

## Did Bishop Leo T. Maher Commit a Felony?

by James W. Prescott

In the November/December 1989 issue of *The TRUTH SEEKER*, this writer evaluated the coercive and punitive actions that Bishop Leo T. Maher took against California Assemblywoman Lucy Killea to compel her to change her public and legislative position that supported the right of women to be mothers by choice. These actions of Bishop Maher involved the manipulation of the press to confront Assemblywoman Killea with a "press conference" that announced to her that Bishop Maher had released to the press a copy of a letter that he sent to her legislative office informing her that she was being denied Holy Communion as punishment for her public and legislative position in support of the right of women to be mothers by choice.

Assemblywoman Lucy Killea was first informed of this when she emerged from a meeting to be confronted with a full blown orchestrated "press conference" requesting her response to Bishop Maher's actions. The context within which Bishop Maher acted against Assemblywoman Lucy Killea is extremely important in contributing to the determination of whether his actions constituted a felony. Specifically, Bishop Maher wrote his "pastoral" letter to her legislative office, as an elected representative to the California Assembly, and not to her home as a private citizen and member of the Roman Catholic Church. Additionally, he used the press to confront her publicly on this issue and did not request a personal and private meeting with her to discuss his "pastoral" and "moral" concerns over her actions as a member of the California Assembly. The context and circumstances of Bishop Maher's actions clearly define his actions as political in nature, namely, to "influence improperly a member of legislature"; and not to provide "pastoral" or "religious" counseling. An analysis of the California Government Code led this writer to the conclusion that, indeed, there was more than a plausible basis to charge Bishop Maher with a violation of the California Government Code and thus, committing a felony (America: Beware The Ides Of November, TS Nov/Dec 1989). Specifically, Article 3, "Crimes Against The Legislative Power", Section #9054: "Obtaining a thing of value to influence improperly a member of legislature" represents just one of the California Government Codes that Bishop Maher has apparently violated.

In an attempt to obtain an appropriate legal review of the felony charges against Bishop Maher I requested in a letter of 18 January 1990 to San Diego District Attorney Edwin L. Miller, Jr. to "review the facts of this case to determine violation(s) of the California Government Code by Bishop Maher with the intent of bringing felony charges against Bishop Maher." Having received no response from Mr. Miller's office to my letter to him of 18 January 1990, I requested Attorney Rita Risser to review the matter for an appeal to California Attorney General John K. Van De Kamp. Her letter to California Attorney General John K. Van De Kamp of 20 February 1990 analyzed Bishop Maher's actions against Assemblywoman Lucy Killea with respect to his very probable violation of the California Constitution. This letter and all the other letters written to obtain a legal "Opinion" and/or ruling from California state officials with respect to this issue are reprinted herein.

On March 6, 1990 Attorney Risser received a response from the office of the California Attorney General, under the signature of Eugene W. Kaster, Deputy Attorney General, who rejected Attorney Risser's request that the "Office of the Attorney General undertake an investigation, pursue a criminal complaint and produce an Opinion concerning a violation of California Constitution Article 4, section 15" and referred the request back to the District Attorney of San Diego (letter attached).

On March 18, 1990 I wrote again to Mr. Edwin L. Miller, Jr., District Attorney of San Diego, reminding him of his lack of response to my letter to him of 18 January 1990 with attachments of the correspondence between Attorney Rita Risser and the Office of the Attorney General, State of California and requested his prompt response to these inquiries. (letters attached).

On March 21, 1990, I received a response from the Office of the San Diego District Attorney under the signature of Steven J. Casey, Special Assistant to the District Attorney, who informed me that "The District Attorney finds your logic amusing but unpersuasive"; and that "There will be no criminal prosecution instituted in this matter." (letter attached).

Given the stalemate at the Office of the Attorney General of California who refused to issue an "Opinion" because only selected public officials can request such an "Opinion" from the Attorney General, I again wrote Mr. Edwin L. Miller, Jr., San Diego District Attorney on 22

April 1990 requesting that in the interest of preserving our constitutional rights of religious liberty and freedom that he formally petition the Attorney General for such an "Opinion" under the provisions of California Government Code section 12519 which authorizes such a request from his office (letter attached).

