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August 12, 2010

The Honorable Michele A. Varricchio
Court of Common Pleas of Lehigh County
455 W. Hamilton Street, Room 132
Allentown, PA 18101-1614

Re: S.P., as parent and natural guardian of C.L., a minor; T.M., as parent and natural guardian of I.M., a minor; D.B. as parent and natural guardian of S.B., a minor; and K.B. v. The Society for Creative Anachronism, Inc., a/k/a "SCA" or "SCA, Inc.", et al

Lehigh County Court of Common Pleas, Docket No.: 2009-C-6144
C.O. v. Benjamin Schragger and Alan & Ann Schragger
No. 2009-C-6008

Dear Judge Varrichio:

Please accept this letter brief on behalf of *Amicus Curiae*, the National Center for Victims of Crime ("NCVC"), and in support of plaintiff's motion to proceed with pseudonyms. We supply this letter brief in lieu of a motion for leave to file an *amicus* application based upon the direction of Michelle Forsell of Your Honor's chambers. However, we will proceed with a motion for leave or more formal brief should the Court require. Thank you for permitting the NCVC to present its concerns regarding the need for victims of child sex abuse to be able to pursue litigation through the use of initials or pseudonyms, even if they are adults at the time of the litigation.

**AMICUS CURIAE STATEMENT OF INTEREST OF
THE NATIONAL CENTER FOR VICTIMS OF CRIME**

The NCVC is a nonprofit organization based in Washington, DC, and is the nation's leading resource and advocacy organization for victims of all types of crime. The NCVC has advocated on behalf of victims' rights for over twenty-five years, where the Center's purpose is a national commitment to rebuild the lives of crime victims. To that end, the NCVC advocates for laws and public policies that create resources and secure rights and protections for crime victims throughout the United States. The NCVC's commitment to serving the interests of victims of child sexual abuse compels this *amicus curiae* application.

FACTS

Two defendants, Ann and Alan Schragger, object to the use of pseudonyms by two plaintiffs, “K.B.” and “C.O.,” who are now over the age of majority (18) but were minors when they were the victims of childhood sexual abuse. K.B. complaint, ¶ 2; C.O. complaint, ¶ 1. While the Schraggers do not object to use of pseudonyms for C.L., I.M. and S.B, who are presently minors, they do object to pseudonyms for K.B. and C.O., presumably because they are now over the age of majority and, therefore, purportedly not in need of the protection that the use of pseudonyms provides those who have been the victims of child sex abuse. In its most basic form, Plaintiffs and *Amicus* assert that pseudonyms must be used when the abuse occurred when the victim was a minor, while the Schraggers contend that pseudonyms apply only when the victim has not yet reached the age of majority when suit is filed.

To that end, there is no dispute that K.B. and C.O. were victims of sexual abuse *as minors*. Specifically, K.B. asserts in her complaint that:

“on multiple occasions, Defendant Benjamin Schragger improperly touched plaintiff K.B.’s body while K.B. was a minor, including but not limited to massages of K.B. while K.B. and Benjamin Schragger were both naked, touching of her private area and causing K.B. to touch Benjamin Schragger’s private area. Defendant Benjamin Schragger performed sexual acts upon K.B. while she was a minor and Benjamin Schragger was an adult. Defendant Benjamin Schragger further exposed his naked body to Plaintiff and caused K.B. to become naked in front of others and caused K.B. to witness the harm he inflicted of a similar nature to K.B.’s cousins.”

K.B. complaint, ¶ 21. K.B. further alleges that she was “harmed as a result and has sustained physical injuries and emotional injuries, including diagnosed depression, embarrassment, humiliation, mental anguish, pain and loss of enjoyment of life and life's pleasures.” K.B. complaint, ¶ 21.

Similarly, plaintiff C.O. asserts that:

“on multiple occasions, Defendant Benjamin Schragger improperly touched plaintiff C.O.’s body, including but not limited to upon his genitals and masturbated Plaintiff on his genitals while Plaintiff was between the ages 13-16 and further caused Plaintiff to touch and masturbate Defendant Benjamin Schragger on his genitals. Defendant Benjamin Schragger further exposed his naked body to Plaintiff.” C.O. complaint, ¶ 24.

C.O. further alleges that he “sustained physical injuries from improper touching and emotional injuries, including the diagnoses of Anxiety and Depression, mixed, adjustment disorder, with mixed anxiety and depressed moods.” C.O. complaint, ¶ 25.

