbal attack upon the religious denomination of the listeners, provoking indignation and a desire to strike Cantwell, who thereafter picked up his books and phonographs and went on his way. The Court held that, in the absence of a showing that Cantwell's deportment was noisy, truculent, or offensive, drew a crowd, or impeded traffic, Cantwell's conviction for breach of peace was a violation of the First Amendment guarantee of religious liberty and freedom of speech.[25]

Religious Autonomy Doctrine

Finally, under the umbrella of both the Establishment Clause and the Free Exercise Clause, the Supreme Court has developed a concept referred to as the religious autonomy doctrine, which bars secular courts from becoming too closely involved in the internal affairs of religious institutions. Under this doctrine, the First Amendment prohibits courts from resolving doctrinal disputes or determining whether a religious organization acted in accordance with its canons and bylaws.[26]

This doctrine was fashioned in *Watson v. Jones*,[27] which held that civil courts should steer clear of questions regarding religious discipline, faith, ecclesiastical rule, custom, or law. It took further hold in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, which involved a property dispute between two local churches that arose following their withdrawal from a larger hierarchical general church organization.[28] The doctrine came to fruition in *Serbian Eastern Orthodox Diocese v. Milivojevich*.[29] A dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church, a hierarchical church whose Seat is the Patriarchate in Belgrade, Yugoslavia, had led the church, acting through hierarchical bodies, to suspend, remove, and ultimately defrock its bishop of the diocese. The bishop filed suit in Illinois, seeking to have himself declared the true bishop. In *Serbian*, the Court held that the First Amendment prevented a court from deciding whether a hierarchical church's decision to remove a bishop was arbitrary and improper, as that decision "necessitates the interpretation of ambiguous religious law and usage.[30] "[W]here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity,...civil courts shall not disturb the decision of the [hierarchical church], but must accept such decisions as binding on them...."[31] Courts may not adjudicate a claim when rendering a decision would require interpreting religious doctrine.

First Amendment Entanglement in the Second Circuit

A solid body of case law has developed in the Second Circuit and Connecticut state courts on the First Amendment issue. The Second Circuit, in a case of priest sexual misconduct, held it was permissible under the First Amendment for the jury to have considered church doctrine if a fiduciary duty arose between a parishioner and the diocese. *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*[32] In *Martinelli*, the jury found the Diocese liable for breaching fiduciary duties it owed to Frank Martinelli, a parishioner, who claimed that as a teenager he had been sexually assault-

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ed on three occasions between 1961 and 1963 by Father Laurence Brett, one of the diocese's priests. During Father Brett's tenure at St. Cecilia's Parish in Stamford, Connecticut, he acted as a mentor and spiritual advisor to a group of boys interested in liturgical reforms. Brett called his group "Brett's Mavericks." Martinelli claimed that Father Brett encouraged the group to engage in sexual relations with him and testified to a number of incidents, including one in Brett's car in St. Cecilia's parking lot by telling him that the act was a way to receive Holy Communion.[33]

The court noted Martinelli's [parishioner's] claim was brought under Connecticut law, not church law; church law is not for the court to assess or to enforce. Martinelli's claim neither relied upon nor sought to enforce the duties of the diocese according to religious beliefs, nor did it require or involve a resolution of whether the diocese's conduct was consistent with them.[34]

In cases "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments[35] mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a [hierarchical] church..." *Serbian, supra.*[36] "But [the Supreme] Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes."[37]

The Connecticut Supreme Court recognized that it is "well established that state judicial intervention is justified when it can be accomplished by resort to neutral principles of law...that eschew consideration of doctrinal matters such as the ritual and liturgy of worship or the tenets of faith." *N.Y. Annual Conference of the United Methodist Church v. Fisher.*[38] (In Fisher, the hierarchical church had brought an action against the local church to determine its interest in church property and to enjoin defendant's interference with the conduct of church services by a duly appointed Methodist minister.)

The United States Supreme Court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Nutt v. Norwich Roman Catholic Diocese.*[39] In *Nutt*, a parish priest showed pornographic movies to two twelve-year-old altar boys. Then, during various out-of-town trips, the priest repeatedly sexually molested the two minor boys, for a period of over six years. The district court in *Nutt* held that "since the Supreme Court has consistently failed to allow the *Free Exercise Clause* to relieve an individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs, the defendants [church and diocese] cannot appropriately implicate the *First Amendment* as a defense to their alleged negligent conduct."[40]

Connecticut courts have followed the decisions of *Nutt*, *Reed*, and *Reynolds*, holding that there is no entanglement issue in determining whether a church or diocese was negligent in supervising its priests.

