November 2017

Violence in Schools

Sr. Mary Angela Shaughnessy

Follow this and additional works at: http://scholarship.law.stjohns.edu/tcl
Part of the Education Law Commons

Recommended Citation
Available at: http://scholarship.law.stjohns.edu/tcl/vol42/iss1/2

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.
VIOLENCE IN SCHOOLS

SR. MARY ANGELA SHAUGHNESSY*

John Liekweg. Sr. Mary Angela is Legal Counsel to Spalding University. Sister writes extensively in the area of school law, particularly as it affects Catholic schools. She also lectures frequently around the country.

Thank you very much Mr. Liekweg. It is a real pleasure to be here with you today. As I was listening to Mr. Dionne, I thought, “Well, what should I call myself?” I started out as a practitioner, ended up as an academic, and somewhere along the way, became an attorney. So, that is my story, which is probably not like many of yours. I also thought, “Well we are in Washington, and since Mr. Dionne told so many political stories, do I know any?” I can think of two.

I was in the fifth grade when John F. Kennedy was elected president. Our Ursuline Sisters came up with a different version of the Hail Mary that we started off with everyday. It was, “Hail Mary full of grace, please don’t forget President Kennedy in the presidential race.” I don’t know if any of you were around when any of that went on.

The second story is that when I was 18 years old I was so excited to be able to vote. My father said, “Honey,” as we said in the south, “you can vote any way you want. You can go register to vote independent, democrat, or republican. It is perfectly your choice. Just one thing, if you don’t register democrat, don’t come home.” So, that is kind of my background.

I am coming to you directly from the National Catholic Educational Association Convention last week in Baltimore. It ended up being standing room only, flowing out into the hall. I like to think it was because I am such a great speaker but I think it is because the topic was one that everyone is interested in these days. Surely, no one is unaffected in this country. However, we hear, and I hear things like, “It won’t happen in a

* SCN, J.D., Ph.D; Spalding University, Louisville, Kentucky.
Catholic school.” “It won’t happen in a Catholic youth group.”

I believe that it is only a matter of time. While this may sound like the prophet of doom, I think that far too many Catholic principals and Catholic religious educators are taking an approach, and the approach is “it hasn’t happened, we’re O.K.” You know as well I know how deadly that kind of approach can be. We are dealing with such situations as the chilling statement by Elian Gonzales’ father, if you recall, when he was asked, “Wouldn’t you want your child to be free in America.” He said, “When I send my child to school in Cuba, I know he is safe. If I send him to school in America, he may get shot.” I think it’s a very sad reality and we have begun to panic at all levels.

A week ago I had my nephew at a Target store and my sister told me that he had wanted a Tonka CD for the computer. So, I bought it, being a very nice aunt. He came back to my apartment and played it. He was very happy. My sister told me on Friday that the principal called, very upset because Brian was talking about blowing up things with dynamite, which is what went on in the Tonka CD. My sister said to me, “He’s only 6 years old.” I didn’t have to respond. My brother-in-law said, “The kid that killed the other little girl in the first grade in Michigan was only 6 years old too.” So, we are at a time where we have to be so careful about everything. Parents fear sending their children to school in the morning. You know that as well as I do. Children leave home in great fear. They wonder if they are going to be safe.

My blood ran cold after the Michigan incident when the Superintendent of Schools was interviewed on the Today Show. He was asked, very appropriately I thought, “Can you guarantee the safety of children in your schools today?” He hemmed and hawed and tried to evade the question, but the interviewer kept bringing it home and finally he said, “Yes, I can guarantee the safety of your children today.” No one can guarantee the safety of children today. Many well-intentioned principals are saying things like “your children are safe here.” We would like to think that people are safe. But, we know only too well that things happen every day over which we have no control.

After the Columbine situation, I received phone calls from across the country the very next day. They were from Catholic school principals and Catholic school superintendents. This is
what I was told. Eighth graders showed up in black trench coats the day after Columbine. Some kids had some buttons made up that said, “Columbine is just the start. Who’s going to finish the job?” These are Catholic schools. These are not public schools. Hit lists were being kept. I worked with some of you in this very room on some of these issues. It is a situation that says that if we are not ready now, when are we ever going to be ready? So, it is important, I believe, that we have diocesan policies and diocesan personnel that can provide the education that is needed.

You may recall a man named Etzioni—he was an organizational management theory expert. Etzioni said, “The easiest thing to change is individual knowledge. The next easiest thing to change is group knowledge. The hardest to change is group behavior”. I think that is true today. And you as diocesan attorneys are the ones to whom people look. Our diocesan attorneys in Louisville, and I believe that they are here, have done a fine job of educating people. So, you are the ones that the principals will also call, unless the superintendent says “please don’t call the diocesan attorney because the clock starts running.” You may or may not have heard that. But, I certainly have heard that.

What I want to do today is to share with you some of the materials that I have developed and that I am using across the country. These have also been mailed to every single Catholic school principal in the country. Now, that is not assuming that if you ask a principal what he or she thought of it, that they will know if they ever saw it. But, these materials did go out. I think it is really important to be practical. Yet, one thing that I hear, and maybe you hear it too, is, “Don’t give me any legalese.” I’m sure you’ve heard that, right? “What do I have to know absolutely?”

I have found over the years that one way to ascertain what people know is to give them a little pretest. Now, I’m sure everyone in here would get absolutely 100% on this. But, you can feel free to use this with your school board, with your principals, with people who want to know. I’d like to go through this, not so much to tell you what’s right and what’s wrong, but to tell you the issues that are arising around these particular points involving school safety and violence prevention. So, I ask people to take this true and false test. I ask you not to do
cooperative learning—when you share your answers with the person sitting next to you—just to see what people know.

1. The first question or statement says, "The laws governing safety and violence issues apply equally to both public and private schools." We know the answer to that is true. You might be amazed how many principals don't think the answer to that is true. They think it is false. You might say, "Where does that come from?" Well, that comes from people like you and people like me saying to them that you don't have constitutional rights that have to be protected in a Catholic school. But, what many principals don't understand is that other laws do apply. Now, it may be perfectly plain to you and to me, but that doesn't mean that it is perfectly plain to the person who is dealing with the issue at the moment. We have to be sure that the people in our dioceses who are responsible for the safety of children know what the state laws are. Now, that seems so obvious. But, many principals will tell you, "I'm not a lawyer. I didn't go to school to be a lawyer. I don't get paid what you get paid, so I don't want to worry about the law." Yet, they are the very ones who are left holding the bag.