To substantiate their claims, Plaintiffs have presented expert opinions through affidavits from Dr. Ann Burgess on behalf of K.B., and by Dr. Edward Silverman on behalf of C.O. In their affidavits, Drs. Burgess and Silverman identify their respective opinions of harms and injury that would be sustained by C.O. and K.B. by the public disclosure of their identities in pleadings. Along those lines, Dr. Ann Burgess is a professor of psychiatric nursing who reviewed records and interviewed K.B. She has stated that: “It is my opinion that the public disclosure of the identity of a victim of child sexual abuse interferes with the recovery process and can lead to further harm in the victim.” Affidavit of Ann Burgess, DNSc, Ph.D., ¶ 10. Dr. Burgess also states that:

K.B. was a victim of child sexual abuse committed by Benjamin Schragger when she was less than 13 years old. K.B. is presently twenty years old. . . . Although K.B. is currently an adult, she has only recently begun the recovery process more than seven years after the abuse, which is common for many victims of child sexual abuse. I specifically discussed with K.B. the issue of her possible identification in court documents, including the use of her full name and address. She expressed to me that if her peers or other people in the community were to learn of her childhood victimization, this would cause her great humiliation, which is consistent with my experiences in counseling, treating and evaluating victims of child sexual abuse. It is my opinion that the identification of K.B. by the use of her full name and address in publicly filed court documents would definitely adversely affect her ongoing recovery process. In addition, it is recognized throughout the mental health field that identification of a victim by name could hamper recovery.

Id. at ¶¶ 14-18.

Dr. Silverman, a psychologist who treated C.O., states that “the disclosure of C.O. address and identity in a public pleading or filing would have an adverse impact upon C.O. and his recovery.” See Affidavit of Edward H. Silverman, Ed.D., ¶ 3. Dr. Silverman also stated that “In my opinion, such a disclosure would cause serious further injury to C.O. in the form of aggravation of his underlying diagnoses of Anxiety & Depression, mixed.” Id. at ¶ 5.

LEGAL ARGUMENT

Our review of reported case law shows that, in Pennsylvania, there are few published appellate opinions discussing the requirements for the use of pseudonyms by parties and none expressly addressing the use of pseudonyms by childhood victims of sexual abuse who have attained the age of majority.

One opinion, cited by both Plaintiffs and the Schraggers, is R.W. v. Hampe, 426 Pa.Super. 305, 626 A.2d 1218 (Pa.Super. 1993). In R.W., the Superior Court held that an

adult plaintiff who brought an action for psychiatric malpractice against her psychiatrist for failed to demonstrate “good cause” for her identification by initials and that the disclosure of mental illness alone does not mandate the closure of judicial proceedings. *Id.*, 426 Pa.Super. at 315. There, the Superior Court specifically noted that “cases involving minors and incompetents” present an obvious exception to the general rule against the use of pseudonym filings. *Id.*, 426 Pa.Super. at 313. The court also found that R.W. was not a minor “whose privacy interests are specially protected by statute.” *Id.*, 426 Pa.Super. at 315. Consequently, the Court accepted the use of pseudonyms when the victim of abuse was a minor, such as here.

Likewise, the Pennsylvania Legislature saw fit to protect the privacy of victims of sexual abuse as minors to encourage complete reporting of childhood abuse. In particular, Pennsylvania’s Child Protective Services Law (“CPSL”), 23 Pa.C.S.A. § 6303 states, in pertinent part, that:

(b) PURPOSE.-- **It is the purpose of this chapter to encourage more complete reporting of suspected child abuse**; to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk.

(emphasis added). Furthermore, two examples of confidentiality provisions are found in Section 6701 et seq. of the CPSL, where the Legislature provides for address confidentiality for domestic violence and sexual assault victims; and in Section 6339, which provides that reports of suspected child abuse are kept confidential.

Federal courts in Pennsylvania have employed a multi-factored analysis in determining whether the use of “Jane Doe” or pseudonyms should be allowed which balances the need for confidentiality against the factors compelling disclosure. In *Doe v. Evans*, 202 F.R.D. 173, 175-76, 50 Fed. R. Serv. 3d (Callaghan) 872 (E.D.Pa. 2001), the following factors were recognized:

- (1) the extent to which the identity of the litigant has

been kept confidential;

- (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases;
- (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity;
- (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities;
- (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and
- (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives,

On the other side of the scale, the factors which militate against the use of a pseudonym are as follows:

- (1) the universal level of public interest in access to the identities of litigants;
- (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and
- (3) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated.

In addition, and as is outlined by the plaintiffs here, additional courts in Pennsylvania and in other jurisdictions recognize the need for the use of pseudonyms by victims of childhood sexual abuse even after the age of majority. See Doe 130 v. Archdiocese of Portland in Oregon, 2008 WL 656021, *4 (D.Or. 2008) (allowing adult plaintiff to maintain pseudonym in suit alleging child sex abuse by priest because despite passage of time plaintiff would still be subject to same specific, irreparable injuries) (“[I]f required to make his name known publicly, John would face a very real risk of harassment, ridicule, and personal embarrassment. The experience of sexual abuse can be deeply psychologically traumatic, and public knowledge of such abuse can trigger new trauma even years after the fact. John faces a real risk of harm to which he, as a survivor of clergy sexual abuse, is peculiarly vulnerable, and his fears regarding that risk are entirely reasonable.”); Doe v. Megless, 2010 WL 3076246, *2 (E.D.Pa. 2010) (“Anonymity may be warranted if a case involves highly sensitive or personal matters, or if there is a concrete risk of injury to the plaintiff by disclosure.”); Doe v. Brown, 2009 WL 5322462 (Conn.Super 2009) (permitting pseudonym for adult plaintiff in suit concerning abuse that took place while a minor); Doe v. Diocese Corp., 647 A.2d 1067, 1072 (Conn.Super. 1994) (“[P]laintiff seemed to express real concern and fear of shame and humiliation if he received public exposure. This not only related to his job situation, which might be dismissed as only an economic concern, but also to his desire that friends, acquaintances and even

