

EMPLOYEE VOLUNTEER PROGRAMS AND LEGAL LIABILITY: WHERE ARE WE?

**National VOLUNTEER Conference
Workshop Session I**

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VOLUNTEERS:

the midst of our Constitution's 200th anniversary celebration, one seldom considers that the architects of that remarkable document were volunteers. But the fact is, whether to "form a more perfect union" or serve on the local PTA, volunteers have always been absolutely integral to the American way of life.

As we honor the Founding Fathers for their wisdom and foresight, it's ironic that their spiritual descendants—America's volunteers and the organizations they serve—are fighting for their very survival.

These are the men and women behind the scenes in our community organizations, our educational institutions, our town councils—every imaginable walk of life.

America's associations are particularly dependent on volunteers. Every service described above is represented by a vital association that coordinates volunteer work and relies on its members to serve with little or no compensation.

A 1985 Gallup survey estimated that 89 million volunteers provide more than \$110 billion worth of free services to our economy each year. Without the talents and dedication of these volunteers and volunteer leaders, the very fabric of our society would begin to unravel.

Volunteers now face a formidable adversary. The liability insurance crisis, which has long plagued health care, industry, and local government, is spreading an icy chill throughout the volunteer community. Across America, volunteers are withholding their services, unwilling to put their personal assets at risk if lawsuits are brought against them or the organizations they serve.

A serious threat

Who can blame them? Although they are rarely sued successfully, volunteers

Fear of liability exposure is paralyzing America's volunteers.

State-enacted tort reform offers one solution to the crisis.

By
**REPRESENTATIVE
JOHN E. PORTER (R-IL)**

are being named in record numbers of lawsuits. Rather than run this risk and the associated expense of defending themselves in court, more and more potential volunteers are simply turning away. Volunteer-dependent organizations often search in vain for insurance coverage. If insurance is available, it can be so costly that it sharply curtails or eliminates their activities.

Liability horror stories abound within the volunteer community. In my hometown of Evanston, Illinois, for example, the Junior League last year faced a classic Catch-22 in an effort to establish a shelter for battered women. Following an exhaustive search, the group found only one insurer willing to offer liability coverage. But the company required at least a three-year track record of operating receipts before it would issue a policy—in other words, the shelter would have to "go bare" for three years in order to obtain insurance. Of course, no one was willing to serve on the board of directors without liability protection, and plans for the shelter went up in smoke.

In February, 1987, I organized a

"Conference on America's Volunteers" in Washington, D.C., to hear firsthand accounts of how liability fears are affecting volunteer organizations. The event included representatives from dozens of major nonprofit groups, including the American Heart Association, the Air Force Association, the American Association of Museums, the American Society of Association Executives, the National Association of Towns and Townships, the National Council of Community Hospitals, and many others.

These volunteer leaders spoke with one voice on their experience with the liability crisis: unavailable or skyrocketing insurance coverage, volunteer pools drying up, and cancellation of valuable programs.

Joyce Black, founding member and vice-chair of VOLUNTEER/The National Center, Arlington, Virginia, captured the urgency of the situation in her remarks. "The inability to secure volunteers and obtain insurance for volunteer boards is undermining our volunteer force at a time when they are being called upon in greater numbers than ever before," she observed. "Volunteers represent our most valuable resource in meeting human needs, and their ability to function in the manner that has become an American tradition is supremely threatened by this liability crisis."

What statistics show

Just what is the extent of this crisis? Relatively little hard data exist on how many volunteers are deterred from serving, but early research confirms that many nonprofit groups are beginning to feel the heat.

In conjunction with the "Conference on America's Volunteers," the accounting firm of Peat Marwick Mitchell & Company released a nationwide liability survey of more than 2,500 chief executives and directors in the corpo-

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rate and nonprofit sectors. Those who responded included 570 CEOs of the 200 largest U.S. corporations, along with chairpersons of hospital boards, municipal officials, national voluntary organizations, symphony orchestras, and others. Conducted by Opinion Research Corporation, the report is the most comprehensive survey on directors' and officers' (D&O) liability ever undertaken.

The results are startling. Ninety percent of the respondents said that problems with D&O liability are damaging the quality of leadership in Section 501(c)(3) organizations in America. In addition, nearly 90 percent said they would favor legislation protecting volunteer leaders from liability in certain circumstances.

