



TO: Clergy
FR: Kevin Snider
RE: Church Security
DT: August 2020

Introduction

The purpose of this memorandum is to briefly discuss church security. Three issues will be addressed as follows:

- trespassers;
- repetitive disrupters; and,
- safety plan for intruders or disasters.

Legal Discussion

First, a brief review of protections under federal law is in order.

FACE Act:

In 1994 Congress passed the Freedom of Access to Clinic Entrance Act (or FACE Act). This federal law extends specific protection to churches. The Act makes it unlawful to intentionally interfere, injure, or attempt to interfere or injure, or use the threat of force or intimidation directed towards any person exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.¹ Further, the FACE Act also extends to the actual or attempted destruction or damage to of a place of worship.² Those committing such crimes face prosecution and are subject to fines and imprisonment.³

In addition to criminal penalties, the Attorney General of the United States⁴ or the Attorney General of an individual state can bring a civil action for an injunction, compensation, and attorneys' fees.⁵ Pursuant to the FACE Act, if these officials fail to act, a private person can bring a civil action.⁶

¹ 18 U.S. Code § 248(a)(2).

² 18 U.S. Code § 248(a)(3).

³ 18 U.S. Code § 248(b).

⁴ 18 U.S. Code § 248(c)(2)(A).

⁵ 18 U.S. Code § 248(c)(3)(A).

⁶ 18 U.S. Code § 248(c)(1)(a).

Trespassers:

One typical problem in church security is dealing with the trespasser. In most states a person entering a church for a service is classified as a licensee⁷ or invitee.⁸ Although there are legal distinctions between the two, for purposes of this discussion it is important to understand that a church can withdraw its permission for access to an individual. Thus, like any other property owner, a church has the right to decide whom to allow on its premises.⁹ Once that permission is withdrawn, the individual who refuses to leave is deemed a trespasser. A trespasser is subject to arrest and prosecution.¹⁰

Churches ordinarily have a number of people who interface with the public on an abbreviated basis, i.e., parking attendants, greeters, ushers. These individuals should be watchful for persons who may cause a commotion. Examples that churches have encountered include persons under the influence of drugs or alcohol, or those suffering from mental illness. Another example could be political in nature: those carrying signs or wearing similar shirts or hats with slogans indicative of a protest or an orchestrated disruption. The church staff or volunteer tasked with interfacing with the public should notify whomever is assigned to security to keep an eye on the identified person or persons who may potentially disrupt church activities. At this point it is necessary to clarify that a protestor intent on disrupting a church is not lawfully exercising free speech rights. "The First Amendment afford[s] [the protestor] no protection in what he was doing; it affords members and visitors of the church . . . freedom and security *against* what he was doing."¹¹

If a disruption occurs, an usher or staff person should go directly to the disrupter. The response should be in proportion to the severity of the behavior. For example, if an individual is heckling or holding up a sign, then the usher should calmly and with gentleness say something to the effect, "Young man/lady, that's not appropriate conduct in this setting – please stop or I'll have to ask you to leave." If they stop, the problem is solved. If they do not stop, then the usher again directs them in a calm but clear manner to leave or security and/or the police will be called. The usher should demonstrate the fruits of the spirit rather than being brash or agitated. The goal is to de-escalate the tension and resolve the problem by either a return to proper behavior or the person voluntarily leaving. Should this not work, then the usher should take out a cell phone and call the church's security. While holding a cell phone, the usher should continue to stand by the disrupter and wait for security. If the trespassers get up to leave, let them. If there is a second staff member or

⁷ The Supreme Court of Alabama explained that a *licensee* means that the individual is attending for their own benefit rather than the commercial or business interests of the church or for the mutual benefit of the church and the attendee. *Antry v. Roebuck Park Baptist Church*, 285 Ala. 76 (1969).

⁸ "An invitee is a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage." *Corley v. Evans*, 835 So. 2d 30, 37 (Miss. 2003).

⁹ *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1248 (2002).

¹⁰ *People v. Morrissey*, 614 N.Y.S.2d (N.Y. City Crim. Ct. 1994).

¹¹ *Hill v. State*, 381 So. 2d 206, 211-212 (Ala. Crim. App. 1979).

volunteer present, then they should videotape the encounter or ask a nearby church member to use their phone to record what is occurring.

A person assigned to security can make a citizen's arrest and remove the person or persons if it is safe to do so. It is our counsel that only off-duty or former law enforcement officers should be involved in the use of force in making a citizen's arrest. A person who is trained with the use of force may be physically quite capable of subduing a trespasser; however, that same individual may not be trained in the reasoned and proportioned use of force for which a law enforcement officer ordinarily has both legal training and actual experience. Reasoned and proportional use of force limits liability. If there are no off-duty police officers available then the usher should call the police or sheriff's department and report the presence of a trespasser and request that a squad car be dispatched. Again, the usher should stand next to the trespasser with cell phone in hand and wait for law enforcement to arrive. In the event that the trespasser brandishes a weapon, the usher should be trained and pre-authorized to move people nearby away from the trespasser.

Repetitive Disrupter:

A church may have someone who chronically engages in disruptive behavior at services or other activities. There may be a history of ushers, security and/or local law enforcement officers having to escort the same person off of the premises as a trespasser on several occasions. Anecdotally, our experience is that this type of disrupter often suffers from mental illness. Under such circumstances, the church should send a certified letter to the disrupter directing him or her to stay away from the church campus until written permission to return has been received.¹² If the directive is ignored, then a restraining order from the State Court should be secured and served on the individual.¹³

Safety Plan for Intruders or Disasters:

As an initial matter, it is advisable to invest in security cameras. A safety plan should also be drawn up in the case of an intruder or disaster, e.g., fire, earthquake, gas leak. Each church facility has its own unique physical features relative to lock down and emergency exit that are conditioned upon the layout of the campus. A safety plan can be developed by having both a law enforcement officer and firefighter walk through the buildings, make an analysis, and then review plans accordingly. Another good resource is someone who works as an administrator at a K-12 public school.¹⁴ You can ask an administrator as to how they drew the school plan up. Once the safety plan is in place, have the staff and volunteers familiarize themselves with it. During the first 12 months, it would be wise to run a practice drill one or more times, as necessary, to work out the inevitable flaws in the plan.

¹² *McBride v. State*, 128 N.E.3d 531 (Ind. Ct. App. 2019).

¹³ *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244 (2002).

¹⁴ In more than 40 states and the District of Columbia school campuses are required to develop a safety plan under state law.

A survey of the church staff and volunteers should be conducted to receive feedback on the drill, paying particular attention to problems. For example, if there was a lock down drill, a Sunday school teacher may discover that one of the doors in a classroom does not have a lock. Or the teacher went to the windows and found there were no curtains to close. It is more important to discover and remedy the defects in the safety plan than it is to identify what is working.

Conclusion

This brief memo has been written to assist churches with developing security measures. The goal is to increase the safety of congregants and to reduce liability to the church. It should be noted that this memo does not cover the issues of the presence of registered sex offenders at church services and activities, authority for church leadership to exercise spiritual discipline, reporting child abuse or neglect, or background and other safety practices for children or youth workers. Should you have questions regarding those issues, feel free to contact this office and speak to an attorney.¹⁵

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¹⁵ As with this memo and all such counsel to churches, legal services undertaken by the Pacific Justice Institute are performed as a ministry on a *pro bono* basis.