for the true identity of the group, they stayed with the group after they learned its identity. It was undisputed that they could have left at any time they decided to do so.

II Corinthians 10:5 teaches that "every thought" is to be taken "captive to the obedience of Christ." Repentance which is essential to eternal salvation is by a change of mind and heart. When an unbeliever recognizes his or her true condition, emotional distress is usually experienced followed by a change of behavior as a result of the presence of the Holy Spirit coming to dwell in the new believer. This whole process satisfies all of the elements of the tort of brainwashing, coercive persuasion or mind control, it may be alleged.

A fundamental premise in *Nally* is that counseling based on Biblical principles is inferior to secular counseling.

In advocating that there must be a tort for such activity, Richard Delgado, professor of law at the University of Wisconsin School of Law, observed that coercive persuasion is "a recognized category in the Diagnostic and Statistical Manual of Mental Diseases which is considered to be the 'Bible' of the psychiatric field." Eminent psychiatrists and psychologists, according to Delgado, describe coercive persuasion as involving guilt manipulation, indoctrination, fear inducement and peer pressure among several other elements. These scientists declare that these forces will bring about behavioral and valuative changes. They dismiss as a defense voluntary exposure to indoctrination on the basis that manipulation has occurred to persuade the individual to listen.

Acceptance of this tort by the courts of our nation will threaten every church and Christian ministry. Delgado argued that the judge and jury are sufficient restraints to prevent legitimate conduct from being punished. This is sheer nonsense. The only true protection is to prevent a judge and jury from even reviewing such conduct. If they are given the power to make such a decision, they could apply an ungodly standard to godly conduct. The dynamics of any Christian meeting could be found to satisfy guilt manipulation, indoctrination, fear inducement and peer pressure.

It is argued that no religious group has a constitutionally protected right to commit a tort. This argument is only as good as the definition of tort. Constitutional protection of activity long held to be lawful can be lost because of society's changing concept of detrimental conduct. For example, the right of a religious body to fire a homosexual because it goes against its interpretation of the Bible has been upheld in the past. In the future, such action could result in a judgment in favor of the homosexual, based upon a court finding that religious beliefs violate a duty not to discriminate because of sexual conduct. The current trend suggests this will happen in the not too distant future.

Fundamentally, there should be no tort based upon the communication of religious information where there is no physical restraint or threat of such to the hearer. Tragically, however, religious conversions are now being evaluated by scientists and doctors to determine those they consider normal and abnormal. Their measure of normal behavior is now determined largely by criteria divorced from Biblical principles. Psychiatric testimony, according to attorney Barry A. Fisher in his presentation entitled "Tort Law as an Ideological Weapon," is now the most powerful and persuasive force in the courtroom on the issues of acceptable behavior. Thus, a genuine Christian salvation experience could one day cost a church a huge sum of money.

Fraud

The old tort of fraud is now being expanded to constitute a threat to Christian teaching and ministry. The threshold issue to establish the tort of fraud is a false statement. Thus, a person attacking the Christian doctrine of eternal security as a false statement, could contend that the only reason he or she joined the church and made contributions to it was because of belief in this teaching. The standard for truth or falsity of this doctrine becomes the real issue. If it is a Biblical standard, then there is protection. However, if the standard is a jury's own idea of what is true or false, then the church is in great jeopardy. The trial lawyers want whatever they can sell to a jury. It is in the best interest of Christianity for these matters to be protected by the Constitution and not decided by a judge and jury.

Another example of how the trial lawyers are working overtime to have religious matters decided by a jury was propounded by Stanley Leal, a personal injury lawyer. He maintained that fraud can occur by a religious organization when it fails to disclose accurately its identity and what it teaches before a person attends any of its functions and submits to its teachings. This is totally impractical. Consider the steps necessary to accomplish this. Liability is predicated on what is not said as opposed to the making of false statements. It is one thing to be liable for doing something wrong, but quite another for failing to do something you did not have the opportunity to do or even think about. Churches could find themselves being required to make disclaimers along the lines of manufacturers of commercial products. Thus, another sound reason why these matters should not be in the courthouse.