2. State laws are relatively broad. They leave much discretion to administrators on issues of safety and violence. Most principals will answer this true when the answer is false. We have very specific state laws about what can and cannot go on in a school in regards to safety. We have safety policies. We have safety procedures that are mandated by the state board of education and by state law. So, people cannot do such things as that which happened in a Catholic school about six years ago. The building inspector came in and said that the roof had to be fixed. There was a danger that the roof would fall in. But the school board had a meeting and decided that fixing the roof was not a priority. They needed computers more than they needed the roof fixed. I'm sure no one consulted with their diocesan attorney. They bought the computers and let the roof go. The roof fell in. The principal said to me, "But we are in a Catholic school. It doesn't matter." It's just like the person who said to the fire inspector who came in and said, "Sister, I'm really sorry, but you can't have a live Christmas tree with lights in the middle of this school. It is against our fire code." And she said, "We are a Catholic school, we don't have to do what the government says we have to do." That's a level. Now, some people are way
beyond that level and some people don't even have that basic discussion.

I was at the NCEA convention having dinner with a very dear friend of mine who is a high school principal. He has invited me to his school to talk to everyone. He said to me that a priest who was on his faculty decided to take some kids to the Virgin Islands for spring break. The kids wanted to go. Yes, I know you all are groaning. But, I think you have heard stories like this before. These are nice kids. He said, "I told the priest that I don't think this was such a good idea. But, you know, this man is popular. He just won an award. He's a great guy." I said "Okay." A friend of mine who was with me said, "What did the permission slip look like?" He said, "I don't think he's got any permission slips." Now, this is a man I taught. I also came and gave workshops for him. But, somehow, even though we hear a lot of these things as practitioners, we somehow don't think it is going to happen to us. At least that has been my experience, over and over again.

3. **Policy should govern institutional responses to violence whether threatened or active.** That's true. But, so many people say to me that nothing's ever happened here. If we write a policy, people will be scared. How many of you have heard something like that? Only one person? I hope it's more than that. So, we don't want to put the policy in. You are at the diocesan level. You've got to be sure that there is a mechanism in place so that the superintendent is communicating with all of those principals about the importance of policy.

We can write all the memos we want. But, until the superintendent is out there saying this is the policy that you must have, and perhaps writing a sample policy or a diocesan policy, people are going to continue to not do it. Why? Because it takes time. I believe that people need to start gathering data early, and I'll be talking about that in a minute, before they ever attempt to write a policy. You know as well as I do that it is better to write a policy that you'll never need than to try to construct one after the fact. I wish I had a dollar for every principal who called me after an incident of threatened or active violence and said, "We don't have a policy." It is so much easier if you have a policy.

4. **All threats of violence must be taken seriously.** I think the answer to that is true. I think that the teacher who spoke to
my sister was correct. Not that I think Brian is going to blow up the school. I don't. But, I think you have to act decisively with everyone and make a statement. One of my students came to me not long ago, and was very upset. It was the beginning of school. The principal had gone down to the five-year-old kindergarten classroom where her daughter was a student. She said, "If you tell anyone that you are going to kill them or you are going to hurt them, you will be suspended from school." Well, she was appalled. I said, "That's what they have to do". They have to say these sorts of things and they have to talk to the parents. We hope that we will never need it. So, we need to draw a line that any threats of violence will be taken seriously.

Now, many of you in the room, although I'm getting old, grew up like I did: telling your brothers and sisters you were going to kill them. Since I was the oldest girl and there were three boys behind me, I regularly said this five, six, or seven times a day. My parents would even say, "You're making me so mad, I'm going to kill you." We have to get out of that way of speaking and we have to teach our children and the children in our schools not to talk that way because people will take them seriously. It doesn't matter how many people they know. I've had people call me up and say, "My son is in trouble with his high school. Would you call the principal?" Absolutely not! For a number of reasons, which I am sure you can appreciate. I'm not going to call the principal. The fact is they are doing what they have to do.

5. This next one causes a lot of problems with principals. The American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended in 1974, prohibits discipline or dismissal of a disabled individual who poses a safety threat. That is false, but people think it is true. Now, we live in a society today, as I'm sure you are aware, where everybody seems to have some sort of disability. Right? You know, we used to talk about ADD and ADHD. Have you heard about ODD? That's my favorite one. Oppositional Defiant Disorder. Show me a kid who doesn't have that and I'll show you a saint, probably.

So, there are many mechanisms available to make excuses for children. What is the basis for the misunderstanding? I think it came from the case in which the Supreme Court ruled on a public school situation and held that students could not be
disciplined for something they did if it was a result of their disability. That has been widely misinterpreted and widely misquoted. Obviously, if a student has Turret's and begins to spit, the student should not be disciplined for that. But, if a student, or teacher for that matter, is posing a safety threat, then the principal has to move on it and should not be influenced by things like, "Well you know, he is learning disabled. He is autistic. He has pervasive developmental disorders." See, I told you there were a lot of names. I didn't know what PDD was so I asked somebody. She said, "It means there's something wrong with the kid but they don't know what it is." I think that's true. We have to get the message across to principals not to be afraid to act if a child is creating problems. Kids do create problems.

I heard a story about a little boy who was five years old. He was in after school care in the afternoon. He didn't want to go to after school care. His mother had no idea why he didn't want to go to after school care. He would cry. He would scream. He would tell his teacher everyday that he was a car rider. Finally, one day the principal decides to go down and see what might be the problem. When she got down there, she heard noise coming from the bathroom. The little boy was in there and two older boys were kneeling him in the groin area. These are five and six year-olds. It's an atmosphere of violence which made that little kid afraid.

