

# Legal Issues in Volunteerism: Preliminary Survey Results

Jeffrey Kahn

At AVA's 1984 National Conference on Volunteerism in Asheville, North Carolina, Energize Associates conducted a Legal Issues Survey to sample the experiences of volunteer administrators with legal issues relating to volunteerism. To the best of our knowledge, this is the first time such a survey has been attempted. Three hundred forty-three (343) people have completed the survey to date (either during the conference itself or subsequently by mail), representing a wide variety of volunteer programs nationwide. We were pleased to receive a great many helpful responses.

Because AVA gave permission for the survey to be conducted during the Conference, participants were promised a report in THE JOURNAL on the results of the survey. What follows is a preliminary summary of the written responses we received, as well as an overview of the comments made to us in conversations about the survey with Conference participants. Energize Associates is still compiling and analyzing the full results of the survey, and would like to hear the opinions and experiences of those of you who were unable to attend the Conference. To this end, we are reprinting a copy of the survey questionnaire at the end of this article and encourage any of you who have not already completed the survey to do so now. When we have done our complete analysis of the survey, including the responses we hope to get

from all of the readers of THE JOURNAL, we will be reporting to you again in these pages. Again, we promise to keep all identities anonymous.

While legal questions relating to volunteers have been discussed in print and at conferences, volunteer administrators show a great deal of understandable apprehension when faced with this issue containing so many unknowns. The field of volunteerism often speculates theoretically about the types of legal questions and actions that face volunteer programs; the goal of the Energize Associates survey is to get concrete knowledge about what issues are really important and most on the minds of administrators, and how many of the possible "horror stories" have become realities. Further, this survey is an attempt to ascertain how much influence legal concerns have in volunteer program planning, and to see what kinds of issues have actually been the focus of legal actions.

## ADDITIONAL LEGAL RESEARCH

I have a very special interest in this project. For the past several years I have worked at Energize Associates, doing research and consulting in volunteerism; in addition, I am currently in my second year of law school at the University of Pennsylvania. These legal issues interest me as a future lawyer, with a strong commitment to volunteerism.

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*Jeffrey Kahn is Special Projects Director for Energize Associates, a volunteerism consulting and training firm. He is also a second year law student at the University of Pennsylvania Law School and is on the staff of its Law Review. He is presently researching legal issues relating to volunteers as his contribution to the Review.*

While coordinating the Energize Associates legal survey, I am concurrently conducting an extensive legal search of precedents and relevant court cases involving volunteers. I am also interviewing various law professors and practicing attorneys, especially those specializing in labor law, insurance, and torts. My immediate goal is to submit an article to the University of Pennsylvania Law Review--if it is published (the topic has been formally approved, which is the first step), it will be the first article on the subject of volunteerism to appear in any Law Review in the country.

Unfortunately, most lawyers have never even considered the implications of volunteer-related legal questions and therefore tend to give superficial, inadequate, and sometimes incorrect answers to inquiries from volunteer program leaders. In my opinion, the law should enable and support volunteers, and should operate to expand the impact of volunteer involvement. To non-lawyers, the law can be intimidating and even scary. However, with the proper resources and information, volunteer administrators can intelligently guard against legal problems, while still achieving the maximum potential of volunteer help.

My legal research will be incorporated into the final report on the Energize Associates survey. It is my hope to contribute to the field's understanding of the legal meaning of volunteering--and also to educate some agency and organization lawyers!

## SUMMARY OF ENERGIZE ASSOCIATES LEGAL SURVEY RESULTS

1. To what extent do legal concerns enter into your volunteer program planning?

No Influence	1	2	3	4	5	6	7	8	9	Great Influence
	<u>Response Circled</u>									<u>Frequency</u>
			1							17
			2							27
			3							43
			4							34
			5							47
			6							25
			7							39
			8							51
			9							18
			10							42
										<u>343</u> total responses