Intentional infliction of emotional distress

Intentional infliction of emotional distress is a relatively new tort. Originally, it was necessary to establish a physical injury for this tort to exist. This requirement has now been eliminated in most jurisdictions making it a potentially devastating weapon against the church.

The Supreme Court of California acknowledged in the **Molko** decision the right to bring an intentional infliction of emotional distress suit against a religious body. The elements of such a claim are (1) outrageous conduct, (2) intentionally causing or recklessly disregarding the probability of causing emotional distress, (3) severe emotional suffering, and (4) actual causation of emotional distress. Such conduct is described as that which is extreme and outrageous, exceeding all bounds of decency usually tolerated by a decent society. An anti-Christian society will almost surely find a Sunday School teacher giving a lesson to young children on Jesus' teachings on hell and eternal separation to satisfy the element. A proper understanding of Jesus' teaching in this subject should cause emotional distress. Anyone who properly understands the gospel message will experience emotional distress. Therefore, this doctrine, like brainwashing, coercive persuasion, mind control and fraud, can be used to strike at the core of orthodox Christianity.

Liability of clergy as spiritual counselors

Counseling is and will continue to be for the foreseeable future a high risk area. Already, many pastors are refusing to do any counseling. It is one way to stay out of the courthouse. However, this is not an option for those led by God to have counseling as a part of their ministry.

The ABA is no ally of Christianity, but a sinister foe.

If counseling is to take place, it must be done wisely. For example, a male should not counsel a female without a third-party female being present. Preferably, a more mature woman should counsel a younger woman. Precautions must be taken to head off the false accusations or the actual occurrence of sin arising out of counseling.

The recent Supreme Court of California decision in **Nally v. Grace Community Church of the Valley** is significant because it holds that community standards are to be used in measuring pastoral counseling.

A fundamental premise in **Nally** is that counseling based on Biblical principles is inferior to secular counseling. Unfortunately, many Christians accept this false view.

Ed Barker, lead counsel in **Nally** asserted during his presentation at the seminar that juries and courts are reacting in favor of such suits against religious organizations. Again, we find the jury is the one determining the standard of liability, be it Christian or non-Christian. Barker's conviction is that juries will hold churches liable, and ultimately the appellate courts will sustain these.

One significant observation Barker made which must be viewed very seriously is that the news media should write articles in the community on clergy malpractice prior to the suit going to trial. This was a part of his effort to lay a foundation in the community for a standard of review he wanted to use during the trial.

When God's truth is measured by the world's false ideas, tragedy must follow. This kind of suit is typical of the suit brought against God's people because the world hates God. It has no actual foundation in tort law.

Christian counselors should not have duties imposed upon them which are non-Biblical. By imposing non-Biblical standards, the court is intruding into the relationship of the counselor and the one being counseled. Thus, the secular definition of duty in a tort suit determines in whole, or in part, the content of spiritual counseling which the court finds permissible. Such a duty would have courts telling spiritual advisors part of what they must say when consulted. This control of the counseling is no different than similar control of the content of sermons which would amount to an unconstitutional invasion into the church.

Another ramification of imposing a secular duty would force the religious counselor to either seek a different source for help in counseling or to provide help in a different fashion. This places judges and juries in control of spiritual counseling.

Suits against spiritual counseling by necessity will in some instances constitute a direct attack on religious doctrine. For example, in the **Nally** case it was argued that the doctrine of eternal security contributed to Nally's suicide. It was this doctrine which was labeled as outrageous conduct constituting the tort. The Court of Appeals held that this claim had to be submitted to the jury. Fortunately, the California Supreme Court overruled the Court of Appeals on this point. Some of the trial lawyers present at the San Francisco seminar were of the opinion that ultimately the California Supreme Court will change its position on this point and so will the highest courts in other states.