A recently undertaken survey promises to shed additional light on the scope of the liability crisis. The ASAE Foundation is sponsoring a nationwide Gallup survey to gather data on the extent of the liability problems facing nonprofit organizations and their volunteers. The survey will also compile information on successful risk-management practices undertaken by nonprofits.

In my judgment, every volunteer deserves protection from being named as a defendant in a lawsuit. For example, if an individual volunteer acting in good faith happens to be present during a slip-and-fall injury at a Catholic Charities resale shop, why should he or she be sued? The litigation, if it is warranted, should be directed at the organization and its assets, not at the volunteer.

Blanket exemption for volunteers

The solution to the crisis facing America's volunteer community is to exempt *all* volunteers from personal civil liability, except for willful and wanton misconduct. And it is the states, not the federal government, that must enact this protection.

Why the states? Simple. State legislatures traditionally have jurisdiction over tort (personal injury) law. Even if Congress enacted legislation providing liability protection to volunteers, states would legitimately argue that it in-

fringes on their primary jurisdiction and is unconstitutional. Instead, the role of the federal government must be to urge states to adopt these reforms before volunteerism is paralyzed by fears of liability exposure.

To provide that encouragement, I have introduced the Volunteer Protection Act of 1987 (H. R. 911). This measure was developed in cooperation with national councils representing major private and public nonprofit organizations. The bill's number—911—was chosen to reflect the serious crisis facing volunteers.

State reform needed

Specifically, the legislation encourages the states to enact laws extending civil liability immunity to individual volunteers—both board members and direct-service volunteers—for any liability action related to their unpaid service to any organization incorporated under Section 501(c) of the Internal Revenue Code. A volunteer whose behavior is willful or wanton or outside the scope of his or her duties to the organization would not be covered. The organization itself would remain liable.

The bill uses a federal "stick and carrot" to encourage such state action. Any state that did not enact such a law by fiscal year 1989 would lose one percent of its allotment of federal Social Services Block Grant funds. Any funds withheld in this manner would be redistributed as a reward to those states that did act to protect their volunteers.

These federal funds supplement local human services activities that rely on volunteers. States that act to encourage volunteers should be rewarded by the federal government. Those that fail to do so should not have their wastefulness subsidized.

Uniformity needed

More than 30 states have passed some form of volunteer protection. But these laws are a hodgepodge—many cover only directors and officers, not direct-service volunteers. Uniformity among the states will contribute greatly to stability and therefore affordable insurability.

Bipartisan support for H. R. 911 is impressive and growing in the House of Representatives. As of late fall, 1987, the bill had attracted 201 co-spon-

sors—almost half the House—who believe that we must act to support our nation's volunteers. An identical measure, S. 929, has been introduced in the Senate by Senator John Melcher (D-MT).

Along with Senator Melcher, I am proud to serve as honorary co-chairman of the recently formed National Coalition for Volunteer Protection (NCVP), an independent group comprising more than 100 organizations representing literally tens of millions of volunteers. NCVP has been formed to support efforts limiting volunteer liability.

Coalition seeks protection

When we addressed NCVP last October, we pledged to work hand-in-hand with them on this important issue. Participants in this meeting included Easter Seals USA, the Salvation Army, National Home Builders Institute, ASAE, Volunteer Trustees for Nonprofit Hospitals, Credit Union National Association, the PTA, and local little leagues and volunteer firefighters. Clearly, protecting volunteers from liability is a campaign with grass-roots backing and considerable momentum.

What can you do? Find out if your state's tort laws exempt volunteers from liability outside of willful and wanton misconduct. If they do not, contact your state legislators and urge them to take action. In addition, your association or organization can join forces with the National Coalition for Volunteer Protection, 1575 Eye St., N.W., Washington, DC 20005; (202) 626-2713.

While we celebrate the blessings of liberty and the rule of law during our Constitution's Bicentennial, we must also reaffirm the volunteer spirit that has always been at the very heart of America. This nation's volunteers help feed the hungry, heal the sick, teach the illiterate, protect the environment, strengthen our economy, and so much more. The least we owe them—and ourselves—is to help keep them on the job and out of the courtroom. [E]

Representative John E. Porter represents Illinois' 10th District. A member of the Appropriations Committee, he is serving his fifth term in the House of Representatives.