On June 4, 1990, I received a response from the Office of the San Diego District Attorney, under the signature of Steven J. Casey, who informed me that they would request such an Opinion from the Attorney General if, "in their judgment, a serious question of law is in need of resolution. In the view of this office, your legal theory, while innovative, does not present such a question". "Thank you for your correspondence and your interest. This concludes the involvement of our office in this matter." (letter attached).

However, this does not conclude the involvement of THE TRUTH SEEKER in this matter. We are making a public appeal to any California public official who has "Standing" to request the California Attorney General to render an "Opinion" on whether Bishop Leo T. Maher has committed a felony in his actions against Assemblywoman Lucy Killea.

Stay tuned for the next episodes of THE TRUTH SEEKER, as we attempt to bring a Roman Catholic Bishop to trial for his felonious assault against one of our most cherished constitutional rights:—the Separation of Church and State—that protects us from the forces of religious tyranny, particularly, Roman Catholic religious tyranny!

You can help us in this effort by joining the National League for the Separation of Church and State (see back cover) and by providing a special contribution to 'Stop the Catholic Bishops Assaults Against the U.S. Constitution'. Your contribution to "freedom" is not tax-deductible!

P.S. One achievement in this process has been the "upgrading" of my legal theory from one of "amusing" to "innovative". Thank you Mr. Miller and Mr. Casey! →

No god and no religion can survive ridicule. No church, no nobility, no royalty or other fraud, can face ridicule in a fair field and live.

— Mark Twain, Notebook, 1888

## Letters of Correspondence

18 January 1990

Edwin L. Miller, Jr.

Office of District Attorney State of California

Dear Mr. Miller,

Please find enclosed a copy of the November/December issue of THE TRUTH SEEKER which provides an analysis of Bishop Leo T. Maher's actions against Assemblywoman Lucy Killea and the probable violation of the California Government Code by Bishop Maher (America: Beware The Ides Of November, p.33). Specifically, there is strong probable argument that Bishop Maher has violated Article 3, "Crimes Against The Legislative Power" and Section #9054: "Obtaining a thing of value to influence improperly a member of legislature" and other sections of the California Government Code.

As I have stated in this analysis and in my editorial statement, I am formally requesting that you review the facts of this case to determine violation(s) of the California Government Code by Bishop Maher with the intent of bringing felony charges against Bishop Maher. As you are aware, any attacks upon the U.S. Constitution, particularly, those involving the separation of church and state must be vigorously opposed and your assistance in protecting our religious liberties is hereby requested.

Your prompt response to this request would be most appreciated.

Sincerely,  
James W. Prescott, Ph.D.

February 20, 1990  
John Van de Kamp  
Attorney General

Dear Mr. Van de Kamp,

I am writing to request that the Office of the Attorney General undertake an investigation, pursue a criminal complaint and produce an Opinion concerning a violation of California Constitution Article 4, section 15.

The facts giving rise to this request are as follows. A special election for State Senate in the 39th district (San Diego County) was held on December 5, 1989. Among the candidates was then-Assemblymember Lucy Killea. Ms. Killea announced her candidacy for State Senate, and in doing so, also announced her intention to run on a "pro-choice" platform. In other words, she indicated her opposition to state laws proscribing, preventing or prohibiting abortion.

Ms. Killea also is a practicing **member** of the Roman Catholic **religion**. After **she** announced **her** pro-choice position, she received the **letter** attached hereto from Bishop Leo T. Maher, of the Diocese of San Diego. In his **letter**, he **states** his decision to withhold Communion from Ms. Killea as a **result** of **her** public stand on abortion **legislation**. Bishop Maher sent this **letter** to **Ms. Killea's** Assembly office. He publicly **announced** his action to the press **before** informing Ms. Killea.

California Constitution Article 4, section 15, provides that it is a **felony** for any person to influence, or attempt to **influence**, a legislator by "**bribe**, promise of **reward**, intimidation or other **dishonest means**." A "bribe" is **defined** in Penal Code section 7 (6) as anything of value or advantage, **present** or **prospective**.

