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PROBLEM PARISHIONERS

JACK M. HAMMEL, ESQ.*

Jack Hammel: My materials are right after Bill's. So, if you have located Bill's, mine would be about half way through the materials on Problem Parishioners, with the heading *Problem Parishioner Issues: Case Studies*.

The first case study is entitled: *School Volunteers—Whose School is This Anyway?* I find, and suggest that probably you do also, that over the last five or six years, schools are becoming a lot like Little League, in the sense that the parents, rather than the kids, are often more of the problem. Similarly, sometimes lawyers, like the coaches, are more trouble than the kids.

That certainly was true in my first case study. As you can see from the summary, we had two parents who were very well known in the county, very influential, who had been there for many years and exerted quite a bit of influence in this parish and school. We ran into a little problem where they were on a habitual crusade, year in year out, against the school administration, feeling that they knew how to teach better and how to administer better than the school. Then they enlisted the support of some of the parents in the parking lot on the way to school. At one point, they tried to take control of a PTA meeting, despite the fact that the pastor had warned them ahead of time that he did not want the subject of this teacher whom they didn't like to become a subject of the PTA meeting. So, this had become something of a pattern with them. The superintendent of schools had become weary of it; the administrator had grown weary of it and so had the pastor.

Finally, they said, "Look, at least for the time being, we're going to have to curtail your coming on the campus and participating in volunteer activities." The parents said, "You

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can't do that. We have a right to volunteer." We respectfully disagreed and they went and got a lawyer, who I suspect was a friend of the family. She worked for a high powered firm, and should have known better than to come bothering us with something like this. However, she wrote a letter and insisted that the parents had a legal right to volunteer. I responded in my letter by making reference to the Webster's dictionary definition of volunteer, which said, "to offer one's services." We said that those services had been respectfully declined. She wrote back a five-page letter, two of which were devoted to her interpretation of the dictionary. I could see where this was going. We wanted to bring a halt the situation, and basically said that we could agree to disagree on the definition of volunteerism. However, I disagreed with the position that there is an implied right to volunteer, if not an expressed right in the various school materials.

The parents also felt that the principal had engaged in a pattern of "harassment" against them. I've also noticed that that term, over the last four or five years, is probably the most frequently cited and misused term of all. Harassment, as we know, has legal connotations to it, but everybody feels that harassment applies in every situation. We dismissed that claim as nothing more than a personality conflict. There was certainly no legal harassment involved.

The long and short of it was that the parents didn't go anywhere with their threats to sue, and they pulled their kids out of school for the third time. This had been a pattern as well. This time the children stayed out. Afterwards, we asked what we should do about this because it was becoming a frequent problem. The lawyer was saying that we had nothing in the handbook that says that you have the right to withdraw this volunteerism. So, we decided to add something expressly dealing with volunteerism, but more importantly, the overall responsibilities of the parents.

Frequently, our handbooks focus on the responsibility of the students to behave in school, to contribute to the moral principals of the school, etc. But what do we say about the parents? We developed the document that is in your handouts as Attachment SF-1, which we call the *Code of Christian Conduct*. As you can see, we made it applicable to both the student and the parent. Our basic objective was to illustrate the specific types of conduct

that we would consider to be offensive and grounds for graduated action, up to and including expulsion. We also tried to put it into a Christian context so that in the event of a lawsuit the court would be a little bit hamstrung, since we feel that they could not interject and determine what was the improper exercise of our discretion in determining what types of actions were violative of Christian principles.

The arrangement between private Catholic schools, parents and students is essentially one of contract, as courts have held. We are not a state actor, so we are not subject to the same detailed rules and principles that would apply to a public school. We don't have to have a detailed due process system. What we have to do is appropriately notify parents and students as to the rules that apply if you wish to attend our schools— Make sure they are incorporated into the tuition agreements and into our handbooks. We have incorporated this Code of Christian Conduct in these documents. I would say no less than ten times in the past year we have referred to that document very successfully, including with individual parents who started out kind of harsh with the pastor. When we referred them to their responsibilities under the contract with this particular document, we got fast apologies and they calmed their act down. The same happened in several instances with attorneys who agreed at the start that this was a question of contract. We said, "Well then, read the contract. Have you read all the documents including the Code of Christian Conduct?" We didn't hear anything back from them. I think this is a helpful tool to have around.

