

Objections to Boy Scout file release are unfounded

By Thomas A. Cifarelli
and Myles Couch

In October 2012, the Oregon Supreme Court ordered the Boy Scouts of America to release thousands of pages of internal documents that have been referred to as the "perversion files," siding with plaintiffs who argued that "lifting the veil of secrecy on child sexual abuse is the primary method by which the child sexual abuse problem in our society will be reduced, minimized, or hopefully eradicated." The order came about from a lawsuit against the Boy Scouts. The documents cover the period from 1965 to 1985 and detail accusations against 1,247 scout leaders involving 1,622 child victims. The records provide information on how the Boy Scouts responded to allegations of abuse, revealing that the organization purportedly failed to report a large percentage of incidents of abuse that had not been previously reported to police. All too often, the documents appear to paint a picture of secrecy and inaction among the leadership of the Boy Scouts.

The court-ordered release of the files will have several positive effects. First, the documents will provide a roadmap for victims to initiate litigation. Lawsuits will allow files to be scrutinized to determine exactly how the organization failed to protect the children entrusted to it. Second, the lawsuits will allow victims to obtain treatment to address the harm they suffered. Child sexual abuse can result in life-long emotional injury requiring extensive treatment. Third, the files ultimately will help identify predators and protect others from future suffering at their hands. Fourth, the disclosure of the files and the accompanying scrutiny and liability will encourage Boy Scouts and other youth organizations to clean up their

acts, implementing safeguards and raising awareness that will prevent children from being harmed in the future.

Indeed, the Boy Scouts organization claims they are now a model of effectiveness in protecting children, having adopted many strict reforms designed to weed out predators. That may be true, but the organization only instituted reforms after years of litigation and repeated attempts to keep the records from the light of day. The files were released only due to the courage of the victims and the tenacity and persistence of their lawyers. In fact, the Scouts fought for decades to keep the records hidden, and they released the materials only under court order.

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Arguments against release of the files are tenuous at best. For example, some have argued that disclosing the files may invade the privacy of victims who wish to remain unknown. However, victims' names and identifying information are routinely redacted from such documents before disclosure and the Boy Scouts files in particular were carefully redacted to conceal the names of victims and the individuals who reported the abuse. Moreover, even if the Oregon court had not ordered the records redacted to protect the victims' identities, it is extremely unlikely the press would reveal such sensitive information. Thanks to stiff penalties and awards in cases where the press has ignored privacy

rights by outing childhood sexual abuse victims, it is hard to recall the last time the name of a victim of child sexual abuse was published by the media without consent. The far greater danger lies in allowing incidents of abuse to be swept under the rug.

Some have argued the release of the files will result in baseless allegations triggered by "false memories," but this argument is also misguided in the case of the Boy Scout files. The possibility that an ex-Scout who was not abused would spend the time to scour the files and develop false memories of abuse as a result is less than miniscule. Adult males are among the least likely of all victims to make up stories of childhood

sexual abuse given the trauma and fear of social stigma that all too often accompany disclosure. Indeed, the stigma of disclosing such abuse is precisely what contributes to many victims failing to report their assaults at all. Many victims wait decades before finally disclosing their abuse, often doing so only after the abuse has already caused a heavy emotional toll and mental damage.

Another flawed argument against the release of the files suggests that their release will encourage the recovery of repressed memories that will result in bogus lawsuits allowed by permissive statutes of limitation. The argument states that claims brought years after the alleged abuse are without merit be-

cause little to no physical evidence remains and memories fade. This argument also rings hollow. First, unless a claim of sexual abuse or assault is brought within days of the act, there will rarely be physical evidence of the assault. Thus, if actual physical evidence was always required, there would be almost no criminal prosecution of sexual abuse claims. Second, without compelling evidence to support the allegation, claims will not succeed. We trust the justice system to weed out baseless claims in other contexts, and the case of childhood sexual abuse is not different. On the contrary, the contents of the Boy Scout files provide precisely the sort of physical evidence which will allow lawyers, jurors and judges to make informed decisions about whether abuse actually occurred. Moreover, the abuse files allow victims to refresh their memories in order to ensure that they only bring claims against those truly responsible for their abuse. Finally, there are legal hurdles in place to prevent just such "witch hunts." For example, in California, negligence lawsuits involving allegations of childhood sexual abuse filed after a plaintiff's 26th birthday may not include the name of any alleged defendant. In fact, plaintiffs are required to follow an elaborate process of authenticating their claims with evidence and affidavits before they are allowed to move forward with litigation. In short, lawsuits cannot be successfully prosecuted unless they are based on solid evidence. It is extremely unlikely that a jury would return a verdict for a plaintiff whose only evidence is his false "repressed memory."

Some might argue that releasing records that name suspected abusers will lead to witch hunts of innocent individuals. But there is simply no evidence to support such an assertion in the case of the Boy

Scout files. First, not a single report of a false accusation of child sexual abuse has been publicized in the more than six months since the records were released last October. Second, the records do not provide the sort of detail that would incite a witch hunt. In fact, while the records reveal troubling instances of neglect when it comes to barring suspected abusers from gaining access to further victims, they provide little details to identify the assailants. It would be nearly impossible for a would-be plaintiff to fabricate a story of abuse based on the all-too-meager information in the files. For example, according to one record, in 1981 a Colorado man who had three sons in scouting warned the organization that a scout volunteer identified as "Joe," who had abused his sons, among others, had re-surfaced at a Boy Scouts event. "Your assurances that Joe was out of scouting and would have no further contact with scouting have just become meaningless," he wrote. Is it better to protect "Joe" or the children harmed after Joe was let back into scouting?

Lawsuits expose dangerous circumstances and, at their best,

encourage positive change that improves safety. The lawsuits against the Boy Scouts have produced thousands of pages of files that can be used not merely to support the claims of victims, but also to learn from past mistakes and make our institutions safer for children going forward. Let us not squander an important opportunity.

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