Receiving Communion is a thing of value, both **present** and **prospective**. Communion is a sacrament. It is of value in the **present**, **because the** communicant is **able** to fully **participate** in the liturgy of the Church during Mass only by receiving Communion. Receiving Communion also is a public testimony to **the** devotion and **forgiveness** of the communicant. Communion is of value in the future, because Catholics believe that **receiving** Communion at **least** once a year is a precondition to **ascendance** to **heaven**.

Similarly, Communion is a "**reward**" within the Catholic **religion** which is given only to those **whose** sins have **been** forgiven through **the sacrament** of Confession. **Moreover**, the promise of **ascendance** to **heaven**, through receiving Communion, also is a **reward**.

Bishop Maher's action **appears** to **have** the **intent** of **intimidating** Ms. Killea from further publicly speaking about her position on legislative **matters**. It also **appears** to **be intended** to intimidate her from voting **pro-choice** on abortion legislation.

Bishop Maher's action, although to my knowledge **unprecedented**, is not an isolated instance of attempts by the Catholic Church to **improperly influence** legislators. Just one **week before** Bishop Maher's **letter**, the National **Conference** of Catholic Bishops adopted a **Resolution** **encouraging** its members to lobby to **change** state **laws** favoring abortion and to campaign for a Constitutional **Amendment** banning abortion. **Indeed**, language from **the Resolution** is **quoted** in Bishop Maher's **letter**. Although the **Conference** has not set forth the **manner** in which its goals may be accomplished by its **members**, it is not unreasonable to believe that other Bishops will follow Bishop Maher's lead and withhold Communion from legislators in their Dioceses. Thus, the issues raised here go **beyond** this particular **election** and this **specific** Church leader.

The separation of Church and State would not be **threatened** **were** you to take action on this issue. California Constitution, Article 1, section 4, guarantees religious

liberty. It provides, inter alia, "**Free exercise** and **enjoyment** of religion without discrimination or preference is guaranteed. This liberty of **conscience** does not excuse acts that are licentious or inconsistent with **the** peace or safety of the State." The proposed criminal action against Bishop Maher does not violate this section, as explained below.

First, **the** California **Supreme Court** has long recognized that the state can **reasonably regulate** conduct by a church, as opposed to **speech**. See Justice Traynor's discussion of this **subject** in **Gospel Army v. City of Los Angeles**, 27 Cal.2d 232 at 242 et seq. It is not **disputed** that **the** National **Conference** of Catholic Bishops, and Bishop Maher in particular, have the right to **preach**, publish and hold **press** conferences in support of their position on abortion. They also may be able to **express** their opinions about **candidates** for **elective** office. **However**, Bishop Maher has gone **beyond** **free** speech. **He** has **engaged** in conduct. This conduct is not **protected** by **freedom** of **speech** or **freedom** of religion.

Second, the conduct **engaged** in by Bishop Maher is not one that is an internal Church **affair**. Bishop Maher clearly **intended** his action to **be observed** by the general public, because he called a **press** conference. He intended to **affect** Ms. Killea's activities as a legislator, because he sent his letter to her State of California **Assembly** office, **rather** than privately to **her** home. **Further**, if this matter **were one** of an internal Church **affair**, other pro-choice legislators such as **Edward Kennedy** and **Mario Cuomo** also would be **denied** Communion. This has not **been** the **case**.

Finally, Bishop Maher is not **protected** by the religious liberty argument because his conduct is inconsistent with the peace or safety of **the** State. His conduct is in violation of Constitution **Article 4, Section 15**. **The intent** of this provision is to **protect** the **people** of the State of California from **improper influences** upon their **elected Representatives**. To allow Bishop Maher or other Bishops to continue with such conduct will **destroy** the **peace** of our democratic **society** and the **safety** our **representative** democracy has achieved for over 200 **years**.

For these **reasons**, I **respectfully request** you take action in this matter. To my **knowledge**, there is at least one complaining **witness** who **resides** in Ms. Killea's district who would ask that this **matter** be pursued. By copy of this letter I am informing him of my **request** to you. I would **appreciate** your early response.

Thank you for your consideration.

Very truly yours,  
Rita Risser

cc: James W. Prescott, Ph.D.



