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Robert A. Destro, General Counsel, Catholic League for Civil Rights, Milwaukee, Wisconsin

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THE LEGAL ACTIVITIES OF THE CATHOLIC LEAGUE

ROBERT A. DESTRO, ESQUIRE

The purpose of this address is to inform you of the activities of the Catholic League, and, for those of you who are not familiar with us, to explain who we are. We like to think of ourselves as a broadly based civil rights research and antidefamation organization. We were founded in Washington in 1973 by a group of devoted Catholics who chose the late Professor David Louisell as the first chairman of the board. The League's current president is Father Virgil Blum and our current chairman of the board is Professor James Hitchcock. The chairman of our legal advisory committee is Stuart Hubbel.

Currently, we have a membership of about 28,000 people across the country. Our national office is in Milwaukee and we have sixteen chapters nationwide in various cities from Boston to Hawaii. Our funding is mainly from membership, and grants from various foundations. We also get some money from bequests. Presently, over 100 bishops in the country are members of the League.

Our various activities include legal services, antidefamation work, research and communications activities. Father Timothy J. O'Brien, a Ph.D. from Catholic University and a member of our staff, recently has completed a study of inner-city schools in selected cities around the country and has supervised the production of an award-winning film called "The Miracle in the Inner City." The film describes some of the activities and problems of these schools and their students. The League also produces educational materials on civil rights issues. These materials are used in schools and for the purpose of educating members of the clergy with respect to first amendment rights.

The League also takes very strong stands on issues which are of interest to Catholics and the religious community in general. We do not lobby, however, since we are a section 501(c)(3) California public-benefit corporation. Instead, we make information and commentary available to various sources, including legislators, through our monthly newsletter, "Status Call," and through specific requests for assistance.

Our current legal staff is composed of two full-time attorneys stationed in Milwaukee. We have four law student clerks who will be working with us full-time over the summer and one legal assistant. For descriptive purposes, we break our legal services down into two categories: specific requests for assistance from individuals, and requests for information. Those requests for assistance which originate in a city in which we have a chapter are first referred to our local legal committee for review to determine whether it is a worthwhile project. All of the services which we provide to people around the country are free. We have, or are beginning to develop, a rather extensive network of volunteer and cooperating attorneys to whom occasionally we refer individual clients on a reduced "fee for service" or free basis, depending on the ability of the client to pay. We have developed extensive networks throughout the country in conjunction with Mr. Caron's office at the USCC, and we do a great deal of cooperative work with the Christian Legal Society, a growing group of evangelical attorneys based in Chicago. We have done a considerable amount of information sharing and are now getting involved in some joint research with the Center for Constitutional Studies and Public Policy at the University of Notre Dame and St. Louis University. We have cooperated and litigated with Americans United for Life Legal Defense Fund. We also have extensive contacts with Marquette University Law School. In the area of international law, we have been developing contacts with international organizations such as Keston College, Amnesty International, and the Catholic Legal Aid Societies in South America. We also keep in close touch and share information with various ethnic groups such as the National Italian-American Foundation, Polish-American Guardian Society, and various Hispanic groups, most notably in Milwaukee, Los Angeles and Miami. We also maintain ties with the American Civil Liberties Union; they have supported us on occasion.

When we get involved in a local case, our usual mode of operation is to get in touch with the local authorities to determine the exact situation. If it is a case which involves an individual, we will describe the case and try to determine the perspective of the local diocese or Catholic Conference.

The actual legal spectrum of issues that we consider largely involves religious freedom questions. They range from consultation in individual cases to litigation up through the Supreme Court level. Each week we encounter anywhere from fifty to a hundred requests for assistance from individuals throughout the country. Their problems range from very simple questions regarding small business administration (which we always farm out to people on the local level) to cases of religious discrimination, some of which we handle and some of which we refer to others. We may give advice, or we may refer them to local attorneys or other experts who are more capable of handling the case.

With respect to groups, we advise several local organizations concerning their rights as organizations. For example, in Milwaukee, we have been very active in helping the Hispanic Pastoral Commission as they attempt to organize themselves from a number of subgroups in the Milwaukee archdiocese. We have helped advise the Right to Life Society in New Mexico regarding Federal Election Commission inquiries, which raised substantial first amendment questions. We also have assisted local schools which are unaffiliated with dioceses. Most of these have been Christian or evangelical schools in places like Grand Rapids, Boston and Springfield.

Legislatively, we have been asked on a number of occasions to do research and issue opinions on legislation. We have done this in Rhode Island with respect to some of that state's tax credit legislation. We have also done research on the congressional level regarding the Civil Rights Commission Appropriations Act.¹ Further, recently we have been asked to give an opinion on the Human Life bill. In the past, we have commented on bills before the state legislatures concerning parental notice, education, and teacher training, and have also given information to legislative bodies in states like Ohio, Michigan, and Massachusetts.

