

Attorney Timothy C. Hale of Nye, Peabody, Sterling and Hale, LLC

Published and Posted
November 1, 2010
www.mysafenet.org

Regarding the appeal of the public release of confidential files
on Franciscan friars accused of sexual abuse.
The Appellate Court Ruling of Sept. 30, 2010
The Clergy Cases I
B215775

***Note:** By personal invitation from **SafeNet**, the ten questions here posed to attorney Timothy Hale were contributed by various clergy abuse survivors and secondary survivors of Saint Anthony's Seminary in Santa Barbara, California. The school was administered by the Franciscan religious order (Order Friars Minor) in the Province of St. Barbara (Oakland, California), from 1897 until it closed in 1987. All respondents were students at Saint Anthony's Seminary, covering the years 1958 thru 1984.*

Question 1

Why did the plaintiffs demand that the psychotherapists evaluations be released?

Hale: Plaintiffs did not demand the release of the evaluations. They demanded and the Franciscans agreed to a process whereby Judge Lichtman could review and authorize the release of the perpetrators' entire personnel files. Those files contained, among other things, the psychotherapists' evaluations. The purpose of the disclosure was to prevent today's children from suffering abuse by these men and other Franciscan perpetrators.

With regards to the perpetrators involved in the appeal, because only one has ever been reported to law enforcement (by the parent of a victim) before the criminal statute of limitations expired, only one is a registered sex offender. The rest are all but unidentifiable to the public as threats to children. Publicizing the personnel files, including the evaluations, is an attempt to reverse the harm and danger caused by the failure to report these men to law enforcement, and the fact they are not registered sex offenders. The more information that is in the public domain regarding the perpetrators, the greater the likelihood the public will be able to identify the threat to children posed by these men. Hopefully, this will prevent them from being given access to children.

Equally important as identifying and publicizing as much information about the perpetrators' criminal conduct as possible is identifying and publicizing the decisions by the Franciscan hierarchy that allowed each of these men to abuse multiple children. Those decisions have always been made by the Franciscan hierarchy behind closed doors. By publicizing these files we hope to give the public insight into the dangerous decisions made by the Franciscan hierarchy regarding the perpetrators. The public can then make

informed decisions regarding whether to trust the welfare of their children with the Franciscans. Hopefully, someday, transparency will not have to be forced on the Franciscans.

Finally, a third goal in publicizing these files is to publish details regarding the grooming and abusive conduct by these men. Most survivors of abuse will never speak out or come forward, and will spend their lives carrying with them a shame from the mistaken belief that they somehow were to blame for the abuse they suffered. The hope is that the publication of this information will bring some peace to those survivors by helping them to recognize that the circumstances of their abuse were not unique to them, and were part of a pattern of conduct by the perpetrators.

Question 2

How is it that this ruling can be narrowly applied and not affect other psychotherapist-patient privileges?

Hale: This ruling is limited in application to privileged documents (the evaluations) that were disclosed to third parties (the Franciscans) who were not therapists, nor working under therapists, who were involved in treatment or diagnosis of the perpetrators. In other words, this was not a case of the Plaintiffs going to each perpetrators' therapist and demanding each perpetrators' file. This was a demand for personnel files that happened to contain therapy records. Under California law, when the therapist turned those records over to the Franciscans, those records lost their protected status because the Franciscans were not therapists, nor working under therapists, who were involved in treatment or diagnosis of the perpetrators.

Question 3

Why does the court's decision in this case not impinge on a person's right to privacy?

Hale: It does impinge on the perpetrators' rights to privacy. What the court did was look at the evidence that these men were perpetrators of the sexual abuse of children, and because each had either been convicted of, admitted to, or engaged in conduct indicative of, abusing children, the court then engaged in a balancing test. The right to privacy is very strong but not absolute. Under these limited circumstances, the court concluded the perpetrators' rights to privacy were outweighed by the compelling state interest in preventing the sexual abuse of children.

Question 4

What is the determination that "public safety" overrides the right to privacy as stated in the original ruling?

The "public safety" is the compelling state interest in preventing the sexual abuse of children.

Question 5

Could the depositions alone be released to the public before the other files are released? If so, why haven't they been?

Hale: Possibly. But many of the deposition exhibits were from the personnel files that were the subject of the appeal. Rather than release incomplete transcripts, it made more sense to wait until the appeal was resolved so that the complete transcripts, including exhibits, may be released.

Question 6

What specifically do plaintiffs expect to discover in the 154 pages of "psychological evaluations and progress reports"?

Hale: A number of things, including information regarding the threat to children posed by these men, the dangerous decisions made by the Franciscan hierarchy regarding the perpetrators, and details regarding the grooming and abusive conduct by these men. There may be other useful information, but we won't know until we see the documents as they have never been disclosed to the Plaintiffs.

Question 7

If the confidential files in question were not released, would the information in the remaining files be sufficient for survivors and others to find closure?

Hale: That's hard to say, as finding closure is such a very personal and unique journey for each survivor. I suspect that for these Plaintiffs, the most likely circumstances to produce a sense of closure will be knowing they did everything in their power to publicize as much information as possible, regarding both the conduct of the perpetrators and the Franciscan hierarchy, to make sure today's children will not suffer abuse at the hands of a Franciscan.

Question 8

If revealed, what kind of information would be considered criminal and how would the Franciscans be held legally accountable/responsible?

Hale: This is an excellent question that would be better answered by an experienced prosecutor with a thorough understanding of the Penal Code.

Question 9

What is the most important aspect of this ruling and how will it impact future cases of clergy abuse?

Hale: We've already seen that impact. It was no coincidence that the San Diego files were released shortly after this opinion was published. The arguments raised by the San Diego perpetrators mirrored those raised by the Franciscans/perpetrators and subsequently rejected by the court of appeal. The opinion really emphasizes the strength of the compelling state interest in preventing childhood sexual abuse.

Question 10

How do plaintiffs (survivors) feel about these particular files (psych evaluations) being released; how important is it to them at this point in the process and in their lives?

Hale: Only each individual survivor can answer that. But again, I suspect a big part of how they feel will stem from knowing that they did everything in their power to save today's children from suffering abuse at the hands of a Franciscan.

...