

Court of Appeal Upholds Order Releasing Priests' Records

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Psychiatric and other confidential records of priests whose molestation of children resulted in lawsuits against their order may be released in the public interest, the Court of Appeal for this district ruled yesterday.

“We hold that compelling social interests in protecting children from molestation outweigh the Individual Friars’ privacy rights, and the trial court correctly ordered the public release of psychiatric and other confidential records in the possession of the [Franciscan Friars of California, Inc.],” Justice Elizabeth Grimes wrote for the court.

The Franciscans were sued in 25 separate cases by plaintiffs who accused individual members of the order of molesting them as children. During discovery, the order produced some files relating to the individual priests, and the case was settled in 2006.

A consolidated settlement agreement required the Franciscans and the Catholic archdiocese of Los Angeles to pay \$28.45 million. It also established a procedure by which a judge would decide what records of individual priests would be made public, with or without redactions, after notice to those individuals.

The Franciscans agreed that they would not assert third party privacy rights with respect to documents involving “affect “public safety issues relating to childhood sexual abuse” or that reflect “the knowledge of the defendants as to the suspected sexual abuse of a child” or the “cover up” thereof. The agreement recognized, however, that individual priests could assert any legally valid objection to the release of any document.

Yesterday’s ruling concerns objections by six Santa Barbara-based friars— Samuel Charles Cabot, Mario Cimmarusti, David Johnson, Gus Krumm, Gary Pacheco, and Robert Van Handel—to release of documents alleged to be protected from disclosure by the constitutional right of privacy, and the psychotherapist-patient and physician-patient privileges. The priests also alleged that the settlement provision governing possible release of their records was invalid and could not be enforced against them because they were nonparties.

Los Angeles Superior Court Judge Peter Lichtman, assigned to hear the objections as provided in the settlement agreement, found that the challenged settlement provision was valid, that the notice-and-hearing procedure satisfied due process, and that the friars waived the therapist-patient privilege by participating in therapy knowing that information they disclosed was subject to disclosure to other members of the order.

The judge went on to rule that 154 pages of documents, mostly consisting of psychological records, should be released under the balancing test used to decide constitutional privacy issues.

Grimes, in her opinion for the Court of Appeal, said Lichtman did not abuse his discretion in finding that the public interest in disclosure outweighed the privacy interests asserted by the priests.

The evidence, the justice explained, showed that 54 children were abused by 41 Santa Barbara-area priests, including 24 Franciscans—nine of them identified in the settled lawsuits—over a 50-year period. The six priests whose records were ordered released, she added, were shown by their own admissions or by records to have molested or to have a propensity to molest children, and one of them, Van Handel, had been convicted of a crime and ordered to register as a sex offender.

“Surely, all members of the Santa Barbara Franciscan province, as well as members of the Catholic Church throughout California, have a compelling interest in knowing what treatment the Individual Friars received, if any, for their predatory proclivities, and whether it was adequate to protect young parishioners whom they may have encountered in their ministries,” Grimes wrote. “Plaintiffs, former members of the Santa Barbara Franciscan province who have suffered the lifelong effects of childhood abuse, have the same interests as other members of the province and society in having the documents of their abusers released. Indeed, all citizens have a compelling interest in knowing if a prominent and powerful institution has cloaked in secrecy decades of sexual abuse revealed in the psychiatric records of counselors who continued to have intimate contact with vulnerable children while receiving treatment for their tendencies toward child molestation.”