Relying on the district court's decision in *Nutt*, a Connecticut court noted that the "*Free Exercise Clause* might well prohibit this court from interfering in the manner in which the diocese supervised a priest's performance of Mass, or confession, but it certainly cannot prohibit this court from determining whether the diocese should be liable for negligently allowing its employees to engage in criminal conduct." *Reed v. Zizka.*[41] In *Reed*, the plaintiff alleged that when she was 13 years of age, while receiving counseling from Peter Zizka, a Roman Catholic priest, Zizka sexually abused her by kissing, fondling, and then by engaging in sexual intercourse, and that this conduct continued for four years. In a related case, *Reynolds v. Zizka*,[42] the plaintiff alleged that when Zizka was counseling her in his rectory office, he began by kissing, petting, fondling, and laying on top of her. The activity gradually progressed to Zizka having sexual intercourse with her. This allegedly began when Reynolds was 16 years old and continued for six years.

Connecticut courts have followed the decisions of *Nutt*, *Reed*, and *Reynolds*, holding that there is no entanglement issue in determining whether a church or diocese was negligent in supervising its priests. *See Rosado v. Bridgeport Roman Catholic Diocesan Corp.*;[43] *Doe v. Hartford Roman Catholic Diocesan Corp.*[44] The same analysis applies to cases where the focus is whether neutral tort concepts can be applied to negligence claims against religious organizations. Several courts outside Connecticut have refused to adjudicate cases regarding negligent supervision of priests by the church for fear that "any inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises...First Amendment problems of entanglement...which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs [and] any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination...."[45]

The District Court of Connecticut, in *Nutt*,[46] rejected such an argument, ruling that the First Amendment does not offer

blanket immunity for religious institutions, and because an inquiry into the defendants' alleged negligent supervision would not "prejudice or impose upon any of the religious tenets or practices of Catholicism. Rather, such a determination would involve an examination of the defendants' possible role in allowing one of its employees to engage in conduct which they, as employers, as well as society in general expressly prohibit."[47]

Conclusion

Eight years after *Nutt*, numerous courts in Connecticut have followed the lead of the early decisions on this issue. "This Court recognizes the concerns of religious institutions regarding entanglement of the courts in examining their religious practices. This Court does not, will not, and cannot sit as the reviewing authority for religious practices and doctrinal matters. But, as far as negligent supervision and employment are concerned, such inquiries can generally be conducted without any entanglement in the religious doctrines and practices of the church."[48] **CL**