One of the saddest phone calls I ever got came from a very young school principal. She happened to be a nun. She asked me what should we do with kindergarten children who were sexually abusing each other. I said, "What do you mean sister?" She said, "I find this really hard to talk about." I said, "Well I understand that." She said, "I have just discovered that all year long one of the five year old boys had introduced the other five year old boys to oral and anal sex, which is now going on apparently with regularity in the bathrooms." Now, you can ask all sorts of questions. Where are the teachers? Well, teachers are scared too about going in the bathroom with people of the opposite sex or with people of the same sex. Very often they will stay outside. She said to me, "Do you think I can keep the kid that's doing this?" I said, "No. I think that child needs a lot of help." First of all, I think that the parents have got to bear some responsibility for this because I can't imagine most five year olds will come up with this on their own. That was a Catholic school.
That was a kindergarten class. Innocence is being robbed from our children everyday.

6. **Gang membership must be prohibited.** That’s false. Now, that’s amazing. I can’t particularly take credit for having found out what’s wrong with that. We were working on a policy for violence in gangs in the Archdiocese of Louisville. One of the things that kept coming up was that we needed to put in that all gangs are prohibited. Then a gentlemen who was on the advisory board said to me, “Well Sister, what do you mean by a gang?” I said, “You know what a gang is? People who go around committing crimes.” He said “Yes, but what about all the other gangs that are around. Can you find a legal definition?” Then, I started to think. My grandmother had a gang. Did your grandmother have one? A gang of girls. I don’t think they were running around burning buildings and throwing bombs in places. But, that’s the term gang. Today, there is a gang for Jesus. So, in California, in a number of cases, the California Supreme Court came up with a definition of gangs, which is: “a gang is defined as an association of three or more members, one of the primary purposes of which is the commission of crime.” Massachusetts picked up that same definition in a case last year and said you have to talk about the criminal nature of the gang. I suppose you can say “criminal gang.” But, in the Massachusetts and California cases, the court found in favor of the student because the school defined “gang.” You know as well as I know, that things get thrown out because of a technicality.

There are so many issues to gang membership. Most principals are not authorities on gang membership. There is the whole area of wearing colors. A principal says to me, “I can’t possibly hope to understand that.” Well, then get a police officer or someone who does, to come in and talk to them about gang activities. One of my students is a vice principal in a public high school and he told me that he stopped a boy from coming into a dance. He wouldn’t let the boy go into the dance because he had his pants leg rolled up. The kids were all saying, “Oh, Mr. Caster, this is terrible. You need to let him come into the dance. He just forgot to roll his pants leg down.” Well, what my student knew, and his students apparently had not caught up with yet, was that in Louisville that was a gang signal. To put up your pants leg, says to members of the other gangs that you want to fight.
There have been instances in Catholic churches, I am aware of at least two, where at a dance a shooting did occur between rival gang members. I sort of think whether we have gangs in our schools or not was kind of like the question of whether we have pregnant girls. I have heard so many sisters say to me, "Oh, we just don't have any pregnant girls here in high school." My problem with that is, "of course, you do." They are just doing something so that they don't appear to be pregnant which, of course, goes against everything we stand for.

People who say that we don't have gangs, I think, have their head in the sand. Not to keep using Louisville, but you probably know that in Kentucky, basketball is a really important event. We have the University of Louisville Cardinals, who wear red, and the University of Kentucky Wildcats, who wear blue. What started in a lot of the public schools was the Crips would wear blue and the Bloods would wear red. So, they would wear the opposing sweat shirt or tee shirt. Now, who's going to think anything of that? But, that's how they were communicating with their gang membership, all over the heads of the public school principals. If they can go over the heads of public school principals, I think they can go over the heads of Catholic school principals as well.

7. Every school should have a crisis plan. That's true. But, here's what I hear from people. Well, the diocese has one. Can you tell me what it is? It's in a book somewhere. They sent it out. Do you know where the book is? I think I took it home. Well, that's useless. What is the crisis plan for St. Margaret's, St. Mike's, or St. Anthony's? It's going to be different than the one for the next school. Maybe there are different situations in each school. What are the things that we shouldn't do in a crisis? Those sorts of things need to be dealt with. One way to have a crisis plan is reflected in No. 8.

8. Policy should require that an annual safety audit take place. What is a safety audit? Well, a safety audit involves getting a group of people together who know something about safety and have them walk through the building and look at safety problems. You might be surprised at what you would find. I have argued with more than one principal that the janitor is not the appropriate person to head the safety audit committee, for obvious reasons. The janitor needs to be included in it. Well, then what do we do after we have a crisis plan?
One of my students who actually graduated with a degree in education, came up with just a few questions that could be asked when you walk through a school. Do your trees or vegetation block sight of a school? Are the building and grounds in any need of repair? Do the driveways and parking lots need repair? Are sidewalks inadequate? Are fences adequate? Is graffiti on the walls? Are gates or doors fully operative and secure? Do exterior stairs or handrails need repairs? Are objects available that can be used to damage the school, for example large rocks. Does the school need additional lighting? Are windows broken? Do roof access ladders allow unauthorized access?

There was a big case not too long ago. The senior class wanted to have their year book picture taken on the school roof. Now, don't ask me what the moderator was using for brains, because I have no clue. But, she agreed. So, they got up on the roof and a girl fell through the skylight and died. O.K. Nobody thought about the fact that you couldn't get onto the roof without a lot of trouble.

Can the building access be gained through the skylight or through a wall accessing the roof? Are there signs? And if there are signs, are they in need of repair? Do we need additional signs for traffic flow? Are outdoor athletic events areas in need of repair? That's just the outside. Then we get to the inside. Are their rugs, chairs, and moveable objects located near exit doors that could be used to prop them open? Do we have a regular floor service? Do things need to be cleaned? Is graffiti present? Are signs that direct visitors in the building inadequate or missing? I'll be willing to bet you that we could walk through every Catholic school in this country and less than half of them will have a sign saying: “All visitors should report to the office.” That is very basic, but it's the kind of things that aren't being done. Are there points of entry located away from the main office? I've argued until I'm blue in the face with a friend of mine that she needs to invest in those T.V. cameras so you can see who's trying to get into the building and you buzz them in. Because it's a neighborhood school and people have always felt very safe there, she doesn't want to do it. I think there could be problems.