Liability for sexual misconduct of the clergy

Sexual misconduct of the clergy is not new. The lawsuits are new. The suits which are being brought go beyond the person guilty of the sin to include the church or the religious organization.

As a general rule, the church or organization is able to successfully defend itself because the plaintiff must show that the employee was acting within the course and scope of his responsibilities. Since the Bible condemns such conduct, this element cannot be proved.

To get around this requirement, the trial lawyers have ingeniously devised the doctrine of "clergy malpractice." This doctrine does not require proof that the employee was acting within the course and scope of employment. This theory argues that the staff person, by acting wrongfully, is misrepresenting the true teachings of the organization and, thus, the victim suffers harm because of the misrepresentation. The negligence of the organization is found in permitting an individual to misrepresent its true position. The sinful conduct is treated by the attorneys as nothing more than an exacerbation of the underlying injury of misrepresentation. By its very nature, clergy malpractice falls within the "scope of employment" and the employer is vicariously liable.

There are some courts which are beginning to change the requirements of "course and scope of employment" to prevent the institutions from avoiding liability for the employee's sinful conduct. The new requirements are (1) the employee must be performing a service for which he has been employed or while doing something that is reasonably incidental to his employment, (2) the conduct should have been fairly foreseen by the employer, and (3) the conduct must occur within work related limits of time and place. Such activity on the part of the courts is nothing more than finding liability where none has previously existed before.

Negligent hiring, retention, and/or supervision—liability arising out of the employment relationship

Several of the attorneys during the seminar made it clear that they were looking for "deep pockets" in litigation involving religious organizations. Deep pockets can only mean the organization. Therefore, the trial lawyers will seek to persuade the courts to apply to religious organization theories of liability currently established against non-religious organizations. Several of those theories are: negligent hiring, negligent retention of an unfit employee, and failure to properly supervise. While so far the courts have not accepted any of these theories as applied to religious organizations, it is not because these theories have not been asserted. The general trend of court decisions concerning the church and its ministries would indicate that at some point the courts will embrace one or more of these theories.

The opening subject area was entitled 'Expanding Use of Tort Law Against Religions.'

The greatest protection from attack based upon these theories is to follow Scriptural principles in selecting people to serve in ministry and to deal promptly with their conduct as directed by Scripture.

Piercing the corporate veil—liability of religious bodies and affiliated entities

In order for trial lawyers to get to the "deep pockets" they seek, "piercing the corporate veil" is another of those theories. While most often the individual who is guilty of wrong conduct does not have assets comparable to the organization, there are some circumstances where the organization has limited assets, but some of its officials have substantial assets. Thus, a trial lawyer will examine the assets of the individual who has committed the wrong conduct, then look at the assets of the organization, and finally, look at the assets of the individuals who are responsible for the organization. This gives the trial lawyer three target areas to go after for a large monetary recovery.

Generally speaking, so long as a non-profit corporation conducts its affairs by following proper corporate formality, the attack of piercing the corporate veil can usually be repulsed.

The more important issue is whether or not the courts should even entertain such a claim against a non-profit corporation. This particular tort doctrine was established against corporations organized to make an economic profit. Spreading liability among stockholders who have sought to economically profit from the corporation's activity is significantly different from spreading an economic burden among people who are not seeking an economic profit, but spiritual growth. This is not to say that individuals who are part of a religious organization should not be responsible for their own individual torts. It is simply to say that the liability should not be extended beyond those who have injured an individual.

Closely associated with the doctrine of piercing the corporate veil is the extension of liability beyond an individual to a group that is associated with the group to which the individual belongs. So far no court has accepted any such theory of liability pertaining to religious organizations, but it is not because the trial lawyers have not tried.

If the trial lawyer's objective is to find a deep pocket, he will start