

Local News

Trial concludes in hospital's case against pro-life protests

By Richard A. Kiley

Testimony ended Thursday, May 12 in the Genesee Hospital's legal attempt to gain a permanent injunction barring anti-abortion protesters from entering the hospital or its grounds.

Lawyers for both sides must now submit written closing arguments to State Supreme Court Justice Myron E. Tillman, who may take several months before making a decision in the case.

The Rochester hospital is asking that Judge Tillman make permanent a temporary restraining order he issued in February, 1987, prohibiting anti-abortion protesters from entering hospital property during protests.

The bench proceeding concerns the activity of various pro-life activists, including Father

Anthony Mugavero, parochial vicar of St. Theodore's Church, Rochester, and Project Life Director David Long. The two men were found guilty in criminal proceedings last fall of violating the 1987 restraining order.

The civil trial, which resumed May 9 after a month-long delay, had been postponed again for two days so the hospital's lawyer, Joyce R. Parker, could produce a witness to rebut earlier testimony given by Father Mugavero.

Calling Estelle Weems of Lyons to the stand, Parker attempted to illustrate that activists have engaged in behavior "inappropriate and incompatible with hospital zones." Weems and Parker re-enacted a January 3, 1987, incident in which the hospital contends that Father Mugavero tried

to physically restrain a young girl — Weems' teenage daughter — from entering a doctor's office to have an abortion. In earlier testimony, Father Mugavero had said he had touched the girl, but that he did not attempt to restrain her.

In her re-enactment of the scene, Weems grabbed the upper part of Parker's arm.

"This guy came out and pulled my daughter away and said, 'Don't go in there; don't go in there. It's a murder; it's a murder,'" said Weems, who had been driven from her Wayne County residence to the courtroom by hospital security officials. "I told him to leave us alone ... I'm taking my daughter to the doctor," Weems testified.

When asked by Parker if the person who approached her and her daughter was in the

courtroom, Weems pointed to Father Mugavero.

After proceedings adjourned, the priest said that the courtroom re-enactment was "so blasphemous I could only laugh at it."

"What took place in the courtroom was so exaggerated," the priest said. "I feel at peace over the whole thing. There was no grabbing, no tugging, nothing like that. I reached out and touched her ... like I would someone coming out of church."

Scott Smith, the priest's attorney, said he didn't think Weems' testimony was helpful to the hospital's case.

"In my opinion, it was not particularly significant to the issues of the case," Smith said. "I didn't think it was necessary to call

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Asbestos

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approved by the legislature to assist with asbestos removal."

Currently, the state is considering an asbestos-aid package that does not include non-public schools.

If the state fails to assist the non-public schools, however, "how (the schools are) going to pay for it is a question that has to be dealt with," Father Bayer said.

The regulations do not require removal or containment of asbestos to begin until July 9, 1989. The regulations give no date for completion of the steps outlined in management plans, although the EPA and the state want any action based on the plans to be completed as soon as possible, according to James Waxman, a technical adviser at the EPA's Edison, N.J., office.

Waxman said that the cost of asbestos removal in a typical high school could run as high as \$2 million, but that plans encompassing a large number of schools — such as the diocesan plan — substantially reduce the total cost.

Under Rochester's plan, the firm of Hall-Kimbrell Environmental Management, Inc., will conduct the required inspections, complete necessary sampling and analysis, and develop appropriate management plans for each participating Catholic elementary and secondary school. Parishes or schools will contract for this service through the diocese, although individual schools may request permission to develop their own plans. Schools which wish to pursue this option must notify Bishop Matthew H. Clark in writing by May 26.

As part of the plan, the diocese will retain the services of a local asbestos coordinator — an architect or engineer who will accompany the inspectors into the schools and be responsible for keeping records of compliance.

Schools will pay 11 cents per square foot for the area to be inspected. Of this amount, Hall-

Kimbrell will receive 6.7 cents per square foot. The diocese will receive 4.3 cents per square foot in compensation for hiring, training and retaining the coordinator; administrative costs involved with developing the plan and contracting with Hall-Kimbrell; and expenses that will be incurred through continued coordination of the program.

In contrast with the diocesan cost of 11 cents per square foot, the New York State Department of Education estimated that inspections and accompanying tests would cost about 25 cents per square foot.

The diocesan cost is lower than the state estimate in part because of the number of schools involved in the overall plan as a result of collaboration among the dioceses of Rockville Centre, Brooklyn, Buffalo and Rochester, Father Bayer explained.