When consultation is inappropriate we attempt to negotiate. We have had a number of requests—probably ten or twelve—from elderly individuals who are residents in nursing homes. It appears that HUD seems to think that there is a problem with the elderly inviting priests to their apartments to say Mass if the apartment house was built with federal funds. We have negotiated with HUD and have had great success in New York, Cincinnati, Chicago and Albuquerque. A similar issue arose with respect to the Pontchartrain-New Town development in Louisiana where HUD indicated that it was not going to allow churches or church-related schools to be built in the district. We prevailed in that controversy through negotiation.

With respect to free exercise claims by individuals, we have helped teachers and Internal Revenue Service employees reach accommodation regarding days off for religious holidays. The most recent example is a high school teacher in Whitefish Bay, Wisconsin, who did not want to work on Good Friday.

In the pro-life area, we helped to write the congressional amicus brief, and worked on the ACLU amicus brief in the *McRae* abortion funding case.² We, in addition, have been involved in several parental rights

¹ See 42 U.S.C. § 1975 (1976).

² *Harris v. McRae*, 448 U.S. 297 (1980). In *Harris*, Cora McRae was a Medicaid recipient who wished to terminate her pregnancy. The New York City Health and Hospitals Corporation and others commenced an action attacking the constitutionality of the Hyde Amendment which prohibits the use of federal funds to reimburse abortion costs under state Medi-

cases, most notably *Bellotti v. Baird*.³ Further, we have been involved in the case of *People v. Worldwide Church of God, Inc.*,⁴ which relates to the public trust theory that all money which is held by charitable corporations is, in essence, owned by the state.⁵ Most recently, we were asked by Judge Raymond Pettine in Rhode Island to help write an amicus brief in a Nativity scene case brought by the ACLU against the city of Pawtucket, Rhode Island.

The individual cases we are most proud of are those in which we have actually been involved as counsel. They range from prison/free exercise cases to tax cases. They arise out of very interesting and, often, very bizarre circumstances. For example, one of our first prison cases involved one of the correctional institutions in New Jersey. The St. Dismas Holy Name Society, named after the good thief, was not permitted to conduct Mass on Sunday and was not permitted to meet in the prison. Once it became clear to the prison officials and the court that the prisoners' right of free exercise was being seriously hampered, the state of New Jersey entered into a consent agreement settling the case in all respects on the prisoners' behalf. We have a very similar case coming up in the Western District of Wisconsin, involving a prisoner at the Waupun state prison.

In one of the first cases we were involved in, the state of Michigan tried to shut down a small evangelical school in order to get the children into the public schools for "head count" day. "Head count" day is the day when the state tallies the number of children in a class, and figures out how much aid is going to the particular school district. By obtaining an injunction forbidding the state from shutting down the school, the controversy evaporated. The state discontinued its attempts to close the school.

We currently have a case before the Iowa Civil Rights Commission on behalf of an Italian-American Catholic who was harrassed and not promoted at his job with the Polk County Veteran's Administration because of his Italian and Catholic ancestry. It was rather incredible to find that

caid programs except in certain narrowly defined circumstances. *Id.* at 302-04. The Supreme Court reversed a ruling by the district court for the Eastern District of New York that the Hyde Amendment violated the equal protection clause of the fifth amendment and the free exercise clause of the first amendment. *Id.* at 305. The Court held that the Hyde Amendment contravenes no substantial constitutional right. *Id.* at 322.

³ 428 U.S. 132 (1976). In *Bellotti*, William Baird and several pregnant minors brought suit seeking to enjoin enforcement of a Massachusetts parental consent statute requiring minors to have their parents' consent before an abortion could be performed. *Id.* at 136-37. The Court unanimously held that the district court should not have enjoined operation of the statute without first certifying the relevant issues to the Supreme Judicial Court of Massachusetts. *Id.* at 146. The Court vacated the district court's order and remanded the relevant issues to the Supreme Judicial Court of Massachusetts. *Id.* at 134.

⁴ 127 Cal. App. 3d 547, 178 Cal. Rptr. 913 (Ct. App. 1982).

⁵ *Id.* at 551, 178 Cal. Rptr. at 915.

on his permanent employment record, it was noted, prominently and emphatically, that he was Catholic and could not think along the same lines as everyone else.

