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ARTICLE: Pandora's Box: Opening Child Protection Cases to the Press and Public

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* Professor, Whittier Law School. Professor Patton was invited to testify at the March 21, 1999, public hearing of the California Senate Select Committee on Juvenile Justice entitled Confidentiality in Children's Court: Is Reform Needed? If So, Then What? Part II of this Article is an expanded version of Professor Patton's testimony at the hearing.

SUMMARY:

... However, courts are starting to more closely scrutinize, on a case by case basis, state statutes that attempt to protect child abuse victims. ... Unlike the Legislature's characterization of a balancing between two competing sets of rights (the child who may be abused and the alleged abuser), in reality, there are three sets of competing interests: (1) the child victim in the case being investigated or a child who might prospectively be abused if a suspected abuser is licensed; (2) the alleged child abuser; and (3) children who were prior child abuse victims and whose names remain on the index after they reach the age of majority. ... Thus, there is a real risk that adults who were child abuse victims and whose names as victims remain on the Index, will have that data used against them in attempting to gain employment, in adopting a child, or in seeking custody in a dependency system as a relative, even though that evidence has been determined to be too speculative to be admitted in court. It is therefore very important that every child abuse victim whose name is maintained on the Index be given notice and instructions for requesting that his or her name be deleted upon reaching the age of eighteen. ...

TEXT:

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I. Introduction

The press has been banging on the closed doors of the juvenile court for decades, clamoring to get access to confidential child protection hearings and records. Yet almost every constitutional attack by the press to gain access to juvenile proceedings has failed. Courts have consistently held that states can determine whether protecting a child's confidentiality and mental health are sufficient governmental interests to override the press' and public's right to court access. n1 However, courts are starting to more closely scrutinize, on a case by case basis, state statutes that attempt to protect child abuse victims. n2

[*182] Even though the press and public do not possess a constitutional right of access to child protection proceedings and records, several legislatures and members of the public have recently begun to move toward opening those hearings and records. n3 For example, on May 21, 1999, Senator Adam B. Schiff, Chair, California Senate Select Committee on Juvenile Justice, held a full day of public hearings entitled, Confidentiality in Children's Court: Is Reform Needed? If So, Then What? n4