2. How adequate do you feel your knowledge of legal issues in volunteerism is?

Inadequate	1	2	3	4	5	6	7	8	9	Sufficient
	<u>Response Circled</u>									<u>Frequency</u>
			1							45
			2							40
			3							54
			4							32
			5							58
			6							29
			7							32
			8							26
			9							11
			10							13
										<u>340</u> total responses

The responses to these two questions indicate a possible problem in volunteer program planning. Most of the respondents felt that legal issues had some substantial influence in their planning, as indicated by the cluster of high frequencies near the top of our scale in the first question. However, the responses to the second question show that many of the administrators feel that they need greater knowledge of these issues. This disparity suggests that there is a need to educate administrators in legal issues, and to ensure that they have adequate legal counsel at their disposal.

Participants' oral reactions to the survey should be considered here and illuminate their written responses.

I would like to share with you some of the reactions I got while administering the survey, and in my many conversations with Conference participants. The large number of people who completed the survey (approximately 50% of those attending the plenary session on that day) indicates the importance ascribed to legalities. Many of the administrators with whom I spoke expressed some confusion about just how legal issues would affect their programs. Not only were there fears about the legal results of actions, but also--significantly--about the impact of even examining such issues. A number of administrators recognized potential legal problems within their organizations, but were afraid to raise them too loudly, for fear that the organization's support of volunteers would waver. This concern of administrators about openly discussing these issues with their top policy-makers leads to questions not only about the force of the legal issues, but also about the nature of the relationship of volunteer programs and organizations. Also, the subject of legal issues seems to produce an ostrich response among volunteer leadership (if we can only hide from the potential danger, it will not materialize).

3. If you had a legal question relating to volunteers, to whom or where would you turn to get an answer?

<u>Response</u>	<u>Frequency</u>
Organization's lawyer	95
Other lawyer (family member, friend, etc.)	31
Lawyer on Board	30
Executive Director/Administrator	30
VOLUNTEER: NCCI	28
State Office on Volunteerism	27
City/County/Municipal Attorney	16
State Attorney/Attorney General	15
Community volunteer lawyer	14
National association (other than VOLUNTEER or AVA)	13
Insurance Agent	11
AVA	9
DOVIA	6
Another volunteer administrator	3
Don't know	1
	<u>335</u> total responses

4. Have you ever consulted with a lawyer or anyone else about a legal question relating to volunteers?

Two hundred and fifteen (215) respondents responded "yes" to this question. They identified the following subjects about which they raised legal questions:

<u>Question Area</u>	<u>Frequency</u>
Liability/Insurance	138
Hiring/Firing Volunteers	11
Volunteer/Salaried Staff Relations	7
By-laws, organization structure, etc.	7
Board member liability	4
Fundraising	4
Taxation	4
Contracts and Agreements	4
Confidentiality	4
Alternative sentencing	3
Miscellaneous/No response	40
	<hr/> 215

That so many administrators have consulted a lawyer or someone else on a legal matter corroborates the finding that legal issues have an important influence in volunteer program planning (question 1, above), and that administrators seek assistance in assessing their legal concerns.

It is no surprise that the most common legal questions concern insurance and liability issues. The questions respondents asked of their lawyers or other individuals relating to liability covered a range of variations. Many administrators were concerned about the liability of their organizations for injuries caused by volunteers, and what insurance coverage is available for this. Liability questions also dealt with liability of volunteers to injured parties, and whether volunteers could get insurance. Finally, some administrators had asked about their own personal liability in the case of an injury caused by a volunteer. While the area of liabilities has received more time in workshops and writing than other legal issues relating to volunteers, clearly it continues to be a source of confusion and concern.

The miscellaneous questions in this area ranged over a number of issues, some of them not directly concerned with volunteers. Among the questions mentioned by respondents were rights of immigrants and unemployed volunteers, volunteers who receive disability payments and fear losing these, and health protection for volunteers working in health care facilities.

5. Has your volunteer program ever been involved in a legal action or lawsuit? This could include any of the following: actual trial; suit settled out of court; formal investigation; licensing authority hearing; administrative proceeding; threatened court action.