Are there any areas of obvious overcrowding? Example: one of my former students is principal of a Catholic high school that once a year has something at Halloween called “the ghost dance.”
It's wildly popular. The only problem is you can only get about 600 students in the gymnasium. They easily sell 2,000 tickets. Well, you can image what happens. Violence, all sorts of things. Finally, the police chief, I guess, issued an ultimatum about it. But, those are the kinds of things that do happen. Their contention is, “We make $10,000.” But, at what cost? Further questions might be: Are there sharp objects protruding? Is there missing glass in doors and windows? Are halls poorly lighted? Are all keys accounted for and documented? I'll be willing to bet you, that they are not. I bet you the person who runs bingo has a key to everything including the principal's office. Check it out. Then, he or she can't come in so he gives it to somebody who has a kid, who gets into school. If you think I am making this up, I am not.

When I was a high school principal I went into a situation where everyone had a master key. All the teachers had master keys. Certainly, all the people who ran bingo had master keys. Things began to disappear. Now, I'm not saying it's the bingo people. But, everyone had master keys. So, do we have a method for giving out keys and accounting for keys? Do we get them back when people leave or are terminated?

9. Now, you know the answer to this, but principals don’t. **Damages for negligence will only be awarded if the claimant has a stated injury.** Now, we know that. That is basic tort law. Principals don’t. They don’t understand this. They will say, “We do something really dangerous, then we're negligent and it doesn’t matter whether there’s an injury.” But you and I know from basic tort law that an injury doesn’t have to be physical. We also know that if you can't show an injury, you can't go into court and demand a remedy. Very basic. There was an occasion in which a man was putting on a school play. He told the little boy to get a ladder and climb up the ladder and pull a wire out of the wall. It was an exposed wire. He told him it was a dead wire. It wasn’t. The kid was shocked and fell off the ladder. Now, you can image how the parents felt when the kid came home with this story. However, they got an attorney, and I know you are not supposed to coach people, but I would think that you would at least perhaps go over the testimony they intend to give. The little boy was on the stand and the lawyer says, “Tell us what happened, Tommy.” He said, “Well, Mr. Jones told me to crawl up on that ladder and pull that wire out of the wall. He
said it was dead, but it wasn’t. Zap, what a rush man!” The judge said, “Well, what we have here may be a case of incredible stupidity. And indeed it is. But, it’s not negligence because there is no injury.” I am not suggesting that when principals hear this, they believe that they don’t have to worry if no injury happens.

There was a second grade teacher who had some kids who were walking past a hotel and somebody threw an armchair out of a second story window and it landed on a kid’s head. The kid was hurt and the parents were mad. So, they sued the teacher. You’ve got this now. The teacher was walking the second graders past the hotel, somebody opens up the window, and throws an armchair out. The kid gets hurt, so his parents sue the teacher. The judge said it went to foreseeability. He had to determine whether if you took kids on a field trip past the hotel, you should foresee that somebody might open up a window and might throw out an armchair. Of course, the court said, even teachers can’t be expected to foresee that.

It’s almost as ridiculous as a case that is affectionately referred to as “The Oregon bee case.” Some of you may be familiar with this. A teacher was riding on the bus with some kids on a field trip. A bee flew in the bus, stung the bus driver, he lost control of the bus, some of the children got hurt, and so the parents sued the teacher claiming that she had not done her duty, she should either have (a) kept the bee out of the bus; or, (b) kept the bee from stinging the bus driver. This is an actual case. The judge said he looked everywhere and he couldn’t find a statute to put teachers in charge of bees.

10. Teachers and other adults must be able to keep the confidences of young people and should not be expected to report what students tell them. Now, we all know that’s false. I think we are making a real good dent in the perception that confidentiality must be guarded at all costs. However, you still find people in school who believe they really should have been counselors, psychiatrists, and psychologists. Do you know those people? So, they are giving out advice. They are functioning in those roles and they are creating all sorts of trouble. But, we need to say to principals, “Tell your teachers to tell their students, I will keep your confidence so long as no one’s life, health, or safety is involved.” Once life, health or safety is involved, everything else goes out the window.
I can tell you story, after story, after story. I can tell you one that happened to me very early in the seventies. I began teaching in Southern Maryland. A girl came in, I was an English teacher, and I had told them that they could write anything they wanted in their journals. They could tell me anything they wanted and I wouldn't tell. Now, it's really easy for us to sit here in 2000 and judge something that happened twenty-eight years ago with the lens that we look through now. This girl came in and said to me, "I want to tell you goodbye." I asked, "Are you going somewhere?" She said, "Well, not exactly. I took these capsules from the lab." She was waving a test tube. "I'm going to drink them tonight, so I will be dead. So, I wanted to tell you goodbye. Remember, you can't tell because you told us you wouldn't." Now, I'm a 22 year-old nun. So, I go to the principal. I don't tell her who the kid is, but I related the story. The principal said to me, "Well, you've got to keep your promise." We have a saying in my community that it's better to get out ten years too early than ten minutes too late. She had overstayed her ten minutes. So, I decided it didn't sound right. I even tried to bring in my novice mistress long distance on a toll call. She told me that since I was professed, I would have to make up my own mind. So, I called the parent. The principal didn't support me and the kid never spoke to me again. But, it doesn't matter because somewhere in this very area she's walking around alive, a woman in her early 40's. We have to get across to the people who work with kids that their safety is more important than what they think of us. You might say that people know that. But remember, the chain is only as strong as its weakest link. And, I've seen some pretty weak links walking around in Catholic schools and running religious education programs. The area that worries me the most is Youth Ministry because we don't seem to have any qualifications for that, in many cases, other than "I like kids". You know, I like little kids, but I'd be a disaster if you wanted me to watch them or teach them or do anything. So, we have to get this message out about confidentiality.

You may be aware of some of the case law that has developed in the last couple of years. One case, I cannot remember the name, but what happened was a kid wrote in his journal, "I am so depressed; I think I'll kill myself." The teacher wrote back, "Please don't, we'd miss you." This is true, more
than once. The kid kills himself. Parent gets the journal. The
teacher said, "But I promised I wouldn't tell." And the court
bound them over for trial for negligent homicide. In some cases,
it's been voluntary manslaughter. I do not think that the vast
majority of teachers know what they are up against. This is
very, very serious.