My second case study refers to parish auxiliary members entitled "*Whose Church is this Anyway?*" We went from a school problem to a membership problem. As you can see, we had a young man who was in the young adult ministry, and who was attempting to become amorous with a number of young ladies in the group. They found this to be quite disconcerting and humiliating. Finally, they went to the pastor and said, "We asked him to stop and he won't stop. We don't want him to be a part of this group anymore." The pastor talked to the young man, who responded that "I just like these girls and I would like to get to know them better." He said, "Well your mannerisms are not consistent with the philosophies of this particular Church group and I am going to have to ask you to leave." The young man went and got a lawyer and filed suit against us. His

allegation was that this parish youth group was nothing more than an unincorporated association that was, in effect, a "social club." Therefore, the normal church/state protections should not apply, and he was not accorded "due process" in terms of his membership in the group being terminated.

The law firm of Tobin & Tobin, with Paul Gaspari as our main litigator, handled that case, quite adeptly I feel, and we were successful on our demurrer on church/state grounds. A copy of the brief is in your handouts. Fortunately, on appeal the court also upheld our right to dismiss the person from the group. Unfortunately, the court ordered the opinion to be depublished. Since there are so many of these kinds of cases, with increasingly more anticipated in the future, we were hoping to have a nice, readily citable, precedent on hand. We asked the California Supreme Court to order it published, but they declined to do so. In any event, you have some of the case law there at your disposal. Hopefully, it will be helpful to you.

I think it is quite obvious that this was a combination of a Free Exercise and Establishment Clause case. This experience suggested to us that we increasingly need to make clear that auxiliary group programs, budgets, personnel, etc., all unambiguously need to come under the auspices of the pastor and the corporate umbrella, so that plaintiffs can't argue that you are nothing more than a social club or that they are semi-autonomous or independent groups that are just using church space. If it truly is a part of your parish program or an auxiliary, you need to make the relationship clear, up front. We have even talked about incorporating the Code of Christian Conduct into parish auxiliary groups so that members will be on notice that certain types of behavior will not be tolerated. We can use that as a document in our defense in the event of a lawsuit.

This case also suggests that these auxiliary groups need to be watched. Some of them will set up what they call "bylaws," have officers and open up bank accounts. We had a situation like that some years back where one of the PTAs opened up a bank account and the pastor, who was a very open-minded and gregarious guy, allowed them to put together bylaws which had the appearance of corporate bylaws, and basically made him "first among equals." So, when we had a question about expenditures from the bank account, these "officers" refused to turn over the monies. We had a lawsuit and one of the defenses

they raised was that the pastor had authorized this, had apparent authority to do so, had granted them all kinds of authority.

In the meantime, or subsequent to that, we put together some model PTA guidelines which are also in your handouts. We make it unequivocally clear that the organization is under the corporate umbrella, that the corporate authorities can define their identity, disband the group at anytime, and that their approval is necessary for any amendments to the organizational structures, those types of things.

As far as limiting our liability for volunteers in general, such as the young man in this youth group, what if he had hit on one of the girls successfully, and she later had a change of heart that this was a form of harassment or whatever? We have developed something that we've used more in the context of situations where older parishioners were looking for rides to church on Sunday, or to go pick up their groceries, and they will say, "Do you know of any drivers who might come to pick me up?" The parish pastors are worried about the liability. So we put together a very brief document (in your handouts) that could be embellished a bit, depending on how far you want to go with this. It is basically to suggest that we function as a facilitator to let people know that there are people who are interested in picking people up and there are people who need rides, but that we are not a clearing house. We don't vouch for folks; checking on their driving records, their backgrounds, etc. If people wish to look into that they would need to do so on their own. This might come in handy for example, in the case of this young adult individual if he had offered to pick up, literally, one of the other group members at their home and then something untoward happened. There would be some degree of protection if the people had been put on notice that this was not a parish sponsored program.

Similarly, when you have off-site social ventures where people go on skiing trips, etc., the only real connection is that they might be members of an auxiliary group who say, "Let's all get together and go skiing." However, the parish doesn't have a clue as to who is arranging the transportation or what location are they are staying at. Is it a safe place? Those kinds of things. We've put together a waiver form that the pastors can use, which is also in your handouts at Attachment #SF-5. It basically puts them on notice. Participants sign off that the parish has not

investigated the transportation, the hotels, etc. So, that if something happens at one of these hotels, they don't say that you should have looked into this more carefully.

Basically what we are finding is that these auxiliary groups and volunteers can be one of the greatest areas for potential liability. What we've tried to do is develop some forms and policies that can help us to address specific situations. Hopefully, the handouts that you have might be of some assistance to you.

Thank you.