"We feel we made a good deal," he said.

Fathers Shatzel and D'Aurizio likewise expressed satisfaction with the diocesan plan. "It makes a lot of practical as well as financial sense," Father Shatzel said.

"I think (the plan is) a good one because the diocese has come up with a firm that's credible, and it's cost effective with all the parishes working together," Father D'Aurizio said. "This sounds like the best way to approach it."

As the first step in the plan, Hall-Kimbrell will conduct the inspections and take necessary samples beginning in June. In addition to meeting the October 12 deadline, the company must report preliminary results to the diocese by September 15, according to James Magee, buildings and property manager for the diocese. Magee noted that Hall-Kimbrell had taken only three weeks to complete inspections and tests in the Brooklyn diocese's 46 schools.

Once the inspections are completed and the management plans are developed, the diocese will have a better idea what steps will be necessary to control the asbestos problem, Magee said. Four options are now available to the diocese, he said.

The most expensive option is to completely remove the substance from the schools. Complete removal would only be necessary if the asbestos or asbestos-containing material is in

such poor condition that the asbestos is or could become friable — broken down into particles small enough to become airborne. Inhalation of friable asbestos has been shown to cause cancer.

Two related options are encapsulation and containment. Encapsulation is a temporary expedient involving sealing the asbestos-containing material with a spray or paint. Containment involves building an airtight container around the material.

The fourth option is to develop an operations and maintenance plan incorporating regular inspections, testing and vacuum removal of asbestos.

According to Magee, the diocese will "probably have to look at containment" as the most practical method of controlling asbestos in diocesan schools. Of the four options, it is the least expensive and most cost-effective in the long run, he said.

Magee noted that the diocese has had an ongoing program of monitoring and maintaining or removing asbestos as necessary since 1983, when state and federal regulations required schools to remove friable asbestos.

"The concern is that non-friable asbestos is not dangerous to your health," Magee said, noting that it is best to leave non-friable asbestos alone. "If you start just pulling it out, you only make the situation worse."

Magee also noted that diocese's inspection plan is well-thought out and researched, especially in comparison with plans implemented by other dioceses.

"When I met with the dioceses' (building supervisors recently), we had the best contract and the best plan," Magee said.

Meanwhile, the New York State Catholic Conference is lobbying the state government to provide assistance to non-public schools, according to J. Alan Davitt, the conference's executive director.

"The government ... is placing this obligation on the schools," Davitt said. "The whole question of asbestos — the use of it in the first place to prevent fires — came from the government."

On April 18, New York's eight bishops is-

sued a statement urging Governor Mario M. Cuomo and the state legislature to enact an asbestos-aid package that includes non-public schools. Earlier this month, Governor Cuomo vetoed a \$50 million asbestos-aid package in the proposed state budget. The governor said the package — which did not include parochial schools — was too large. He did not respond to the issue of including non-public schools in the package.

In their letter, Davitt said, the bishops noted that the new asbestos regulations would have "a significant impact on a system already financially strapped," and that failure to include non-public schools in an aid package would be discriminatory.

"(The bishops) will expect the state to treat the schools even-handedly," Davitt said. He noted that state precedent for providing asbestos aid to non-public schools already exists in the form of a \$5 million Asbestos Aid Program that is open to any school in the state. "The protocol has been established," Davitt remarked.

At their executive committee meeting on May 3, the bishops decided to continue pressing for more state aid, Davitt reported. In addition to the bishops' direct communication with the state government, the New York State Federation of Catholic School Parents is urging parents to contact their legislative representatives.

Davitt predicted that the bishops will take further action if the state does not enact an aid package including parochial schools.

As long as state aid remains in doubt, however, the Diocese of Rochester — and its parishes and schools — must examine their financial options for implementing the asbestos-management plans.

At this time, the diocese has no plan for assisting the schools beyond its involvement in the inspection and management plan, Father Bayer said. But he said the diocese is looking at ways to offer assistance.

"The diocesan oversight task force will be making a recommendation on that topic," the chancellor said. "The recommendation is due to Bishop Clark at the end of June."

Catholic schools

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"I take this action because I believe it will best position us for the collaboration necessary to ensure that the Catholic school will be a ministry of our diocese in the future," Bishop Clark explained at a series of four meetings during which he outlined the quadrant plan to pastors and educators from each geographic region.