The Michael Corneal case in Paducah, Kentucky. All sorts
of counts were included. The judges dismissed some of them.
But, a lot of them came down to a piece that the student had
written in October in English class. It was called, "Halloween
Surprise." In this story, the boy talks about how he impaled his
enemies in front of his mother's house and then opened up the
door for his mother and said, "I've brought you a Halloween
surprise". The teacher wrote something to the effect, "You may
be the next Stephen King." But, look what happened. So now,
parents and their lawyers are saying, the teacher should have
done something. Do we have mechanisms in place where
teachers can say, "I'm concerned about this kid."

11. **Institutions can be held liable for one person's
harassment of another person.** Obviously, that's true. Now,
when I first was a principal, kids used to harass each other by
calling them on the phone. Today, in the days of Caller-ID,
nobody is going to call somebody on the phone and make a
threat. There is plain old harassment on which we have to take
a zero tolerance stand. But, there is also the whole area of
sexual harassment which is erupting into violence. What is
sexual harassment? People ask me for a legal definition. You
can run and find one. Unwanted, unwelcomed, unwhatever.
But, I say, "It's like middle age, you know it when you see it." I
doubt anybody would look at me and said, "Oh, she's in her
twenties." You know, I'm not in my twenties. I think it's like
that. I don't think the first grader in New York who kissed the
other first grader was sexually harassing her. But, in some
cases, we have situations where ninth graders have been
involved in seemingly innocent things. There is a gentlemen
here who told me this story that I'm about to relate. In religious
education class, a boy and a girl went to the pencil sharpener.
The boy sharpened his pencil, turned around and blew the pencil
shavings all over the girl's chest and said, "Here, let me help you
get them off." Sexual harassment? Yes. The Director of
Religious Education didn't think it was anything to get excited
Now, we have the other extreme. I have been asked for advice on a lot of cases where teachers have accused other teachers of sexual harassment. Anybody ever had any of those cases? They come and say to you, “What are we supposed to do?” I think we need to ask some questions, as you know. What happened? We could carry this to ridiculous extremes. One night, I was leaving the University late, and I had on a multi-colored blouse, which is not something that I usually wear, but it was on sale, so I bought it. This guard called to me. He came over and said, “Sr. Mary Angela, you look great in that blouse. You should wear it more often. It looks really nice.” I said, “Thank you.” I got in my car and somebody’s banging on my window. It was a nursing instructor. I rolled the window down and said, “Yes.” She said, “I just want to know if you are going to let him get away with that?” I said, “What are you talking about?” She said, “He told you that you look good in that blouse. That’s sexual harassment.” I said, “Honey, if you knew how long it’s been since a man told me that I looked good in anything!” It was not unwanted or unwelcomed. I think that is ridiculous. I told one of my colleagues, a male, “I like your tie.” He said, “You are sexually harassing me.” I was telling this story to doctoral students in employment law class. One of them said, “Sister, I don’t think you ever took the psychology of communication class. Because if you had, you would know that a tie is a phallic symbol and when you are commenting on somebody’s tie, you are really commenting on another part of the person.” That’s idiotic.

Well, we need to consider personal dignity. We will respect the personal dignity of the people in our institutions.

12. You know the answer to this as well as I. Failure to act could be as deadly as doing the wrong thing. Absolutely.

Now, if you will look at the next sheet. These are things that you can use with your constituents. These are just some suggestions for administrators. You also have in your handouts, Grams Issue. These are articles that I wrote last year for the School Boards Department of the NCEA. It talks about some of these issues in greater detail. Don’t assume that because nothing has ever happened, that nothing ever will. Plan for the worst case scenario. People say to me, “Well, if you think about it, it might just happen.” I hear these things. It is better to have the policy for the worst case scenario and never need it.
Do develop with consultation from appropriate parties a crisis plan that includes a safe place to which people can go if the building has to be evacuated. How many of you have safe place designations in your buildings? Well, not too many. I'm pretty sure we have them in Louisville. What does that mean? People say, "Well, you know, the Walmart is not going to want our kids running over there." We are not talking about an every other day thing. We are talking about a disaster. Can we take the kids to a Walmart? Can we take the kids to an empty field? What are safe alternatives? If there is a hostage situation and kids get out, where should they go? These are things that people sometimes don't think about. Do allow some discretion in the implementation plan for policy. Now, it doesn't have to be the Walmart, or some other store. But, we do need a policy. It is the board's job to enact the policy, and it is the principal's job to implement it. Do you make arrangements for a review of implementation of safety plans? Do you understand that injuries don't have to be physical?

Realize that standards of supervision are different for adults and children. However, administrators are responsible for the safety of all. A lot of times it is easy to forget that we are still responsible for the adults in the building. Some adults, unfortunately, do rather stupid things, as you may or may not have noticed. So, the principal needs to keep in mind what she's going to do to protect the adults, as well as the kids. Do not enact a zero tolerance policy for violence unless you define zero tolerance. See, I think it can be gradated. If they wanted to do anything to my nephew, I don't think it should have been suspension and expulsion for saying, "He'd like to blow up a building with dynamite." Now, if you ever meet my sister, I never told this story. Please!

But, what about the ninth grader who says, "I'm going to blow up the school." I think we have to move in and act. I don't think it means you have to throw everybody out, except the reality is that injuries can occur. Do everything to prevent them, but be as prepared as possible to deal with them.

The next sheet is simply basic tort law. And yet, I think it is very important to go over these elements with people because a lot of them depend on duty. What's a violation of duty?

These cases are all from the last decade, the 90's. This one was Jesuit High School in New Orleans. A high school student
was shot by a fellow student and he brought an action to recover damages from the high school. The court ruled that the high school could not be held strictly liable for injury of the student who was shot by a fellow student, absent showing that the school had actual knowledge of a gun being kept on the school premises or that school personnel should have known that the student had the gun.

Now, there is a lot being done about standards of knowledge. What is constructive knowledge? What is it they should have known? In this particular case, they didn’t expect the school to know everything. Maybe we would have a different outcome today.