March 6, 1990  
Ms. Rita Risser  
Employment Rights Attorneys

**Dear Ms. Risser:**

In your letter of February 20 you ask the Attorney General for an opinion as to whether alleged actions by Leo T. Maher, Roman Catholic bishop of San Diego, constitute a violation of Section 15 of Article 4 of the California Constitution. Our understanding is that Bishop Maher, in response to the pro-choice stance of a state senate candidate, is alleged to have publicly announced a denial to the candidate of the right of receiving the Eucharist.

The law does not provide for the preparation of an opinion upon your request. Opinions of the Attorney General are provided only to specified public officials and only upon specified conditions. The law governing the Attorney General's responsibility to provide legal opinions is summarized and explained in the foreword to Volume 66 of the Opinions of the California Attorney General (January - December 1983). A copy of this foreword is enclosed.

Your letter also asks that the Attorney General pursue a criminal investigation and complaint. For review of this request we are forwarding your letter to the District Attorney of San Diego where the acts at issue are alleged to have occurred.

Very truly yours,  
John K. Van De Kamp  
Attorney General

cc: Edwin L. Miller, Jr.  
San Diego District Atty.

18 March 1990  
Edwin L. Miller, Jr.  
District Attorney of San Diego

**Dear Mr. Miller,**

On January 18, 1990 I sent you a letter that formally requested that you investigate the facts surrounding Bishop Leo T. Maher's action against then Assemblywoman Lucy Killea that involved violations of the California Government Code which prohibits "Crimes Against The Legislative Power" (Article 3) and "Obtaining a thing of value to influence improperly a member of legislature" (Section #9054). As of this writing (some two months later), I have not even received an acknowledgment let alone a response to this formal request which included a copy of the Nov/

Dec issue of The Truth Seeker that contained my analysis of why Bishop Maher's actions constitute a violation of the California Government Code and thus a felony.

On February 20, 1990 Attorney Rita Risser wrote Attorney General Van de Kamp which provided an additional analysis of Bishop Maher's actions that clearly indicates a violation of the California State Constitution (Article 4, Section 15) with a request that he "undertake an investigation, pursue a criminal complaint and produce an Opinion concerning a violation of California Constitution Article 4, Section 15".

On 6 March 1990, Deputy Attorney General Eugene W. Kaster responded on behalf of Attorney General John K. Van de Kamp which essentially rejected her request with a referral of this matter to your office.

If past behavior is any predictor of future behavior it would appear that you will also not acknowledge nor comply with this additional request to investigate Bishop Leo T. Maher's violation of the California State Constitution. The intent of this letter is to summarize this history for you, acknowledge Attorney Rita Risser's letter to you of 14 March 1990 with a specific request that you "Please advise as to your intention to prosecute this matter, and the timetable by which you anticipate filing charges", and to reaffirm my petition to you of two months ago to take appropriate legal review and criminal prosecution of Bishop Leo T. Maher. If I do not receive a written response from your office within ten (10) days of the receipt of this letter I will assume that you do not intend to investigate this matter with the intent to pursue criminal prosecution of Bishop Leo T. Maher.

Recognizing the difficult situation that any Roman Catholic attorney would have in prosecuting his own Bishop and being informed that you are Roman Catholic, I am further requesting that you appoint an attorney who is non-Catholic and who supports the right of women to be mothers by choice to investigate this matter and to pursue the criminal prosecution of Bishop Leo T. Maher. This action would avoid any conflict of interest that would inherently exist for any Catholic attorney or any other attorney who is opposed to abortion rights of women that would be involved in the prosecution of Bishop Leo T. Maher.

I am enclosing copies of previous correspondence concerning this matter for your file and forwarding this communication to you by certified mail to assure your receipt of this communication. Your immediate response to this letter is requested.

Sincerely,  
James W. Prescott, Ph.D.

March 21, 1990  
James W. Prescott, Ph.D.

**Dear Mr. Prescott:**

This is to **acknowledge receipt** of yours of January 18, 1990, and March 18, 1990 to District Attorney Edwin L. Miller, Jr. **requesting prosecution** of Bishop Leo T. Maher. Mr. Miller has directed me to **respond** on his behalf.

