Legislation Meets Tradition:
Interpretations and Implications of the Volunteer Protection Act for Nonprofit Organizations as viewed through the Lens of Hermeneutics

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Summary of research

• Examination of the Volunteer Protection Act from a practical and hermeneutical perspective
  – Extent to which the Act fills its purpose of protecting volunteers
  – Extent to which the interpretation of the Act has changed (or not) since its enactment

• By examining how the courts have ruled on this legislation.
Introduction

• America has a deep history of volunteerism
  – Beginning in Colonial times
• Spans all aspects of society
  – Formal/informal groups
  – Private nonprofits
  – Public/governmental agencies
• Volunteers provide wide range of services
• What happens when something goes wrong?
Volunteer Protection Act: A brief history

• Enacted in 1997; first proposed in 1980’s

• Proponents’ arguments:
  – Increased number of lawsuits against volunteers
  – Negative publicity for the organization
  – Increased insurance premiums

• Opponents’ arguments:
  – Unfairly limited only to volunteers
  – Volunteers weren’t being sued in high numbers
Volunteer Protection Act

- Stated purpose: to protect volunteers from liability due to harm caused by the actions of the volunteer while volunteering.
- Excludes:
  - motor vehicle accidents
  - criminal activities
  - reckless conduct
  - acts while intoxicated
  - violations of state or federal civil rights laws
Theoretical basis

• Legislation starts as mere words
• Becomes “real” as it is applied to facts
• Process:
  – Statutory construction (interpretation of words)
  – Examination of facts (context)
  – Law is applied to the facts
• Process is repeated in every case but results may differ
• Hermeneutical aspect to process
Hermeneutics

• Reaches understanding through dialog and discourse
• Understanding comes from multiple perspectives merging parts into a whole (fusion of horizons)
• Individual’s perspective makes up his/her horizon of understanding, which fuels that part of the discourse.
Research questions

• Two-fold examination of the Volunteer Protection Act
  – Does this law provide the level of immunity intended (proclaimed?) by its proponents?
  – Did these outcomes result in an evolution of the meaning of the Act?

• Using written judicial opinions to see how the courts have ruled on this legislation.
Methodology

• Search of all cases in which VPA is mentioned from 1997 to 2013
  – Westlaw
  – Google search
• 65 different case cites
  – Included instances of same case at different levels
• 50 cases after duplicates, lower court rulings removed
Methodology

• Challenge: most cases are decided on fact-specific basis, with some consideration for precedent.

• When we looked at the cases we asked:
  – Did the court examined and interpreted the law’s language
  – Or take the language at face value
Methodology

Attributes of cases

• Defendant
  – Board members
  – All other volunteers

• Type of claims
  – Negligence
  – Statutory violations
  – Intentional acts
  – Civil rights violations

• Jurisdiction (federal or state)

• Level of court (trial, appellate, supreme)
Findings: Breakdown of cases by courts and types of volunteer

<table>
<thead>
<tr>
<th></th>
<th>Court</th>
<th>Volunteer</th>
<th>Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State</td>
<td>Federal</td>
<td>Service volunteers</td>
</tr>
<tr>
<td>Negligence</td>
<td>18</td>
<td>8</td>
<td>24</td>
</tr>
<tr>
<td>Statutory Violations</td>
<td>6</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Intentional Acts</td>
<td>3</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Civil Rights</td>
<td>0</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>27</td>
<td>23</td>
<td>34</td>
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</tbody>
</table>

Table 1. Breakdown of cases by courts and types of volunteer
Findings: Basis for outcome of case

- Three categories
  - Court made decision on whether the Act applied to the facts with little/no discussion
  - Court looked to meaning of Act before deciding on whether the Act applied
  - Court decided the case for reasons other than the Act
## Findings: Basis for outcome of case

