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## Scouts' Honor Goes On The Line

CACHE OF RECENTLY REVEALED FILES SPAWNS CHILD SEX ABUSE LAWSUITS

By THOMAS B. SCHEFFEY

In Connecticut's history of child sexual abuse cases, the Catholic Church was the first target for widespread civil litigation. Then came Hartford's St. Francis Hospital, with the scores of young patients subjected to a former doctor who molested them in the guise of conducting adolescent growth studies.

And now, claims against the Boy Scouts of America appear to be on the rise.

Attorney Paul Slager, of Stamford's Silver Golub & Teitell LLP, has recently filed suit on behalf of two "John Doe" plaintiffs against local and national Boy Scouts organizations. They claim the scouting organizations failed to protect them from sexual molestation by a New Fairfield Scout leader in the mid- to late 1970s.

In addition to Slager's two pending cases, and two that he recently settled, there are at least six other cases pending against the Boy Scouts of America pending on the civil docket in Connecticut state courts.

In Connecticut's biggest sex abuse case, more than 100 civil claims were filed against St. Francis Hospital after a cache of 50,000 slides and other images were discovered inside a wall in the former West Hartford home of the late Dr. George Reardon. It's a different kind of cache that's likely to be at the center of the Connecticut Boy Scouts' cases.

In 2010, two lawyers representing a former Scout in Portland, Ore., brought to light that the Irving, Texas-based Boy Scouts of America (BSA) has kept an informal database of "perversion files" listing complaints about Scout leaders who may have been pedophiles and child molesters.

The lawyers in the Oregon case argued the BSA didn't adequately analyze those files to improve its methods of detecting and preventing child abuse, and the jury awarded their client \$18.5 million. Last summer, more than 20,000 pages of those files were ordered released by the Oregon Supreme Court, with the names of alleged victims and

informants redacted.

For plaintiffs across the country, the files — formally known as the Ineligible Volunteer files — are evidence that the Scouting organization was well aware of the potential for child abusers in their ranks, and did too little with that knowledge.

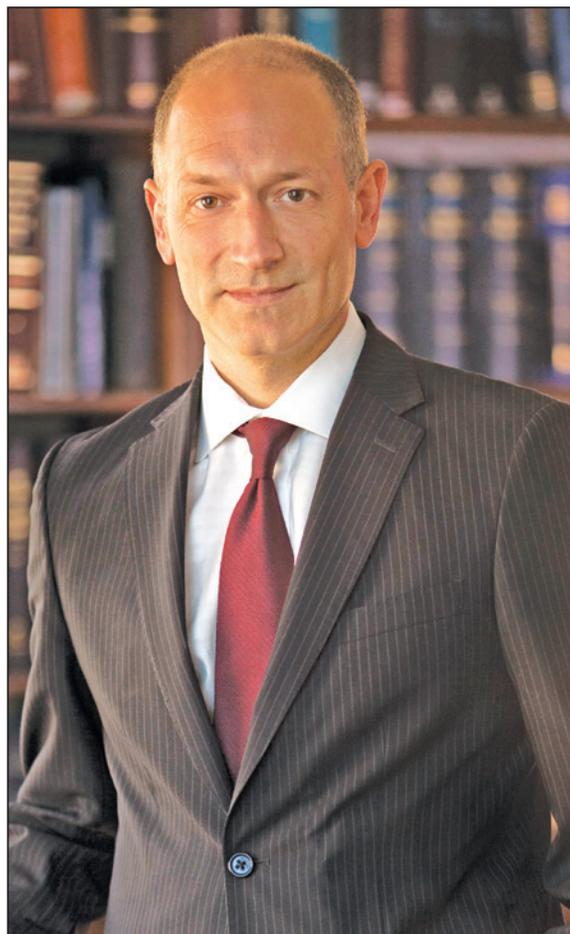
For the BSA, the files may turn out to be valuable evidence that leaders took active steps to prevent child molestation. The organization's Connecticut lawyer is Phillip Newbury, of Hartford's Howd & Ludorf. Newbury, who has not yet filed an answer in either of Slager's John Doe cases, referred all questions to the BSA headquarters, which last week did not respond to interview requests.

But in a statement released in October, the Boy Scouts' national president, Wayne Perry, mentioned the organization's child-protection efforts in recent years, including beefed-up background checks and mandatory reporting of all suspected abuse.

"There have been instances where people misused their positions in Scouting to abuse children, and in certain cases, our response to these incidents and our efforts to protect youth were plainly insufficient, inappropriate, or wrong," Perry said. "Where those involved in Scouting failed to protect, or worse, inflicted harm on children, we extend our deepest and sincere apologies to victims and their families."

### 'Strictly Confidential'

Five of the Connecticut lawsuits alleging sexual abuse against Boy Scout leaders have been filed by plaintiffs attorneys Frank Bartlett,



Stamford lawyer Paul Slager says the Boy Scouts of America should have used a huge collection of written documents chronicling sex abuse incidents to come up with better policies to combat the problem.

of Cheshire's Bartlett & Burns.

Bartlett, who has represented plaintiffs in the St. Francis litigation, said that the hefty Oregon verdict may have increased public awareness of the situation. He said he consults with Paul Mones and Kelly Clark, the West Coast lawyers who won that case.

