



Legal Decisions

Volunteering is inherently risky

Are nonprofits selling out volunteer potential by allowing fear of lawsuits to challenge desired activities?

It is hard to open any periodical addressed to the nonprofit community without encountering articles warning about potential liability and offering risk management advice. Much of this is a sensible reaction to the increasingly litigious nature of our society right now. Citizens seem to turn to the courts not only to resolve disputes but also to claim damages for even the most minor of incidents.

The question confronting nonprofit managers is whether avoidance of risk should be allowed to dominate decision making about volunteer activity.

First, lawyers, accountants, and insurance agents are servants. Their job is not to tell an organization what it should not do. Rather, their role is to listen to what the organization wants to do and then find the legal and best way to permit that action to go forward.

In too many situations, especially those involving volunteers, attorneys and accountants advise avoiding any plan with potential risk — often without doing any research into the legal precedents. If it “sounds” as if the organization could be open to a lawsuit, such advisors are likely to urge against it.

Risky Assignments

The problem is that the work of many nonprofit organizations, and specifically the assignments of greatest importance for volunteers, are often inherently risky. There is no way around this reality. In many cases, no one else wants to tackle the problem or reach out to a particular client group exactly because the work is hard, perhaps still not solvable, and with many unknowns.

Can nonprofits attack serious problems creatively without selling out to practice “risk management”? The question is not Can nonprofits prevent liability? It is Are organizations willing to defend volunteers and employees in court if someone tries to sue?

The long-standing tradition of volunteer action is that volunteers are on the cutting-edge of change, usually responding to needs before formal institutions even acknowledge the problem. Consider just a few of the issues about which concerned volunteers have led the way in just the last 15 years or so — often dragging the “establishment” behind it, kicking and screaming, until the activist position was ultimately recognized as right:

- Publicizing, advocating for, and creating services to deal with AIDS;
- Challenging the way we approached death and dying to form hospices;
- Politically unpopular health-care projects such as needle exchanges for drug ad-

dicts or condom distribution for teenagers;

- Changing the public perception of drunk driving;
- Environmental protection activities.

Even this brief list begins to highlight the incongruity of discussing “risk management” in the face of uphill battles to make a difference. In truth, the person who asks “will I get sued?” when considering whether to give out blankets at midnight to homeless people on the street is probably the wrong volunteer candidate.

If an organization has set out to create social change or to serve a population in need, it will end up confronting those with a vested interest in the status quo. Board members must accept this as one element of accomplishing the mission. Front-line volunteers must recognize that they are extending themselves in ways that many others would not want to do.

It is undoubtedly important to assess all situations for their safety risks and in protecting clients, volunteers and employees from unnecessary danger. This means that any organization has the obligation to define its services and the role of its paid and unpaid staff, train people to be as competent as possible, supervise effectively, evaluate

continued on page 35



ON VOLUNTEERS

continued from page 33

performance, maintain standards, and provide appropriate work space and tools.

It is just as helpful to the homeless if blankets are distributed by two or three volunteers in a group for personal. And it's easier to recruit volunteers if basic comfort and security issues are resolved. All of this type of risk management seems like plain old good management.

If an organization, an individual employee, or a volunteer behaves negligently or does wrong willfully, why should the person wronged not sue? The old "Good Samaritan" argument that deeds done in the spirit of helpfulness should not be judged by the same standards of care as other actions has always seemed counter-productive. Ironically, in recent years the nonprofit community has lobbied for legislation that restores blanket protection to volunteers.

The various "Volunteer Protection Acts" proposed at the federal and state levels seem rooted in the concern that only if people are protected from suit will they volunteer. In individual cases this may be true. But, once again, these reluctant recruits are probably not the right candidates for volunteer work that carries inherent risk.

Further, if we legislate that volunteers cannot be sued for their contributed services, simply because they are volunteers,

what is the message we send about quality of care?

Caution versus limits

Risk management can be a valuable tool for improving services or it can be an obstacle to creativity. Inherently risky volunteer assignments are usually self-evident and will attract risk-tolerant volunteers for whom the cause is more important than a potential negative incident.

But the problem goes even deeper.

Increasingly, agencies are limiting the things that volunteers are permitted to do even in support roles, out of dread of worst-case scenario consequences.

The following real-life, proposed volunteer assignments were all vetoed by agency administrators because of their presumed risks. Consider whether these ideas were rejected simply out of fear, what the cost was in loss of really useful service, and whether appropriate training and supervision might have made these projects feasible:

- Licensed hair stylists willing to wash and arrange the hair of patients in a hospital on a volunteer basis;

- Corporate employees bringing their children along to help with a park clean-up project;

- Pairing up able-bodied teenagers with people with disabilities to be companions during a swimming party.

Every organization must grapple with its own tolerance for risk. Just be sure that fear of liability does not lead to narrow and confined roles for volunteers.

Susan J. Ellis is president of Energize, a Philadelphia-based training, publishing and consulting firm specializing in volunteerism.