Advocacy

Volunteer Protection Act Update

What do mechanical engineers, credit unions, museums, trade association executives, a supermarket chain and Air Force association members have in common? A concern over the uncertain fate of volunteerism in America.

That is how the newly established National Coalition for Volunteer Protection expresses the depth and breadth of involvement in the push to get volunteer liability protection legislation enacted. Senator John Melcher (D-MT) and Representative John E. Porter (R-IL), the sponsors who introduced such legislation in the Senate and House, are the honorary co-chairmen of the Coalition.

Established to promote solutions to volunteer liability problems at the state and federal levels, the Coalition is working to reduce the threat of lawsuits against volunteers and to increase the availability and affordability of liability insurance for volunteer-dependent organizations.

The Coalition's immediate objective is to promote federal legislative action on the volunteer protection issue. The Volunteer Protection Act of 1987 (H.R. 911 in the House and S. 929 in the Senate) has been introduced to encourage states to enact volunteer protection laws. Specifically, the bill would withhold one percent of Social Services Block Grants from any state that fails to extend liability protection to all volunteers by the beginning of the 1989 fiscal year and redistribute those funds to states that have complied. (See spring/summer 1987 VAL for complete coverage on this issue and legislation.)

The bill now has more than 200 cosponsors in the House, and Rep. Porter has met with Rep. Peter Rodino (D-NJ), chairman of the House Judiciary Committee, to request that hearings be held

soon. Rodino agreed to hold hearings, but has not set a date. (In the Senate, Sen. Melcher met with Judiciary Committee Chairman Joseph Biden, who also agreed to hold hearings but did not set a date.)

"Support for H.R. 911 has been growing exponentially as more and more volunteer organizations are adversely affected by the liability crisis," Porter said. "While some states, including my home state of Illinois, have moved to protect

their volunteers, most have not done so. I am committed to working with the National Coalition for Volunteer Protection to enact this legislation and remove the climate of fear that now hangs over the volunteer community."

At the Coalition's first meeting in October, Porter congratulated the organization for "fighting to protect America's greatest natural resource—our volunteers." Representatives from the following organizations attended the meeting:

- Air Force Association
- American Association for Marriage and Family
- American Association for Personnel Administration
- American Association of Museums
- American Association of University Women
- American Bar Association
- American Cancer Society
- American Chemical Society
- American Heart Association
- American Historical Association
- American Society of Association Executives

SAMPLE LETTER OF SUPPORT FOR H.R. 911 & S. 929

(Please note choices in italics.)

Dear Congressman (or Senator) _____:

Volunteers across America are withholding their services because they fear being named in lawsuits against the organizations they serve. This fear has had a negative effect on the quality and quantity of volunteer participation in our country.

The Volunteer Protection Act of 1987 (*list bill number here—either H.R. 911 or S. 929*) has been introduced to encourage states to enact volunteer protection laws. These laws would protect volunteers from being sued except for unauthorized or willful and wanton actions.

This legislation has been introduced by (*fill in either Congressman John Porter or Senator John Melcher here*) and is rapidly gaining support.

H.R. 911 (*or S. 929 if you are writing your Senators*) offers incentives to states to address the volunteer protection issue. Many states have responded to this problem by passing limited or targeted volunteer protection laws. Passage of federal legislation will promote equal treatment of volunteers in all states.

To help keep volunteerism alive, please cosponsor H.R. 911 (*or S. 929 if you are writing your Senator*) and encourage your colleagues on the Judiciary Committee to hold hearings on this issue as soon as possible.

Sincerely,

(Your name)

Letters to House members can be sent to the person directly, c/o U.S. House of Representatives, Washington, DC 20515. Send letters to senators c/o U.S. Senate, Washington, DC 20510.



VOLUNTEER FACT SHEET

THE NATIONAL CENTER

1111 North Nineteenth Street Suite 500 Arlington, Virginia 22209 (703) 276-0542

INSURANCE FOR VOLUNTEERS

SHOULD WE PROVIDE INSURANCE COVERAGE FOR OUR VOLUNTEERS?