<table>
<thead>
<tr>
<th>Application</th>
<th>19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immunity granted</td>
<td>11</td>
</tr>
<tr>
<td>Immunity denied</td>
<td>8</td>
</tr>
<tr>
<td><strong>Interpretative</strong></td>
<td>8</td>
</tr>
<tr>
<td>Immunity granted</td>
<td>2</td>
</tr>
<tr>
<td>Immunity denied</td>
<td>1</td>
</tr>
<tr>
<td>Alternate statute</td>
<td>5</td>
</tr>
<tr>
<td><strong>Decided on other grounds</strong></td>
<td>23</td>
</tr>
<tr>
<td>Alternate statute</td>
<td>13</td>
</tr>
<tr>
<td>Disputed facts</td>
<td>4</td>
</tr>
<tr>
<td>No factual liability</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>50</td>
</tr>
</tbody>
</table>

Table 2 Basis for disposition of case
Findings: Outcomes by type of claim

• Negligence: failure to act as reasonably prudent person under the circumstances
• Intentional acts: performed with purpose of carrying out that act
• Statutory violations: a law has been broken
• Civil rights violations: include gender and racial discrimination
Findings: Outcomes by type of claim

<table>
<thead>
<tr>
<th>Disposition of case</th>
<th>Applicability of VPA</th>
<th>Other grounds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Immunity granted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Immunity denied</td>
<td></td>
</tr>
<tr>
<td>Types of claims:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Negligence</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Statutory Violations</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Intentional Acts</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Civil Rights</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>11</td>
<td>9</td>
</tr>
</tbody>
</table>

Table 3 Disposition of cases based on type of claims
Analysis

• Does the Act protect volunteers as per its stated purpose?
  – Yes: grants immunity for unintentional actions
  – No: Volunteers will still be sued and incur associated legal costs.
  – Impact on the organization:
    • Assumes responsibility for acts of volunteers
    • VPA does allow organization to sue the volunteer
Analysis

• Have the court decisions changed the Act’s original purpose, an intent to protect America’s tradition of volunteerism?

• Hermeneutics tells us that the meaning of the Act should have changed over 17 years since its enactment.
Analysis

• Two ways to look at the question.
• Examine cases to see:
  – Federal or state court
  – Who raised the issue of immunity
  – Basis for decision
  – Type of claim filed
• Look at overall impact
Analysis

• State or federal court: no change in meaning
• Court or defendant brought up immunity issue: no change
• Basis of decision: some change where court actively interpreted language in the Act, resulting in differences in:
  – Nature of exclusions
  – Definition of organization
• Overall, little shift in meaning of law
Discussion

• Lots of questions
• Why were so many cases decided on other grounds?
  – Judges often look to legislative history or past decisions, another set of “horizons”
  – May be easier to look to another law
Discussion

Why so few cases in 17 years?

• Volunteers may be at low risk of lawsuits
• Volunteers don’t know about the Act.
• Volunteers are using state immunity laws.
• Act is deterring lawsuits against volunteers.
  – If so, interpretation is taking place outside of the courtroom.
Discussion

- Another interpretative aspect occurring outside of the courtroom:
  - Volunteers and nonprofit managers may interpret these cases to fit their own situations
    - Create policies and practices
    - Decide whether or not to volunteer
Conclusions

We found:

• Nature of volunteerism is unchanged
• Horizon of understanding of volunteer protection is continuously at play
  – VPA only part of the discourse
Implications

• Small part of the concerns of nonprofit managers but has a potentially big impact.
• Does not protect the organization.
• Preventative measures:
  – Liability insurance
  – Waivers
  – Training and Supervision
References

http://www.iep.utm.edu/gadamer/ (last visited 12/5/13)


House Report (Judiciary Committee) No. 105-101 (Part I), May 19, 1997 (To accompany H.R. 911).


[http://scholars.law.unlv.edu/facpub/49](http://scholars.law.unlv.edu/facpub/49)
References


VPA 42 USC 14501 et seq.

Questions?