Then, I have some suggestions you might go over with school boards or with superintendents to suggest to boards how to develop strategies, policies, and procedures for crisis management plans. Call a meeting of the chief decision makers to brainstorm. What has happened or has almost happened in terms of institutional and personal safety? Even principals might be amazed at some of the stories teachers tell them on things that almost happened. Do we have a particular problem here or theme? What do we want to put in the safety and violence policy? You need to decide on that. Develop a system in which everyone’s input is valued and considered. Ask for written suggestions. Ask staff members and students if they feel safe. Now, today you will probably get a lot of people saying no. But, why don’t you feel safe? Conduct a safety audit at least yearly with one non-institutional employee. Consider not only hazards but practices such as blocking the doors, etc.

I was in a Catholic school that shall remain nameless, not in my diocese, a few weeks ago and the exits on either end were chained. My blood went cold because I was five years old when the Holy Angels fire happened in Chicago. I really thought people were beyond chaining doors. But, the principal said that was how she was going to keep people out who might want to prey on the kids. So, sometimes our worst decisions are motivated by our best plans, but they don’t turn out correctly.

Develop and enforce rules regarding threats of violence and actual violence. Hold information sessions. Parents do not understand these things. But, they want to. And, they need to. I am not suggesting that you, the diocesan attorney, have to do this. You may not want to present to parents. But, there are
people who can present to parents. You can help them, be it the principal or a local school board person. You can help them say the right things and to say what people need to know.

Know state weapons and controlled substance laws. Now, local and state officials will give you signs and they are supposed to be posted. Plenty of schools don’t post them. Now, you might say, and I’ve heard people say this, do you think the fact that you have up a sign that says, “weapons are prohibited” and “all visitors must report to the office,” that everyone who comes in will report to the office and will not bring their weapons. No, at least it gives an impression that we are trying to do the right thing. No. 8 is really important. Remember that the staff and students can be required to go through medical and psychological evaluations if administrators determine that their presence may be a risk to student safety. A lot of principals say that you can’t do that. You can tell a teacher, “You have to have a psychological assessment.” Sure, you can. Now, I don’t mean you can do it just because you don’t like the person. But if the person has been engaging in behaviors that cause you concern, you have a right to say, “If you want to keep your job, you need to have an assessment.” The same thing is true with students.

Another question that I often get asked is: “Can the student, the teacher or the parents choose the person doing the assessment?” I say no, for this reason. Almost everybody knows somebody who’s a psychologist or psychiatrist. So, I call up my friend and I say, “This crazy school is saying whatever. Would you look at my kid or would you write a letter.” Now, I am not saying that all psychologists and psychiatrists are derelict and would automatically do this. But, you know as well as I do that there are some.

One of my favorite stories happened when I was a principal. We had a rule that said you couldn’t be absent from school the day before or after a holiday without a doctor’s note. Now, I learned the hard way that that’s a ridiculous rule to have. But, this girl came in and she had a note. It was signed by her father. I said, “Honey, you have to have a note from a doctor.” She said, “My father is a doctor.” I said, “He’s a veterinarian”. She said, “He knew you would say that, but what you have in the handbook is doctor. It doesn’t say medical doctor.” You know there are people like that.

Consider posting signs such as the County Public School
System or St. Mark’s, or St. Matthews, or whatever is a violence free zone. It is a goal. We are always striving toward the goal—no violence.

Now, on the back there is something I came up with because so many people ask, “What do I do if what I fear the most happens?” Well, this is just meant as a guideline for you. Maybe you can improve on it. You can add some other things, but at least this covers some of the main elements.

First, don't panic. The principal says to me, “What do you mean don’t panic! There is a guy out there with a machine gun.” I think principals need to try to steel themselves in anticipation of what they are going to do. The more drills you can have, the better.

Now, you don’t want the next kind of situation. You may be surprised to find out that this is going on. “We are going to have a fire drill today. However, the music classes do not have to come out because they are practicing for a musical.” Our students know that the people in the cafeteria don’t come out. This is going to create a lackadaisical attitude towards drills. Now, some states says that you are supposed have a fire emergency drill once a month. I think that is very good advice and the kids, teachers, and everybody must participate. It doesn't then become, “What do we do now?,” or, “I am going panic.” Students depend on the teachers, but the teachers depend on the administrators. If a principal is going around saying, “Oh, my God! What am I going to do now?” It’s not going to do much to inspire confidence in the teachers. Have your safety plan readily accessible and follow it. It should be right there in the front office. Notify appropriate school and district personnel by phone if possible, or diocesan personnel. Some dioceses are now calling themselves a district. It is also the best reason I know for saying that there should be a cell phone in every school. Now, people say yes, but most people have cell phones. The school needs a cell phone even if you only call 911. But, every one needs a cell phone. I believe you also need cell phones whenever people go off campus because things can happen.

There should be one spokesperson only for the school system. I like the way it is done in our diocese. We have an official spokesperson. She’s very good, very capable, very competent, and nobody has to worry about what she is going to
say. So, many dioceses and superintendents use a diocesan spokesperson. I believe it shouldn’t be the principal because the principal is supposed to be around taking care of people, so why is she going out and talking to the media. While students cannot be prohibited from talking to the media, the media can be denied access to the school building. A lot of principals don’t know that. Now, you can’t stop the kids from going across the street and talking to the media. But, you can keep the media from coming inside the school. You know that as well as I do, but we need to say that to our principals who maybe do not know this sort of thing.

Now, when I gave this presentation last week in Baltimore, a man came up to me said, “You know I disagree with you. I was a journalist before I became a teacher. Journalists have some rights and it would be better if the journalist got in there and told the true story.” All I could think of was the Elian Gonzalez rescue and the picture of that guy with the gun. I don’t think journalists did a whole lot for making everybody think that this was O.K. Now, I am not saying that the picture doesn’t have value in other ways, but, I don’t think you need the media in there. This is especially true, if you don’t know what’s going on, which sometimes is the case.