"Too often in the past, we portrayed the notion that the strength, the viability, the quality of our schools was to be found in the number of buildings in which we offered a Catholic school education ... We cannot and will not portray this in the future," he said. "In many instances, the only way we can maintain our Catholic schools is to pull back, reconfigure, and on this foundation, build for the future."

"With a strong foundation, we can then begin to change and adapt our Catholic schools to serve the Church of the new century," he added.

Some parish and school leaders predict that any meaningful attempt at reconfiguration must also include school closings in some quadrants.

"Some schools, as time goes by, will just have to close — it's just going to have to happen," said James Bell, principal of Most Precious Blood School. "That will be better accepted by everyone if people have sat down and talked about it ... if it is clear that time

and care was taken in making the decision."

On the other hand, the issue of expanding existing schools or opening new ones is expected to come up in at least one quadrant — the northwest.

Simply grouping schools and parishes together in the same geographic region clearly does not guarantee that members can agree on the specifics of a reconfiguration plan. Yet supporters of the quadrant system believe that quadrant members do share a common goal: that of preserving and strengthening Catholic education.

"We're looking at total Catholic education — moving away from a parochial system toward educating all the children in the diocese with support from all of the parishes in the diocese," said Sister Margaret Mancuso, principal of Nativity School in Brockport, a member of the Northwest Quadrant.

"It's not just people inside the school system; you're getting a lot more lay involvement," observed Sister Lorraine Burns, principal of Holy Family School. "I think that's good."

In addition to broadening the base of support for Catholic education, proponents of the quadrant system point to flexibility and a more efficient use of resources as advantages.

Schramm, a parishioner at St. Augustine's Church, pointed out that members of each quadrant should be able to plan at their own speed. "Everybody won't be moving at the same pace," she observed. "This way, they will be able to look to the other (quadrants) as models. Everybody won't have to break new ground."

Sister Carolyn Knipper, principal of Holy Cross School, believes that school and parish communities in the Northwest Quadrant are

ready for the new initiative. "We waited just long enough," she said. "We had done as much as we could on our own, and we needed someone ... to pull it all together and say 'This is what we're going to do.'"

However, Sister Knipper believes that the Northwest Quadrant may move more slowly than some other regions. "We do not, as far as I'm aware, have to react immediately to a difficult situation," she said. "We have the luxury of time."

"At the same time, I don't think we have the choice of whether to plan or not," she added. "Changes are coming."

On the other hand, members of the Northeast Quadrant are likely to move quickly since many have already been planning together for more than a year.

Because the Northeast Quadrant is well-advanced in the planning process, it offers a model of how members can pool resources on such projects as parent surveys and hearings.

But Annunciation School's principal, Sister Diane Marie Erskine, cautioned that the Northeast Quadrant is also facing decisions that are painful and difficult.

"I'm not sure you can expect a group to come together without some real ups and downs," Sister Erskine said. "Still, nobody comes to the meetings thinking (a change in the schools' format) can't happen. Everyone believes that it will happen, and that by the time we're finished, we will have something good that we can all believe in."

Because quadrant members — with the exception of those in the Northeast — have yet to begin meeting, it is not clear how effective the geographic groupings will prove to be.

Some principals question whether the areas

encompassed by quadrants are too broad.

"My greatest concern is that the Southeast Quadrant includes Henrietta and Webster," observed Mary Caffrey, principal of Holy Trinity School in Webster. "A solution for Henrietta is not going to be a solution for Webster."

On the other hand, Caffrey welcomes the initiative. "At this point, I'd say that anything that's done in the name of planning is a good move," she said.

Other educators note that the quadrant lines do not coincide with the membership of school-related groups, such as principals' associations, or existing school consolidations. The regional junior high school at Blessed Sacrament, for instance, already draws students from elementary schools in both the Northeast and Southeast Quadrants.

At least initially, schools and parishes will be able to move from one quadrant to another, according to Brother Brian Walsh, CFC, diocesan school superintendent.

Still other parish leaders and educators — particularly those in the City of Rochester, where the urban school planning process has continued for several years — are concerned about burnout among school and parish leaders.

Yet Sister Tierney pointed to the involvement of local leaders as critical to the quadrant system's success. "What we have found to be true is that you need the local ownership for a thing to work," she said. "At least five years ago, we would look at the statistics and say 'This has to happen; but nobody believed us then ... We could sit in a room and make up an ideal plan for what to do with this building and that building, but it would sit on the shelf unless the people in those buildings believed in it.'"