

BY ERIK SHERMAN

Snow Job

*Why the City Plows Its Churches' Parking Lots,
and Why the ACLU Is Suing*

*I*t seemed like such a simple thing—a mere courtesy, really—when Barrington began plowing the parking lots of its churches in the late 1920s. After all, the houses of worship not only were part of the small Rhode Island community, but were always ready to help in times of trouble



and even occasionally to provide space for polling places. And it was no great trouble for the drivers, after finishing their assigned tasks, to take a quick pass at those parking lots: perhaps an hour of work at most, even after the worst snowstorms.

Then came the winter of 1995.

Buffeted by major storms, New England received record snowfalls, and because towns throughout the region had to clear the roads after each one, labor and supply costs unexpectedly broke community budgets. According to Peter DeAngelis, Barrington's Department of Public Works director, in the winter of 1995/1996 plows were on the road between 15 and 18 times (as opposed to the normal two or three), removing snow and slush not only from the streets, but from the churches and one synagogue as well.

All of which led to letters to the local newspapers, protests from citizens, a heated town meeting, and an American Civil Liberties Union (ACLU) suit over church-state separation.

Church-state separation issues aren't new to Rhode Island. Since its founding by Roger Williams in the seventeenth century on the promise of religious freedom, the state has been the breeding ground for church-state disputes, including three Supreme Court cases. As recently as 1992, the High Court held, in *Lee v. Weisman*, that a Rhode Island public school could not include as part of an official graduation ceremony a clergy member offering prayers.

Then came little Barrington's turn, and some can't help wondering what the fuss is all about.

"The churches are members of the community," said outgoing town council president Charles Brule. "When there's been a tragedy, we've never hesitated to ask the churches and synagogue for the use of facilities or to

ask a priest or minister to help in various situations. They've been there when we've needed them."

"I appreciate the attitude that the plowing is a kind of acknowledgment of the churches' contributions to the community," said Father Jenkinson, pastor of St. Luke's Catholic Church in Barrington.

Yet to many in Barrington—and to the American Civil Liberties Union (ACLU)—

the plowing was not a simple question of unnecessary expenses or community spirit; it involved instead the issue of what church-state separation means and when the principle is violated. However silly or trivial the circumstances themselves seemed, the ACLU viewed the plowing as an impermissible breach of the Establishment Clause.

"This seems to some a petty issue," said Peter McCalmont, a town resident and plaintiff in the suit, "[but if you] look under the tip of the iceberg . . . you find more [church-state entanglement]." According to

McCalmont, Barrington previously had faced charges of church-state entanglement when it once tried to display religious creches on town property.

Most residents see it as much ado about nothing. The cost in a typical winter reached perhaps \$1,000 for all the plowing, a level of underwriting that would hardly be missed. The churches were not plowed until all the streets were done, so the town itself wasn't inconvenienced. (One resident, though, did write to the local newspaper and complain that his street hadn't been plowed when the near-

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by church parking lot had been, and that brought the issue to light.) Also, because all the religious groups that wanted plowing could receive it, there was no support for a particular religion.

"We're not fostering a specific religion," explained Brule. "We're not encouraging people to attend a church of our choice. It was simply an extension of a community service, nothing more."

Though understanding that the situation in Barrington was not oppressive, the ACLU was concerned that giving any ground on the separation of church and state was to start on a slippery slope that could lead to more egregious violations, and so it asked the city to end the practice.

"[Snowplowing] is a long way from the type of tyrannical society where people get jailed or punished," said John Dineen, an attorney who eventually litigated the suit for the ACLU. "You have to jealously guard the principle so you don't start down that hill."

In response to the ACLU request, the town council called a meeting that by all accounts was unpleasant.

"The first meeting was an outrageous display of zealotry by the people who were in favor of plowing," said McCalmot.

"There was a kind of nasty reaction from the pro-snow plowing constituency," remembered Dineen. "Some people were shouting: 'If you don't like it, move out of town.'"

The result of the first meeting was a unanimous vote on the part of the town council to continue the plowing policy. Barrington's assistant solicitor, Andrew Teitz, explained that "most of the sentiment was that this is a nice thing to do. It is part of the community spirit; the churches do a lot for the town, and it is something the town does for them and has done for 50 years."

Yet Barrington's legal position was, he admitted, shaky.

"I told them that I did not think the way

they were doing it would stand up to a court challenge, and so I suggested some alternatives, such as extending the policy to plow other nonprofits."

Plowing other nonprofits, though, would have required the purchase of additional equipment in addition to increased labor costs for a rapidly lengthening list of organizations, and so it wasn't deemed a viable option.

Another strategy was to detail formally in civil defense procedures the role of the churches as potential shelters. While churches were never before used for that purpose, a spokesperson for the American Red Cross offices in Rhode Island could see the need.

"In Rhode Island, Barrington is the single most vulnerable town to coastal flooding because the town is very low-lying," said Red Cross spokesman Brett Davey. "So as far as we're concerned, it's good planning to have that option."

"One of the things the town will claim, a little belatedly, is that churches can serve as civil defense shelters," said Dineen, who noted that this was not a reason Barrington originally gave for the plowing policy. "If they had said that any site in town is part of the civil defense and preparedness network, and will be plowed to be always accessible, that would have been a different ball game."

Because the town wouldn't stop the practice, the ACLU filed suit in federal court, with a few Barrington residents as plaintiffs. It's arguing that the plowing policy violates the Establishment Clause.

So often church-state disputes deal with principles that far exceed the seemingly trivial particulars (be it a moment of silence, a religious symbol in a courtroom, a generic prayer at a high school graduation, or the plowing of church lots) that trigger them. That, no doubt, is what the Barrington case involves too. But the question remains: Is the ACLU suit a valid defense of constitutional right—or just a snow job? 