No one has a legal obligation to take serious risks that may result in personal injury or death. A lot of teachers will say that they think they have to take serious risks. Now, I would like to think I’m first, last and always a teacher. At least, that’s the way I think of myself. I like to think that I’d do what the lady in Jonesboro did, or the gentleman in Columbine, that I would give up my life for the kids. But, there is no law that I know of that says that you have to give up your life, except the one of course that Jesus gave us.

Implement a communication plan for parties other than the media. Principals and superintendents should meet with the faculty, staff, parents and students, as soon as possible. In the alternative, written communication should be sent. I don’t think you want the diocesan lawyer meeting with the faculty, staff parents and students. For one thing, that will scare everyone more. If you want to do that, that’s fine. But, there is certainly no need to. Give school counselors a primary role. They are so often discounted. Now, maybe they need help. You may need to bring people in from the outside. But, the school counselors need
to be involved in developing the crisis plan so that appropriate responses are in place.

Ask for and utilize professional help. Do not talk to any attorneys except the school or diocesan attorney. I'm talking about the fact that you don't want people talking to other attorneys.

The principal should only be talking to the diocesan attorney. If there is someone else who could be called to give advice, fine. But, hopefully the person giving advice is saying, remember you have the diocesan attorney you need to go to. In the case of competing opinions, only a fool would go with an opinion that wasn’t given them by the diocesan attorney. However, there are some fools out there.

Refer all other attorneys to the diocesan attorney. Sounds simple. Failing to follow this advice can result in claims that administrators accepted liability. So, what I have tried to do is to give you some things that I think are practical, some tools that will be practical in dealing with your constituencies. I am reminded of the old adage that we should work as if everything depended on us and pray as if everything depended on God. I think that's what you as diocesan attorneys are up against. Doing the best you can to prevent tragedy and violence, keep kids safe as possible and praying that the Good Lord will help us reach that goal. I believe we have some time for questions. At least I was told to leave some time for questions. We have about fifteen minutes for questions or comments.

**Bernie Huger, Diocese of St. Louis** - I have a comment about your very first statement that laws apply equally to public schools and private schools. That may not be true in every state. I know it's not true in Missouri. We have a state school's act that doesn't apply.

**Answer:** Really? Yes. Well, thank you, I stand corrected. It should apply though, I bet.

**Robert Scamardo, Diocese of Galveston-Houston** - The problem that I've encountered is students who have not committed any violence, or who have not threatened any violence, but who have been on campus with weapons. Clearly a reported offense in Texas. But, many principals feel as though they don't want to expel that student or, in my judgment, don't really want to harshly discipline the student. The comment that I get is that if we do that, then we're not any different than the
public schools. How do we, as a Catholic school, deal with the student who for whatever is going on in his or her life, may be at risk of committing violence to the point of bringing some weapon on campus? I would just like your reaction to it.

**Answer:** I think that shows why we need teachers being very vigilant and reporting things to counselors and administrators that cause concern when they hear things or believe that a student is having a problem. When you bring a weapon to school, I think you have to look at, as you suggested, what are the circumstances. If a five year old brings his father's pistol for show and tell, you have to wonder if the five year old could even conceive of trying to shoot a bunch of people. The problem is the father or the mother, I think, for leaving the gun in a place where the child could find it. I think we have to have enough leeway to look at that situation and not throw the kid out.

Now, some state laws do say that the person who brings a weapon to school should be expelled. But, what is a weapon? Remember the little girl with the knife, the serrated knife. Now, I agree with you. That's why I was suggesting that we should have standards and gradations of it. I don't think a student necessarily has to be thrown out. I believe and I suggest this in the article you have in your materials, that the person can be taken to counseling, can be referred to counseling, and then you could look at the results of the counseling and determine whether you want the child back in school or not.

I can tell you a very sad story that happened last year. A group of eighth grade boys, it's always eighth graders, usually boys and it's always near graduation. They were sitting around one night and three of them decided to go on the Internet and write what they thought would be a funny threat to the principal. The fourth boy said you really shouldn't do that. But he didn't leave. He stayed there. The principal got the threat, which was something to the effect of, "You better watch your back. We are going to get you." For some reason, these kids didn't think she could find out where it came from. It was traced to the father's business computer. He used it at home. Her contention was that the fourth kid should not be suspended. But, the fourth kid was, valedictorian, and had never been in trouble. Was there a way, she said me, not to put that kid out of school. I said, yes. I think you get the parents in, you talk to the
boy, you say, this is really dangerous. It is not good enough to just not say anything. But, I don’t think that you have to ruin the kid’s life. I think there has to be room for discretion.

I recall a situation just before I became principal. It was so innocent. I wanted to check how the door worked from the auditorium into the parking lot. So, three of us opened up the door, and there was a girl, in the act of putting a beer bottle in the hand of another girl in the car. It was her eighteenth birthday. It was sort of wrapped up, but it was pretty apparent what it was. We had no tolerance for alcohol, so I figured we had no choice but to turn her in. The principal insisted that the girl be suspended. They were Cuban immigrants and the mother said to me, “This is why we left Cuba.” I would suggest to you that there was a better way to handle that.

**George Restovich, Diocese of Winona.** My wife is a teacher and a counselor in a Catholic high school. She maintains that kids can do just about anything in a Catholic school and get away with it, which is quite different than what happens in public schools where, at least in my town, which is a relatively peaceful place, they routinely expel kids in the public schools for anything. I don’t mean kick them out for a couple of days, I mean they actually expel them until the end of the year. But, those kids come to the Catholic school and they are in school the next day. Which raises the question, is there a policy, should there be a policy, what is the policy about taking students into the Catholic school system who have been kicked out of the public school system?

**Answer:** Thank you, that’s a good question. I don’t think there is any national policy or suggested one. I’ve seen this in the context of kids put out of one Catholic school for threatening violence and the other Catholic school picks him up the next day. So, I think it’s the same sort of question. I believe that it should be almost never done, that you pick up a kid that has been expelled from another school for violence. I believe the alternative is to let the child go through the home schooling process and reevaluate it later on.

Now, there are exceptions to every rule. Let’s say that the five year old brought his father’s pistol to school, or found the pistol on the street, or whatever. The school says, we have to expel him. Well, why would the principal decide to take the kid? I’d have some questions to ask and I’d want the kid in
counseling. Do I have to take him? No. But, I think as an operating principle, we should not take kids who have been let go from another system.

