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Boy Scout file release: the benefits ...and harms

Jaelyn B. Stahl is a student at University of California, Irvine School of Law, class of 2013.



Elizabeth F. Loftus is a distinguished professor at University of California, Irvine, and a specialist in human memory.



In October 2012, a court in Oregon ordered the Boy Scouts of America to release information that has infamously become known as the "perversion files." These 1,247 files detail allegations of child sexual abuse that happened within the organization between 1965 and 1985. The release of these files has brought forth criminal and civil actions relating to the allegations contained in the files. A judge in Texas has ordered the release of the subsequent files from the years 1985 to 2011, but the order has been stayed pending appeal.

The release of this

information has the potential to help victims by giving them support and encouragement to seek reparations for their injuries. It also has the benefit of possibly bringing those who perpetrated these heinous crimes to justice.

But the release of these files also has the potential to cause tremendous harm. They may invade the privacy of victims who wish to remain unknown. Moreover, the files may create or encourage repressed memory claims that are actually the byproduct of false memories. And the publicity of the matter and public disclosure of the alleged perpetrators' names may deny the accused the right to a fair trial. Admittedly, a court could decide that the good outweighs the bad and accept the risks, but all of the potential harms should be considered.

In Oregon, the trial judge required that the names of any victims and the names of those who reported the incidents be redacted. However, information relating to the date, location and troop number are located in the files. With some investigation it may be possible to uncover the alleged victims' identities. Thus, their privacy would not have been adequately protected.

Repressed memory became a topic of debate in the late 1980s, and it came to the forefront of public consciousness in the 1990s. The controversy regarding repressed memories largely surrounds allegations of childhood sexual abuse. The alleged victim claims to have recalled memories of abuse long after the incident of abuse had occurred, claiming that a memory was repressed before it resurfaced. As the repressed memory movement picked up momentum, states began to change their statute of limitations laws. This has resulted in a number of cases being brought before courts years after the alleged incident when little to no physical evidence may exist and memories have faded.

Government

Federal prosecutors dodge furloughs, but defenders are not so fortunate

Federal prosecutors can keep coming to work every day for the next five months, and will not face the 10 percent cut in pay they anticipated.

Law Practice

Fenwick to replace longtime chairman

Gordon K. Davidson, who has led Fenwick & West LLP as its chairman since 1995 and become one of the best known corporate lawyers in Silicon Valley history, will step down at the end of the year, the firm announced Thursday.

Government

State Bar adopts changes to open meeting rules

Responding to an angry legislator and the demands of a 2011 statute, the bar's governing board voted Thursday to match its rules more closely to state open meeting laws, including electing officers publicly.

Corporate

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

Sunnyvale company names new GC

On the heels of former general counsel Damien P. Eastwood's departure from Sunnyvale-based network equipment and software vendor Aruba Networks Inc., the company has selected a new top legal counsel.

Solo and Small Firms

Harnessing a Will-Do Spirit

Nelsen, Thompson, Pegue & Thornton has established itself as a fixture in insurance coverage work - a niche area that's seen crests and lulls since the firm's founding.

Real Estate

California lawyers assist in second-largest REIT stock offering

O'Melveny & Myers LLP, Mayer Brown and Venable LLP are helping guide San Francisco-based industrial real estate giant ProLogis Inc.'s roughly \$1.3 billion offering of common stock, a financing announced late Wednesday.

Litigation

At first blush, it may appear that openness is the best course of action. Yet upon further reflection, it may surface that this level of complete openness may bring a host of unintended consequences.

These repressed memory cases present difficulty for all parties involved. The defendant may have lost any exculpatory evidence to the unfortunate result of time. The alleged victim is put on trial to test the veracity of his or her memory. And the truth is held hostage in a battle of expert witnesses, if each side is able to afford them.

When discussing the merits of releasing the files, the controversial topic of repressed memory bears mention. Exposure to the files is an invitation for new individuals to come forward and claim abuse that they allege was repressed in memory. In fact, at least one such case has already been filed in Cook County, Ill. Given the lack of credible scientific support for the notion of massive repression, some, perhaps many, of these cases may involve false memories that even the accuser can eventually come to believe are real. Such false memories have already occurred in cases resulting in medical malpractice litigation, and criminal and civil cases against innocent people. The harm created by such a situation may include the prosecution of innocent defendants, emotional damage to the person who claims to have the repressed memory, or wasted court time when court time is steadily dwindling due to budget cuts.

Likewise, a cornerstone of our criminal justice system is that a defendant is innocent until proven guilty. But the alleged perpetrators' names have been released to the masses and held out as child abusers without a trial by judge or jury. Some may be guilty. Others may be innocent. But even the guilty deserve a fair trial. Instead, their names were released on a list that condemns them as one of the worst types of criminals in our society without due process and without opportunity to respond - simply blacklisted from society.

The release of the perversion files was a drastic move. Touted by some as a victory for child abuse survivors and condemned by others as extremely prejudicial. At first blush, it may appear that openness is the best course of action. Yet upon further reflection, it may surface that this level of complete openness may bring a host of unintended consequences. It is important for the courts to be cognizant of a potential harm, even if the harm might not be readily apparent. Each of these risks should be considered and evaluated by the courts when considering an action as dramatic as releasing private files that document something as horrific as child sex abuse. In the end, openness may win the day, but if it does, it should only be after deliberate consideration.

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Creditor's bid to get share of San Francisco attorney's award dismissed

A federal judge on Thursday dismissed a creditor's bid to nab more than \$28 million that it claims San Francisco-based plaintiff's attorney Joseph M. Alioto owes in unpaid debt.

Law Practice

Heller estate settles malpractice suit against Greenberg Traurig

The Heller Ehrman LLP estate and its former dissolution counsel, Greenberg Traurig LLP, have reached a proposed \$4.9 million settlement to the estate's malpractice suit against the firm.

Environmental

9th Circuit rejects wildlife protection settlement

A federal appellate court on Thursday threw out a settlement between the government and environmentalists over protecting imperiled wildlife in public forests.

Alternative Dispute Resolution

James R. Trembath

The calm, unassuming aura James R. Trembath projects is one of his key assets as a mediator, say those who have seen him at work.

Labor/Employment

Justice Department asks for Supreme Court review of recess appointment challenges

The Department of Justice asked the U.S. Supreme Court Thursday to review an appellate court decision that would starkly limit the executive branch's ability to make recess appointments.

California Courts of Appeal

Appellate court vacates indictment against city officials

The Los Angeles District Attorney's Office failed to reveal exculpatory evidence that could have vindicated the Irwindale city officials charged with embezzlement and misappropriating public funds, the appellate court ruled.

Bankruptcy

O'Reilly & Collins estate gets contested trustee

A trustee to the O'Reilly & Collins bankruptcy case was elected during a disputed trustee election April 17, according to court filings Wednesday.

U.S. Court of Appeals for the 9th Circuit 9th Circuit takes another case away from Los Angeles judge

For the second time this year, a 9th Circuit panel has taken a case away from the frequently-reversed U.S. District Judge Manuel L. Real of Los Angeles and ordered it reassigned to a different