Additionally, we have been involved in a number of church-state cases. For example, we represent, in conjunction with a local attorney in Kentucky, some intervening parents in litigation which raises the question of whether Kentucky school children are entitled to receive textbooks for certain kinds of courses. Further, we have been involved in a number of "pure" religious discrimination cases. In one of these cases, we are suing the state courts of New York for discrimination against an attorney priest. In another case, we have brought suit against the Board of Education of Allegheny County, Maryland, for discrimination against Catholic school students who wish to take classes offered at public schools.

We have represented Catholic school teachers in Pennsylvania and recently were successful in a case litigated in the Third Circuit, which forced the Commissioner of Internal Revenue to apply the regulations to deductions for Catholic school teachers in the manner in which they were written. It was interesting to see how far the Commissioner would go to bend the rules when he felt that the case should not result in a posture favorable to the Catholic schoolteacher. The Tax Court split eight to seven against us, but the Third Circuit reversed.

One of the cases we are most interested in pursuing is *Brandon v. Board of Education*.⁶ It is a voluntary prayer case which involves a group of students from Guilderland High School who formed a voluntary prayer group called the "Students for Voluntary Prayer."⁷ It is an interesting case because it is a "pure" voluntary prayer case.⁸ There are no faculty members involved; it concerns before or after school meetings. Perhaps the most interesting thing from our perspective is that the Second Circuit has ruled that free speech does not apply to religious speech for high school students.⁹ In the court's view, students have a right to speak on political matters, but the establishment clause forbids them to speak

⁶ 635 F.2d 971 (2d Cir. 1980), *cert. denied*, 102 S. Ct. 970 (1981).

⁷ *Id.* at 973.

⁸ *Id.* Although no faculty were involved, the lower court concluded that excessive entanglement between the secular school and religious activities would occur because faculty members would have to supervise the meetings to make sure they were voluntary. *Brandon v. Board of Educ.*, 487 F. Supp. 1219, 1229-30 (1980).

⁹ 635 F.2d at 980. The court stated that a public school classroom is not a public place where religious views may be voiced. *Id.* The court noted that since the case involved prayer and not simply religious discussion, the establishment clause prohibition against prayer in public schools ends any discussion that students' free speech is being unconstitutionally limited. *Id.*

about religion.¹⁰ We are closely following a very similar case in southern California called *Anderson v. Saddleback Valley*.¹¹ In this case, the ACLU is seeking from the Superior Court in Orange County a ruling which would, in effect, expel some students who are gathering on the school premises to pray. The school board has indicated that they would not get involved in deciding what school students can discuss. The ACLU has now taken it upon themselves to have the students thrown out. We will see what happens over the next few weeks.

We have also been involved in a number of parental rights cases, most notably the Akron abortion ordinance controversy which currently is pending before the Sixth Circuit. It involves a parent's right to know and participate in judicial proceedings which would lead to a minor's abortion. The case should go a long way in defining what the rule will be with respect to parental notice and opportunity to participate in the abortion decision of a minor.

In areas other than litigation, we are responsible for the publication of *Status Call*, which is a quarterly publication designed for attorneys who are interested in first amendment litigation. We intend to expand it to include related publications, information on international human rights issues, and commentary and analysis. We also provide a good deal of research and writing capability through law review articles and participation in Wisconsin, Minnesota, Iowa and Kentucky Continuing Legal Education programs. In addition, we have authored CLE materials on first amendment issues.

Basically, our position is that we would like to be a resource for you, for the church community at large and for individuals who are members of the church community. We have found that, over the last few years, there has been an increase in interest in first amendment religious issues. Last week there were four hundred attorneys, in addition to a number of others, at the Christian Legal Society Conference on Religious Issues in the 1980's. Their agenda was almost identical to what one would expect at a Catholic lawyers' conference: extended discussions of tax credits and vouchers, prolife, parents' rights, prisons, prayer and religion in public life, and church-state relations.

Interestingly, many of the CLS lawyers are Catholic lawyers. The Catholic community, as we see it, is an invaluable resource. Now that the

¹⁰ *Id.* The court indicated that there is a difficult balancing of three factors: voluntarism, neutrality, and separation of church and state. *Id.* at 974-75. Because political speech in public school does not threaten this delicate balance, it is allowed. *Id.* at 980. However, the court felt that prayer or religious discussion upsets the balance, and unless the student's religious needs are very compelling, the forum of the public high school classroom is not available for religious discourse. *Id.*

¹¹ No. 354-722 (Cal. Super. Ct. Orange County filed Apr. 21, 1981).

dominant trend in public life appears to be more toward the secular, we need Catholic lawyers to get involved and to stay involved in these issues. The issues are there and we are willing to help. We receive a great deal of personal satisfaction from this type of involvement. We feel that it is part of our mission to do what was said by the Lord himself, "Whatsoever you do for the least of my brethren that you do unto me."¹²

¹² *Matthew 26:40.*