As far as the Catholic schools kids getting away with things. Personally, I think that's changing nationally. I think Catholic schools are exercising their right to expel students for that kind of behavior far more frequently than they did in the past. To suspend or to expel. I think it is something you can't afford to play around with, even if people think it is funny. I don't know how most kids past the age of reason could think that they won't be taken seriously if they bring weapons to school or something that looks like a weapon. That happens sometimes. I know of one case where kids bought something that looked like a bomb, but it wasn't a bomb. But, they told everybody that they had a bomb. So, the principal expelled them. The parents came back and said, but they didn't have a weapon. But the school took a stand and refused to let the child come back to school.

Kevin Shaughnessy - Diocese of Orlando. I have a question that is a corollary to the one that was just asked. Have you seen any trends towards negligent referral arising when you have a violent student in the Catholic school and, you expel the student and the public school system calls you for a referral and background. A lot of dioceses say, he was here; he left; he chose to resign, or withdraw. I don't think that's right and I would like your opinion on that.

Answer: I've seen some cases that have not been decided yet based on negligent referral or negligent recommendation or failure to warn, all of which I guess would be the same thing. This is what I tend to say to people. If the student is being dismissed from your school for some reason that you feel that safety has been compromised, you have to tell the other school or school district. I think not to do that is ridiculous. I would say to the parents, I have to do this. In some states, you have to put on a transcript why the student was expelled. Now, most of us in Catholic schools have taken this approach, which is to let the parents withdraw the student. I am all for that. But, I also believe that you have to notify the other school.

The worst case that I ever heard of wasn't about a student. It was about a principal in a Catholic high school who kept an apartment in the school. He really lived far away. Detention for the senior boys was cleaning the apartment. Only that isn't
what they did. He had sex with them, and he told them that if they ever told their mothers would die. But, one kid didn't have a mother. He went to the bishop and the bishop said, “I’ve got to do something.” So, he went to the principal and said, “Look, I don’t want a scandal. If you go quietly, I would give you a good recommendation.” The last I heard of this so-called gentlemen, he was running a correctional camp for boys. I think we have to err on the side of perhaps being liable for defamation, than to err on the side of not warning somebody of safety hazards.

**Bill Wood, Minneapolis.** We have a case in our state where a juvenile court judge is threatening to order a Catholic school to reinstate a student that was expelled. Have you ever heard of such a case?

**Answer:** I have heard of attempts. I’ve only heard of one in which a court ordered temporary reinstatement. I don’t think anything like that should ever have gone to court. You may recall, and I don’t remember the diocese, but the girl’s mother was the head of Planned Parenthood. The little girl was wearing buttons espousing Planned Parenthood because her mother said that she could. The school contacted mom. But, the mother was very insistent about Planned Parenthood, so they expelled the girl. You know as well as I do, that the remedy for a breach of contract is not reinstatement. I believe that the court did it because of the inherent unfairness of it. I really don’t think, though, that a school is going to be forced to take back a student. I hear it periodically. But, it is going to undermine all of the law that has developed since 1979 on the fact that schools have a right to make their decisions. Private schools have a right to make their decisions, and courts will generally upheld those decisions under the doctrine of judicial restraint.

A case that didn’t go that way was in Florida where a high school had a no smoking rule. The rule went like this, believe it or not. The first offense, you are fined $5. The second offense is a $10 fine, or expulsion. Nobody had ever been expelled. Kids were getting $20-$30 fines. Then, the vice principal had had it with two boys one day. It was their second offense, so he expelled them. There was a lawsuit. The lower trial court said, you have to reinstate them. But, the Florida Supreme Court said, “No. Even though it is a rule that we don’t like and we don’t think was applied fairly, we are not going to substitute our judgment for that of people who broke the rule that clearly said,
$10 fine or expulsion”. Now, that's probably a twenty year old case but, I think it does articulate the judicial restraint doctrine.

**Tom Wilson, Diocese of Steubenville.** I want to comment first regarding the question of transferring from public to parochial schools. One thing that I found out in our diocese in the last couple of months that, under the Ohio Anti-Violence and Schools Law, if a public school expels a student, they can do so for 181 days, but they have to give them alternatives. One of the alternatives that they give them is Catholic schools. Then, they turn around and say that they can't accept them. The question that I have is in regard to Section 504, if you have a student who is expelled on the basis of violence, who at one time was diagnosed with a disability, how far do you have to go when the threat of violence was real? Or can you just ignore Section 504 altogether?

**Answer:** No. You can't just ignore 504 altogether. But, I think what you can do is go back and look at the plan that you have. As long as you can say why you are taking the position you are taking. Let's say it is somehow related back to disability. Then, what you are doing is, you are putting the child on home study or something, until it can be resolved, where they take the work home. But, you don't have to keep that child in the school. At least that's my opinion.

**Tim Clarke, Archdiocese of Mobile.** In the fall, we had a situation where a sixth grader brought a gun to school, which actually ended up being a B-B gun, and threatened another student. The child was expelled from school. But, a side issue that arose because the principal was struggling with “Do I make a police report?” Do I have a responsibility to report to the district police from the standpoint of the legal issue of I'm going to be liable if he ends up in a public school. Have you ever run into that situation? What do you recommend with respect to reporting this to police and other officials? What obligation do we have?

**Answer:** In some states or cities, there are agreements where police are supposed to be notified. I know we had one in our diocese. It has to do with marijuana. It was sort of an informal agreement between the diocese and the police force. But, my advice to the principal is this, find a police officer you trust. Maybe a child’s parent or somebody you know. When, you get in those situations, I would be inclined to ask that person,
“what do you think, off the record”? Then, of course, the principal should be calling the diocesan attorney. I say it is always better to err on the side of caution. I think you have to determine whether you think there really is a risk, a safety risk here, and if there is, then you need to go ahead and make your report.

Well, I appreciate your attention and time. I am fortunately being allowed to stay here for the whole meeting, so I’ll be around if anybody wants to discuss anything further.

Thank you very much.