The District Attorney finds your logic amusing but unpersuasive. **There** will be no criminal prosecution instituted in this **matter**.

Very truly yours,  
STEVEN J. CASEY  
Special Assistant to the District Attorney

cc: Rita Risser

22 April 1990  
Edwin L. Miller, Jr.  
District Attorney  
County of San Diego

**Dear Mr. Miller,**

This is in response to your letter of 21 March 1990 which rejected my **request** that you review the facts and circumstances surrounding Bishop Leo T. Maher's attempt to "Obtaining a thing of **value** to influence improperly a member of legislature (Assemblywoman Lucy Killea), a violation of the California Government Code (Section #9054) and other sections of the CGC; as well as violating California Constitution Article 4, Section 15 which provides that it is a **felony** for any person to **influence**, or attempt to influence, a **legislator** by "bribe, promise of reward, intimidation or other dishonest means." A "bribe" is defined in Penal Code section 7(6) as anything of **value** or advantage, **present** or **prospective**.

I regret that the **reply** of Steven Casey, Special Assistant to the District Attorney, on your **behalf**, conveyed your **response** to this **request** that "finds your logic amusing but unpersuasive. There will **be** no criminal prosecution instituted in **the** matter."

Since you have been unwilling to initiate an impartial and objective review of the merits of this complaint nor to **recognize** the serious **threats** to our Constitutionally protected religious **liberties** by the American Catholic Bishops and Bishop Leo T. Maher in particular, I am requesting that you formally petition Attorney General John Van de Kamp to produce an Opinion **concerning** the violations of the

California **Government code** and the California Constitution by Bishop Leo T. Maher. This request is made under the provisions of the California Government **Code** section 12519 which authorizes such a request by your office.

Although we **clearly** disagree on the merits of this petition there would **be benefit** to both your **office** and to the millions of Americans, who are offended and **outraged** by the attempts of the Roman Catholic Church to impose their **religious** beliefs and theological doctrines upon all **Americans** through **their** coercive influencing of our **elected legislatures** and public officials, to **have** this issue impartially and **objectively reviewed** by the **Attorney General**—"the chief law officer of the **State**".

Such an Opinion by the Attorney **General** would provide a distinct public service to all **parties** concerned and would materially advance the "**separation** of church and state" and all of our religious liberties that are **threatened** by the actions of Bishop Leo T. Maher and the other **American Catholic Bishops**.

Your serious attention to this petition is respectfully requested and your early response would be most **appreciated**.

Sincerely,  
James W. Prescott, Ph.D

cc: John Van De Kamp  
California Attorney General

June 4, 1990  
James W. Prescott, Ph.D.

**Dear Mr. Prescott:**

Thank you for your **telephone** call the **other** day in which we **discussed** your request that the District Attorney **seek** an Opinion of the California Attorney **General** concerning the question of bribery as you described in your **correspondence**.

As I **explained**, the District Attorney **declines** to **seek** such an Opinion. District Attorneys may **request** Opinions of the California Attorney **General** if, in their **judgment**, a serious question of law is in **need** of **resolution**. In the view of this office, your legal **theory**, while innovative, does not present such a question.

Thank you for your correspondence and your **interest**. This concludes the **involvement** of our **office** in this matter.

Very truly yours,  
Steven J. Casey  
Special Assistant to the District Attorney

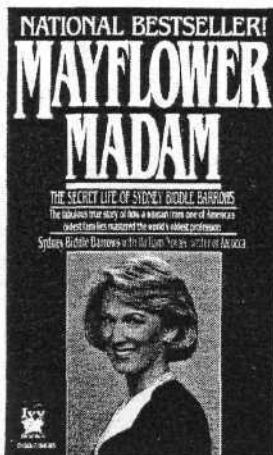
The above correspondence documents the difficulty of enlisting the aid of elected officials to investigate the bases for bringing felony charges against a Catholic Bishop, let alone, of actually bringing such charges against a Catholic Bishop. The Truth Seeker has nearly exhausted the administrative course of actions available to hold Bishop Leo T. Maher accountable for his apparent violation of California laws. Our next and final administrative step which we are pursuing is to locate a public official who has "standing" to petition the California Attorney General John K. Van DC Kamp (A Catholic) to render a legal "Opinion" on this matter. We will keep you informed of our progress.