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Notes

1. Laurie Goodstein, "Two Studies Cite Child Sex Abuse by 4% of Priests," *New York Times*, February 26, 2004, A1. These statistics were taken from a press release for "Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002," a study produced by the John Jay College of Criminal Justice and authorized and paid for by the U.S. Conference of Catholic Bishops (USCCB). The John Jay survey found that the church spent more than $572 million on lawyers' fees, settlements and therapy of victims and treatment for the priests. But the report said the figure was prematurely low, and that a more accurate total was about three-quarters of a billion dollars. The study was cited by Judge Silbert in his decision denying the Motion to Strike a count based on the doctrine of respondeat superior. *See Nelligan v. Norwich R.C. Diocese*, 2004 Conn. Super. LEXIS 476 (J.D. Middlesex at Middletown; Silbert, J.).
2. 2007 Conn. Super. LEXIS 1745 (CLD at Middletown; July 9, 2007; Beach, J.).
3. 2007 Conn. Super. LEXIS 1773 (CLD aat Middletown; July 9, 2007; Beach, J).
4. *Noll v. Hartford Roman Catholic Diocesan Corporation*, 2007 Conn. Super. LEXIS 1745 (CLD at Middletown; July 9, 2007; Beach, J.), *Sutherland* v. *Hartford Roman Catholic Diocesan Corporation*, 2007 Conn. Super. LEXIS 1773 (CLD aat Middletown; July 9, 2007; Beach, J).
5. Neither the U.S. Supreme Court nor Congress has set forth a particular, uniform position on this issue. *See McKelvey v. Pierce*, 800 A.2d 840, 848 (N.J. 2002) (noting the murky area of civil lawsuits between the Church and parishioners, employees, and clergy); *see also Pritzlaff v. Archdiocese of Milwaukee*, 533 N.W.2d 780, 794 (Wis. 1995) ("It is generally acknowledged that this area of First Amendment law is in flux and the United States Supreme Court cases offer very limited guidance.")
6. *See generally*, Christopher L. Barbaruolo, *Malicki v. Doe: Defining a Split of Authority Based on the State Tort Claims of Negligent Hiring and Supervision of Roman Catholic Clergy and the First Amendment Conflict*, 32 Hofstra L. Rev. 423 (2003).
7. *Malicki v. Doe*, 814 So. 2d 347, 364 (Fla. 2002); *See also*, Lisa J. Kelty, *Malicki v. Doe: The Constitutionality of Negligent Hiring and Supervision Claims*, 69 Brooklyn L. Rev. 1121 (2004).
8. U.S. Const. amend. I.
9. *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990).
10. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
11. *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) (quoting *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970).
12. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
13. *Id.* at 612-13.
14. *Id.* at 614.
15. *Id.* at 615.
16. *L.L.N. v. Clauder*, 563 N.W.2d 434, 440 n.11 (Wis. 1997).
17. Donald T. Kramer, *Annotation, Supreme Court Cases Involving Establishment and Freedom of Religion Clauses of Federal Constitution*, 37 L. Ed. 2d 1147, 1158 (1999).
18. *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).
19. *Malicki v. Doe*, 814 So. 2d 347, 354 (Fla. 2002) (quoting *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990).
20. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993). In *Lukumi*, the Court discussed the process of determining if a law is facially and objectively neutral. To determine facial neutrality, a person must look at the text of the statute. If the law refers to a religious practice without obvious secular meaning, it is facially neutral. In *Lukumi*, the Court held that even though the law contained religious terms such as sacrifice and ritual, it was not obviously facially discriminatory because these terms had religious as well as secular meaning. However, the Court stated facial neutrality was not the end of the inquiry. A law must also be neutral in its object or purpose. Here, it was clear that the object of the law was the suppression of the central element of the Santeria worship service, and thus the law was not neutral in its purpose.
21. Zanita E. Fenton, *Faith in Justice: Fiduciaries, Malpractice & Sexual Abuse by Clergy*, 8 Mich. J. Gender & L. 45, 69 (2001).
22. 310 U.S. 296 (1940) (Conduct remains subject to regulation for protection of society.).
23. Fenton, *supra*, *id.*
24. *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940) ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." *Id.* at 306).
25. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
26. *Smith v. O'Connell*, 986 F. Supp. 73, 76 (D.R.I. 1997).
27. *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871).
28. 393 U.S. 440 (1969).
29. 426 U.S. 696 (1976). In *Serbian*, the Court declined to invalidate the removal of a Serbian Orthodox Bishop by an ecclesiastical court, holding that: "[C]ivil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense 'arbitrary' must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it find them." *Id.* at 713.
30. *Id.* at 708.
31. *Id.* at 709.
32. 196 F.3d 409 (2d Cir. 1999).
33. *Id.*
34. *Id.* at 431.
35. The First Amendment is applicable to the states through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).
36. 426 U.S. 696, 709 (1976).
37. *General Council on Finance & Administra-*

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(860)612-2037 or lparker@ctbar.org. The editor will discuss article length and deadline. Criticism of the judicial system should be presented with restraint and good taste. No client confidences should be revealed.

On what subjects should you write? The list is wide open. Here are some suggestions:

- recent U.S. Supreme Court rulings concerning patent law and what they mean
- new state laws that affect families
- commentary on recent Connecticut Supreme Court cases
- implementation of the new conservatorship statute
- student rights after *Morse v. Frederick*
- how to start and build a law practice
- financial planning to increase your billables
- criminal practice topics
- mediating complex cases
- preparing for an appeal in trial court
- the keys to effective advocacy
- representing financially distressed consumers
- what makes lawyers successful
- what law firms can do to encourage women
- tips for work-life balance
- what is right about the profession of law
- how to better communicate with clients
- why and how mentoring is important
- motivating law firm staff
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- what has best taught you how to be a lawyer
- Connecticut court decisions and the Fourth Amendment
- protecting clients against mortgage fraud
- writing tips for lawyers
- futuristic trends in legal services
- how to increase the quality of attorney-client relationships
- how to maintain the honor and integrity of the profession CL

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tion, United Methodist Church v. California Superior Court, 439 U.S. 1369 (1978) (internal citations omitted).