Bartlett calls the Ineligible Volunteer files an "invaluable" resource. "They show the

extent of the knowledge that the Boy Scouts had access to. They also show that the organization was excluding an abuser from Scouting at the rate of one every week.”

Meanwhile, Slager has filed previous lawsuits against the Boy Scouts of America and local Connecticut councils. Two claims, filed in 2008, have settled recently on undisclosed terms under a confidentiality agreement. In those cases, troop leader Bjarne E. Karlsen Jr., of Milford, allegedly molested Scouts during practice for a first-aid demonstration, on a camping trip, and during self-defense instruction. Karlsen was not personally named as a defendant.

In the more recent lawsuits, the Scouts allege they were molested while camping alone in their tents, by assistant scout master Siegfried Hepp, a New Fairfield resident at the time. Hepp is not a defendant in either suit.

The cases allege seven counts against the national BSA, including negligence, negligent infliction of emotional distress, vicarious liability, recklessness and unfair trade practices. Only the first two counts are lodged against the local Boy Scout councils in Norwalk and Milford, respectively.

The largely identical complaints allege that for more than 20 years before the plaintiffs joined Troop 137 in New Fairfield, the national BSA maintained files chronicling “alleged instances of sexual misconduct by adult troop leaders with minor Boy Scout members, across the United States.”

Thus, according to the plaintiffs, the BSA was aware of hundreds of cases of sexual misconduct before the mid-’70s, when the alleged molestations occurred.

The complaints allege the Ineligible Volunteer files were locked in the BSA’s national headquarters, “strictly confidential from its local councils, its Boy Scout participants, the parents of youth participants and the general public.”

The information in the files, according to testimony in the Oregon trial, was a mixture of newspaper reports, police reports, individual complaints, reported suspicions and tips from local community members. As a result of the complaints, many Scoutmasters were dismissed. However, that wasn’t always a final decision.

“There have been appeals of the Boy Scouts’ internal processes where someone has been

told that they’ll no longer be suitable to be a Scout leader, and they appeal it,” Slager said. “I know that the Boy Scouts have faced challenges from people put on the Ineligible Volunteer list, saying it’s just an allegation. I know in some cases they’ve reinstated people.”

Slager’s argument, as sketched preliminarily in his clients’ latest complaints, is, if organized scouting knew so much about child molestation in its ranks for so long, what took them so long to do something about it?

“According to the plaintiffs in the cases which I represent, that’s where the Boy Scouts fell down in meeting their responsibilities — not using that knowledge in a creative way to establish a safe environment for Scouts,” he said.

## **The information in the sexual misconduct files was a mixture of newspaper reports, police reports and individual complaints.**

### **Early Vigilance**

The Boy Scouts of America say the sexual misconduct files are proof of its early vigilance, according to the organization’s website.

Founded in 1910, the BSA started requiring character reference checks of Scoutmasters the following year. By the mid 1920s, it says, “Scouting was cross-referencing all adult volunteers against a list of ‘ineligible volunteers’ to identify and keep out individuals deemed by the BSA as lacking the moral, emotional or character values for membership.”

The organization’s “Youth Protection” web page highlights a history of the organization’s steps to weed out potential abusers, warn parents and Scouts, and implement protective policies. In 1981, for example, the Scoutmaster handbook directed that there should be a minimum of two adult leaders at troop activities. In 1987, the organization created a so-called “two-deep” policy that states that a Scout is never to be alone with a non-parent.

Interestingly, the BSA “Child Sexual Abuse Awareness and Prevention” timeline makes a case that it wasn’t the Scouts that were slow to notice that child sexual abuse was a problem, it was society itself. The timeline lists a num-

ber of “benchmarks” in the 1970s and 1980s, including scientific studies, which illustrated how American society was becoming increasingly aware of the sex abuse issue.

How important is the state of public awareness in a sex abuse case?

Some believe it’s the central issue. At this moment, the Connecticut Supreme Court is in the process of deciding St. Francis Hospital’s appeal of a \$2.6 million jury verdict in one of the cases involving Dr. Reardon. The hospital is seeking to overturn the verdict or get a new trial on grounds that the trial judge did not instruct the jury that the hospital needed to have notice of Reardon’s propensity to harm children.

Whether the hospital was sufficiently vigilant, the hospital contends, must be viewed in the context of the times. In an argument presented by then-Day Pitney partner Michael Shea last year, the hospital contended that “sexual abuse was simply ‘not on anybody’s radar’ in the ‘60s and ‘70s, and the notion that otherwise responsible members of the community might engage in such behavior was not discussed, even in the psychological community.” Shea became a federal judge earlier this year.

One of the plaintiffs lawyers in the St. Francis litigation is Kelly Reardon, of New London. Her firm, headed by Robert I. Reardon, has handled many of Connecticut’s priest sex abuse cases, as well.

Whether the institution had notice of the “propensity for harm” is an issue raised in the priest cases “all the time,” said Reardon. And the related argument, that no one was looking in the ‘60s and ‘70s, is a key part of the legal analysis, she said.

“Personally,” said Kelly Reardon, “I don’t think it’s a winning strategy. I don’t think that a jury nowadays would buy the fact that even back in the ‘70’s, nobody knew that molestation occurred. Society was different, in that maybe there was more fear of reporting abuse than there is now, or more stigma attached. But I don’t think that juries feel that’s a legitimate excuse.” ■