Your assistance in these efforts is encouraged by membership in the National League For The Separation of Church and State and any donations to support anticipated legal expenses in pursuing this case would be welcome. ■

## Mayflower Madam

### The Secret Life of Sydney Biddle Barrows

"If some men are willing to pay for sex, and some women are willing to provide it at a price they consider fair, and if nobody is being taken advantage of or coerced, then why is it wrong? Maybe it's my entrepreneurial bias, but when each party has something the other wants, and they're able to make a deal, that constitutes a good and fair exchange....It may not sound very romantic, but the fact is that sex is a commodity just like anything else. And like every other commodity, it operates on the law of supply and demand. All over the world, some people are in the position to sell, and others are interested in buying. It's ridiculous to make sex the one area of life where people who wish to are not allowed to make a living with their bodies. Our society has no qualms about a masseuse who is paid for touching people, or about laborers, or professional athletes or dancers, all of whom make a living with their bodies. Why should we make an exception for sex?



### Letter to Paul Kurtz, Ph.D., Editor, Free Inquiry

The subject of oaths interests me. In your BULLETIN (May 1990) you publish a report from Gary Posner concerning events in Florida.

The general counsel for the Florida Department of State says "The wording on some of these forms is sometimes antiquated," and agreed to delete the phrase "so help me God" from its oath for new notaries public.

It is my impression that Florida is simply falling into line with the U.S. Supreme Court decision **Torcaso v. Watkins (1961)**.

The abolition of judicial and other oaths was set out as one of its goals when a group was formed under the name of the **National Liberal League** on the fourth of July 1876 in Philadelphia. The League later incorporated in New York and eventually made San Diego its principal place of business. It was dormant for decades but is now being reactivated by myself and others under the name **National League for Separation of Church and State**.

It doesn't take much research to show that every oath and every affirmation is in fact a religious exercise. The implication of supernatural verification of one's words is there whether or not the name of any deity is overtly invoked. In my opinion the courts, as a civil institution, have no business administering or requiring any oath or affirmation of anyone. In a modern rational secular world, truth is not made more true by any oath, affirmation or declaration. Truth is verified by evidence, not by words supposedly reinforcing it.

I don't think the courts want to remain in the business of religion. What they need, however, is veracity of testimony. Robert Ingersoll argued that the observations made by a sound jury would be the best assurance of a witness's veracity.

However, our courts are punishment-oriented. The California codes were written mostly in 1872, when fire-and-brimstone Protestantism was at its peak. So except for John Vasconcellos in the legislature, we here in California are stuck in a framework of Puritanical thinking, with little comprehension of B.F. Skinner's understandings about amending human behavior.

The question is, then: How to give the courts the reinforcement of veracity they think they need, without the use of oaths and affirmations?

In the California Code of Civil Procedure, a 1957 item (2015.5) makes provision for unsworn written testimony and specifically states that it has "like force and effect" as oaths in specified cases.

On June 26, Judge Lillian Lim of the Municipal Court of San Diego took testimony from me, using orally a form corresponding to the form which CCP 2015.5 provides for written testimony.

I have discussed this event with a number of attorneys, with mixed responses. Some perceive a significant judicial precedent as having been established. Others say it will be ignored. I say that whatever its outcome, Judge Lim's bold and innovative step is to her great credit.

The local **ACLU** considered taking up my case, but decided at length that it would be too costly in time because the case is contaminated with issues other than that of mere oath-taking. But it does appear that their legal committee sees a constitutional issue in the mandating of judicial oaths. When the right case comes along, I suppose the **ACLU** will go to bat against oaths.

In Washington, **Americans United for Separation of Church and State** considered that case with care but decided that in the present climate of the Supreme Court a loss is probable. That leaves Roy Torcaso as the most recent contributor to the abolition of oaths through the courts, by his 1961 case.

I have heard a report that in Pennsylvania oaths have long since gone, possibly being replaced by an affirmation. However, I think the affirmation is really just an oath by another color. The real need is to get rid of the superstitious belief in words, rather than facts, as the measure of veracity.

**Cordially,  
Frank Mortyn**