38. 182 Conn. 272, 281 (1980) (applying *Jones v. Wolf*, 443 U.S. 595, 602 (1979).
39. 921 F. Supp. 66, 73 (D. Conn. 1995) (quoting *Employment Div. v. Smith*, 494 U.S. 872, 878-79 (1990).
40. *Nutt, supra*, at 74 (internal quotation and citation omitted).
41. *Reed v. Zizka*, 1998 Conn. Super. LEXIS 620 (J.D. Hartford; March 5, 1998; Aurigemma, J.). *See also Reynolds v. Zizka*, 1998 Conn. Super. LEXIS 619 (J.D. Hartford; March 5, 1998; Aurigemma, J.).
42. *Id.*
43. *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 45 Conn. Supp. 397 (J.D. at Bridgeport; June 17, 1998; Skolnick).
44. 45 Conn. Supp. 388, 395-96 (J.D. New Haven; April 15, 1998; Fracasse, J.) (denying motion to strike count regarding negligent hiring, training, retention and supervision of clergy). *See also Doe v. Norwich Roman Catholic Diocesan Corp.*, 268 F. Supp. 2d 139 (D. Conn. 2003) (GLG); *Hartwig v. Albertus Magnus College*, 93 F. Supp. 2d 200 (D. Conn. 2000) (CFD); *Nutt v. Norwich Roman Catholic Diocese*, 56 F. Supp. 2d 195 (D. Conn. 1999) (AVC); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 10 F. Supp. 2d 138 (D. Conn. 1998) (JBA) *vacated on other grounds*, 196 F.3d 409 (2d Cir. 1999); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 989 F. Supp. 110 (D. Conn. 1997) (JBA); *Trinity-St. Michael's Parish, Inc. v. Episcopal Church*, 224 Conn. 797 (1993); New York Annual Conference of the United *Methodist Church v. Fisher*, 182 Conn. 272 (1980); *Mullen v. Horton*, 46 Conn. App. 759 (1997); *Nelligan v. Norwich Roman Catholic Diocese*, 2006 Conn. Super. LEXIS 1848 (CLD, J.D. Tolland; June 15, 2006; Sferrazza, J.); *Nelligan v. Norwich R.C. Diocese*, 2004 Conn. Super. LEXIS 476 (J.D. Middlesex; March 5, 2004; Silbert, J.); *Doe v. Buongirno*, 2002 Conn. Super. LEXIS 2613 (J.D. New London; July 30, 2002; McLachlan, J.); *Doe v. Norwich Roman Catholic Diocesan Corp.*, 1996 Conn. Super. LEXIS 1632 (J.D. Middlesex; June 26, 1996; Stengel, J.);
45. *Schmidt v. Bishop*, 779 F. Supp. 321, 332 (S.D.N.Y. 1991) (internal citations omitted); *see also Swanson v. Roman Catholic Bishop*, 692 A.2d 441, 445 (Me. 1997).
    For a contrary line of cases, *see Bear Valley Church of Christ v. DeBose*, 928 P.2d 1315 (Colo. 1996); *Bivin v. Wright*, 656 N.E.2d 1121 (Ill. App. 1995); *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002); *Doe v. Hartz*, 52 F Supp. 2d 1027 (N.D. Iowa 1999); *Doe v. Hartz*, 970 F. Supp. 1375 (N.D. Iowa 1997), *rev'd on other grounds*, 134 F.3d 1339 (8th Cir. 1998); *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002); *Kenneth R. v. Roman Catholic Diocese*, 654 N.Y.S.2d 791; 1997 N.Y. App. Div. LEXIS 2166; *Konkle v. Henson*, 672 N.E.2d 450 (Ind. App. 1996); *Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo. 1993), *cert. denied*, 511 U.S. 1137 (1994); *Smith v. O'Connell*, 986 F. Supp. 73 (D.R.I. 1997); *Smith v. Privette*, 495 S.E.2d 395 (N.C. App. 1998).
46. *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 72 (D. Conn. 1995).
47. *Id.* at 74.
48. *Doe v. Norwich Roman Catholic Diocesan Corp.*, 268 F. Supp. 2d 139, 146 (D. Conn. 2003) (GLG).