Volunteers delivering services for both public and non-profit agencies are subject to all of the same events that would affect paid staff and would create a condition usually protected against through insurance coverage. Examples of these events include accidental injuries to the volunteer, health difficulties of the volunteer, incidents in which the volunteer negligently injures clients or third parties, libel or slander claims, board liability claims, etc. Protection through insurance is as natural for volunteer staff of an agency as it is for paid staff.

The determination to provide insurance coverage for volunteers is made in the same manner as if the decision were being made regarding paid staff. The following areas are among those which should be investigated:

1. Is there a clear risk present - either to the volunteer or to other individuals - which would justify the expenditure for insurance?
2. Could the risk be better handled by other methods - such as better selection of volunteers, improved training and supervision - that would reduce it to a level where insurance would not be necessary?
3. Is the volunteer already adequately protected by personal insurance coverage? (Note: it is essential to determine in advance of any claim or incident that the personal insurance does in fact cover the volunteer while engaged in volunteer service.)
4. If the volunteer works for a public agency, can the volunteer be covered by protections such as a Tort Claims Act that would alleviate the need for insurance?

Assistance in determining the need for insurance can be obtained through reference to the personnel or other insurance office of an agency or through consultation with private insurance or legal counsel. When in doubt, simply determine whether paid staff would be covered if in similar circumstances.

WHAT TYPES OF COVERAGE SHOULD BE CONSIDERED FOR VOLUNTEERS?

The type of insurance protection to be purchased will necessarily depend upon the precise job and work situation of each volunteer program. There are four general types of insurance for volunteers:

- **ACCIDENT INSURANCE** - This type of coverage insures the volunteer when she/he suffers bodily injury or death while performing volunteer duties.
- **PERSONAL LIABILITY** - This type of coverage insures the volunteer if she/he is sued for personal injury and/or property damage arising out of performance of volunteer duties.
- **PROFESSIONAL LIABILITY** - This coverage protects directors, officers, staff, volunteers, and the organization or agency itself against claims of wrongful action.
- **AUTOMOBILE INSURANCE** - Protection against property damage or bodily injury resulting from the volunteer operating a motor vehicle is provided by this type of coverage.
- **DIRECTORS and OFFICERS (D&O) LIABILITY** - This coverage is for volunteer board members and protects their personal assets against wrongful action claims which may be brought against the agency board of directors.

If applicable, several types of auto insurance might be considered including: *non-owned auto coverage*, which protects the policyholder against claims that are brought because of the use of the volunteer's vehicle on policyholder business, and volunteers and employees excess auto coverage which protects the agency when the volunteer, (or employee) using their own automobiles while conducting company business, is involved in an accident and the judgment rendered is more than the volunteers personal insurance policy provides for.

When considering volunteers insurance coverage, it is helpful to consider what coverage the individual volunteer may carry as a part of their personal policy. The volunteer should check to see if her/his personal insurance policy (auto, life and homeowner) considers volunteer work employment. Many insurance companies consider volunteer work as unpaid employment and do not provide coverage for such activity. Often it is possible to have coverage extended to include volunteer activity. Not all types of insurance will be appropriate for every volunteer position, and some volunteer positions may require specialized coverage.

WHAT ARE THE METHODS FOR OBTAINING VOLUNTEER INSURANCE COVERAGE?

There are a number of different methods through which insurance can be obtained for volunteers. These include:

1. Having the volunteer obtain protection through his personal insurance, such as by coverage added onto a basic homeowner's policy.
2. Having the agency which utilizes volunteers provide coverage either through a special policy or through specific inclusion of volunteers in the basic agency policy which

covers paid staff. If this second route is followed, it is essential to obtain a clear agreement with the insurance carrier regarding the coverage of volunteer personnel.

3. Joining with other agencies in the purchase of insurance, or coming under an "umbrella" insurance policy carried by a national organization for its affiliate chapters. Some local United Ways also offer some types of insurance coverage through an umbrella policy for local agencies.

Whatever the method chosen for obtaining insurance coverage, it is highly desirable to seek bids from a number of insurance companies, since there is an area in which widely varying premiums may be quoted. It is also very important that the organization or agency practice good risk management techniques to reduce claims and keep premiums low. These type of tactics include performing regular safety inspection of facilities, establishing safety guidelines, keeping good administrative records, maintain sound personnel policies, holding regular board meetings, keeping good minutes of meetings etc.