Forty-five (45) respondents answered affirmatively to this question. It is understandable that some of them wished to remain anonymous and did not include their names on the survey.

The more extended analysis of this survey will focus on these actual legal actions, and the issues they raised. For this preliminary report, we are listing the subjects of some of the actions:

- EEOC complaint/discrimination (several responses)
- Firing volunteers
- Volunteer tried to get guardianship of a client
- Volunteer misappropriated funds
- Volunteer injured, sued organization (several)
- Client injured by volunteer, sued organization (several)
- Volunteer breached client confidentiality

6. Are you aware of any legal actions involving another volunteer program?

Again, forty-five (45) respondents answered "yes" to this question, and we will be following up on their responses as part of our further analysis of the survey.

7. What legal issues or questions related to volunteers would you most like information about?

Responses fell into the following categories:

<u>Response</u>	<u>Frequency</u>
Liability/Insurance	107
Volunteer/Staff Relations	16
Hiring/firing volunteers	12
Contracts/Agreements	7
Board Member Liability	7
Confidentiality	6

Other issues respondents wanted more information about included problems in evaluating volunteers, taxation, Federal government's use of volunteers, what legal issues to cover in a volunteer orientation session, and "how we can avoid legal actions."

FOR JOURNAL READERS WHO HAVE NOT YET COMPLETED A SURVEY...PLEASE DO SO NOW

ENERGIZE ASSOCIATES LEGAL ISSUES SURVEY

ENERGIZE ASSOCIATES is conducting a survey of volunteer program leaders to gain information about legal issues in volunteerism. To the best of our knowledge, this is the first time such a survey has been attempted. The results of this survey will be made available in several ways, including in THE JOURNAL OF VOLUNTEER ADMINISTRATION. Answers will be used solely for the purpose of this study.

For the purposes of this questionnaire, please define "legal issues" as broadly as possible to include such topics as:

- |                          |                        |
|--------------------------|------------------------|
| law--civil and criminal  | liability              |
| insurance                | statutes               |
| personnel policies       | administrative rulings |
| contracts and agreements | labor relations        |

\* \* \* \* \*

1. To what extent do legal concerns enter into your volunteer program planning? (circle a number)

1	2	3	4	5	6	7	8	9	10
No									Great
influence									influence

2. How adequate do you feel your knowledge of legal issues in volunteerism is?

1	2	3	4	5	6	7	8	9	10
Inadequate									Sufficient

3. If you had a legal question relating to volunteers, to whom or where would you turn to get an answer?

\*4. Have you ever consulted with a lawyer or anyone else about a legal question relating to volunteers?

\_\_\_\_\_ No

\_\_\_\_\_ Yes ..... \_\_\_\_\_ a lawyer

\_\_\_\_\_ someone else: \_\_\_\_\_

What was the question? \_\_\_\_\_

\_\_\_\_\_

\*5. Has your volunteer program ever been involved in a legal action or lawsuit? This could include any of the following: actual trial; suit settled out of court; formal investigation; licensing authority hearing; administrative proceeding; threatened court action.

\_\_\_\_\_ No

\_\_\_\_\_ Yes .....Type of legal action: \_\_\_\_\_

Principle issue: \_\_\_\_\_

\_\_\_\_\_

Result: \_\_\_\_\_

\_\_\_\_\_

6. Are you aware of any legal actions (as listed above) involving another volunteer program?

\_\_\_\_\_ No

\_\_\_\_\_ Yes ..... Describe briefly: \_\_\_\_\_

\_\_\_\_\_

Whom should we contact to get additional information about this?

\_\_\_\_\_

\_\_\_\_\_

7. What legal issues or questions related to volunteers would you most like more information about?

\* \* \* \* \*

\*If you answered yes to either Question 4 or 5, we would like to contact you to conduct a short follow-up interview. We will gladly keep all responses confidential.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone ( ) \_\_\_\_\_

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THANK YOU FOR YOUR PARTICIPATION!!! Please return this survey to: ENERGIZE ASSOCIATES, 5450 Wissahickon Avenue, Philadelphia, PA 19144.