ISN'T THERE LEGISLATION WHICH PROVIDES PROTECTION FOR VOLUNTEERS?

Many states have passed legislation to protect volunteers from personal liability while performing volunteer work for nonprofit organizations or government agencies. The legislation varies from state to state as does the definition of "volunteer" and the type of volunteers protected. Some states specify that only certain audiences of volunteers are covered, such as volunteer boards or youth sports team volunteers. Even in states where such legislation exists, it is still recommended that insurance for volunteers be considered.

Federal legislation, titled the "Volunteer Protection Act," is under consideration to encourage states to adopt legislation to protect all volunteers providing service to nonprofit agencies. It is difficult to predict, but the hopes are that adoption of such legislation will have a positive impact on the rising insurance costs that many nonprofit organizations are experiencing.

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VOLUNTEER INSURANCE CARRIERS

Listed here are carriers of volunteer and director and officer's insurance. VOLUNTEER-The National Center does not endorse the services of any of these companies or groups, but provides this information for organizations who are interested in purchasing volunteer insurance.

CORPORATE INSURANCE MANAGEMENT ASSOCIATION
Volunteer Insurance Service
4200 Wisconsin Avenue, NW
Washington, D.C. 20016
(202)244-5678

CONSORTIUM FOR HUMAN SERVICES
P.O. Box 1183
San Jose, CA 95108
(408)297-0755

FIRST NONPROFIT RISK POOLING TRUST
111 North Canal Street
Chicago, IL 60606
(312)930-9500

HUNTINGTON T. BLOCK INSURANCE
2101 L Street, NW
Washington, D.C. 20036
(202)223-0673

INTERSTATE RISK MANAGEMENT CORPORATION
Hunting Ridge Mall
Bedford, NY 10506
(800)431-1336

NATIONAL HOSPITAL VOLUNTEERS INSURANCE PLAN
Two Madison Avenue
Larchmont, NY 10538
(914)834-9326

PROFESSIONAL INSURANCE CONSULTANTS, INC.
211 Sixth Avenue North, Suite 210-S
Seattle, WA 98109
(800)654-0500

SAFECO INSURANCE COMPANIES
Safeco Plaza
Seattle, WA 98185
(206)545-5000

VOLUNTEER INSURANCE/LEGAL LIABILITY Selected Bibliography

Compiled by Kay Drake-Smith - Director, Information Services

Arkansas Office of Volunteerism. Volunteers and Insurance - An Arkansas Guide. Little Rock, AK: Arkansas Office of Volunteerism. <P.O. Box 1437, 1300 Donaghey Bldg., Little Rock, AK 72203 (501)371-7450> 1985.

Presents a collection of information including types of insurance coverage, legislation pertaining to insurance for volunteer and news article on the topic of insuring volunteers. Also contains a glossary of insurance terms. (40 pages)

Chapman, Terry S.; Lai, Mary and Steinbock Elmer L. Am I Covered...? A Guide to Insurance for Nonprofits. San Jose, CA: Consortium for Human Services. <Volunteer Readership, 1111 N. 19th Street, Suite 500, Arlington, VA 22209 (703)276-0542> 1984.

Basic information about insurance for nonprofits, including liability, workers' compensation, property and volunteer insurance. The book discusses the necessity of specific types of insurance, levels of coverage, calculation of premiums and availability.

Chapman, Terry S.; Lai, Mary and Steinbock Elmer L. "General Liability - What Nonprofit Organizations Should Know About Coverage." Whole Nonprofit Catalog. (Summer 1987): 28-31<The Grantsmanship Center, 650 S. S. Spring St., Suite 507, P.O. Box 6210, Los Angeles, CA 90014> .

Summarizes the types of liability insurance available to nonprofits and discusses the various types of coverage. Based on information from Am I Covered...? A Guide to Insurance for Nonprofits.

Haberek, Judy. "Getting H.R. 911 Passed: How the Process Works and What You Can Do." Voluntary Action Leadership. (Spring/Summer 1987): 15-16. <VOLUNTEER-The National Center, 1111 N. 19th Street, Suite 500, Arlington, VA 22209>.

This article provides guidelines for those interested in providing support for federal legislation to protect volunteers from civil liability suits.

Kahn, Jeffrey D. "Legal Issues Survey Results." Journal of Volunteer Administration (Winter 85-86): 28-34. <Association of Volunteer Administrators, P.O. Box 4584, Boulder, CO 80306 (303)497-0238 >.

Analyzes the results of the Energize Associates Legal Issues Survey conducted at the Association of Volunteer Administrators' 1984 National Conference on Volunteerism in Asheville, NC. The survey included questions concerning insurance for volunteers.



1111 North Nineteenth Street Suite 500 Arlington, Virginia 22209 (703) 276-0542

WHAT IS VOLUNTEER-THE NATIONAL CENTER?

VOLUNTEER-The National Center is a private, nonprofit corporation that works to strengthen the volunteer sector in the United States. VOLUNTEER is the only national organization that exists for the sole purpose of stimulating and supporting more effective volunteering by citizens to help solve local problems...this is our mission.

VOLUNTEER was incorporated in 1979 as a result of a merger between two leadership organizations: the National Center for Voluntary Action and the National Information Center on Volunteerism.

WHAT ARE THE GOALS OF THE ORGANIZATION?

VOLUNTEER-The National Center has four primary goals:

1. To help more people become more effectively involved in volunteering.
2. To help develop and sustain strong local structures to promote and support volunteering.
3. To increase public awareness and understanding of the importance of volunteering.
4. To demonstrate innovative ways of applying volunteer energies to specific problems.

WHAT ARE THE SERVICES WHICH VOLUNTEER PROVIDES?

- VOLUNTEER acts as the primary information resource on volunteering for nonprofit organizations, business, government and the media.
- VOLUNTEER operates to support and help strengthen the development of the nearly 400 local Volunteer Centers in communities across the United States. Assistance is also provided to those communities starting new Volunteer Centers.
- VOLUNTEER is the only national consulting resource for corporations which seek to encourage and assist their employees in becoming involved in their community as volunteers.
- VOLUNTEER publishes Voluntary Action Leadership magazine, "Volunteering" newsletter and "Workplace in the Community" newsletter. VOLUNTEER also disseminates information through "VOLNET," an electronic news service which encourages networking among voluntary organizations.

VOLUNTEER Profile

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- VOLUNTEER distributes over 100 publications and promotional items through its Volunteer Readership service.
- VOLUNTEER cosponsors (with ACTION) the President's Volunteer Action Awards through which the President of the United States gives recognition to exemplary volunteers and volunteer programs each year.
- VOLUNTEER administers "The Next Step Project" for disabled high school youth, the "Volunteering and Unemployment Project" which involves unemployed persons as volunteers, and Operation Care and Share a national food distribution project.
- VOLUNTEER sponsors and promotes National Volunteer Week.
- VOLUNTEER sponsors the National VOLUNTEER Conference held annually in a different location each year. It has become the largest and most resourceful training event for volunteer leaders from both the public and private sectors.
- VOLUNTEER maintains the Private Sector Initiatives Database, a vehicle for retrieving information on projects which involve volunteers in solving local problems.

WHO ARE VOLUNTEER'S CONSTITUENTS?

VOLUNTEER-The National Center seeks to serve all those individuals, organizations, government agencies and corporations interested in volunteerism. Our primary service audiences are Volunteer Centers and corporations with employee volunteer programs. Priority is placed on meeting the needs of the membership of VOLUNTEER. Details about the membership plans offered by VOLUNTEER can be obtained by contacting Information Services.

HOW DOES VOLUNTEER OBTAIN ITS REVENUE?

VOLUNTEER's funding base is derived from a variety of sources: membership fees, fees for service, sale of products, corporate contributions and foundation grants. VOLUNTEER generates over 40 percent of its own revenue through the sale of products and services.

WHO GOVERNS THE ORGANIZATION'S ACTIVITIES?

VOLUNTEER is governed by a Board of Directors comprised of 40 distinguished volunteer leaders and representatives of business, organized labor, private philanthropy and government. The Chairman of VOLUNTEER's Board is the Honorable George Romney, former Governor of Michigan. The President and chief executive officer of the organization is K. Kenn Allen who was also an administrator for one of the predecessor organizations to VOLUNTEER-The National Center. VOLUNTEER also employs a highly qualified staff who works under the direction of the Board and the President to carry out the goals of the organization.

3/30/88