family not know all the details of the experiences he alleges”); Doe v. Potter, 225 S.W.3d 395, 402 (Ky.App. 2006) (upholding anonymity of class of child abuse victims, some of whom had reached majority by time of suit, due to fear that victims could be “irreparably harmed” by disclosure of names). See also Doe v. Provident Life & Accident Ins. Co., 176 F.R.D. 464, 466 (D. Pa. 1997) (hereinafter “Provident Life”) (finding that regarding dispute over claimed psychiatric disorders in insurance context “the public may have a strong interest in protecting the privacy of plaintiffs in controversial cases so that these plaintiffs are not discouraged from asserting their claims.”); Doe v. Evans 202 F.R.D. 173, 175-176 (E.D.Pa. 2001) (applying Provident Life factors to sexual assault case because “the public has an interest in protecting the identities of sexual assault victims so that other victims will feel more comfortable suing to vindicate their rights, especially where law enforcement officers are involved.”); Doe No. 2 v. Kolko, 242 F.R.D. 193 (E.D.N.Y. 2006) (citing Doe v. Evans, permitting pseudonym in child abuse case, against rabbi, stating legitimate reasons for necessity of pseudonym such as fear of “retaliation and ostracism” from Jewish Community, “private nature” and “potential misuse” of the information); Doe v. Hartford Life and Acc. Ins. Co., 237 F.R.D. 545 (D.N.J. 2006) (adopting Provident Life factors); Doe v. Johns-Manville Corp., 1980 Pa. Dist. & Cnty. Dec. LEXIS 330, **14 (Pa. C.P. 1980) (Pseudonyms permitted on a case-by case basis. A party needs to argue adverse consequences “to outweigh the requirement that actions be brought in the names of the real parties.”).

A. THE USE OF PSEUDONYMS SHOULD BE RECOGNIZED BY COURTS FOR VICTIMS OF CHILDHOOD SEXUAL ABUSE TO PREVENT HARM TO THE VICTIMS

As is outlined by the *R.W.* court, “good cause” exists for the use of initials where the matter involves abuse during childhood. In fact, the Superior Court found this to be an “obvious exception” for which the use of initials would be permitted. In the present matter, both K.B. and C.O. presented expert evidence which supports a finding of “good cause” in this case. There exist clear statements of harm that would be suffered by K.B. as Dr. Burgess has stated that K.B. was a victim of sexual abuse when she was younger than 13, who has only begun the recovery process. Dr. Burgess stated that although K.B. is an adult, the disclosure of her identity publicly would “definitely” interfere with her recovery. Similarly, Dr. Silverman has stated that in his opinion, disclosure of C.O.’s identity “would cause serious further injury to C.O. in the form of aggravation of his underlying diagnoses of Anxiety & Depression, mixed.” Therefore, these victims present two bases for the use of pseudonyms: (1) that they were child victims of sexual abuse; and (2) that disclosure of their identities would lead to further harm. As discussed above, courts in various jurisdictions have recognized that victims of childhood sexual abuse are in need of protection from public shame and embarrassment even into adulthood.

The *Doe v. Evans* factors weigh in favor of permitting adults to employ pseudonyms in litigation involving their sexual abuse as children. While there is a very strong public interest in having child perpetrators identified to the public, there is a very weak public interest in knowing the identity of a child sex abuse victim. The victims in this case are not public figures or officials for which there might be a public interest in knowing their identities. While there may exist public interest in the *issues* raised by this litigation, namely for the protection of children against child sexual abuse, there is no public interest in the victims' identities.

The vast majority of victims do not come forward because of the shame, humiliation, and embarrassment they experience, and age does not alter that fact. Because of the nature of child sex abuse, mandated public identification of the victim amounts to the system re-victimizing them. It is difficult enough to tell even close family and friends about the abuse; forcing them to be in the public spotlight inflicts further unnecessary harm and dissuades them from pursuing meritorious claims and identifying their perpetrators to the public. The public identification can seriously impede their recovery and harm their mental health, but it can also inflict serious pain and public embarrassment on their families and children. They should not be forced to proclaim to the world their identities and the acts they suffered as the price for justice.

As discussed below, there is a universal public policy interest in permitting victims of child sex abuse, even if they are adults, to remain anonymous in litigation involving their abuse as children. It is needed to ensure a greater likelihood that victims will come forward whenever they are ready.¹

C.O. and K.B., who are victims of childhood sexual abuse, should not be excluded from the protection afforded by anonymity simply because of their present age.

B. THE PUBLIC POLICY OF ENCOURAGING DISCLOSURE OF CHILD SEXUAL ABUSE IS ADVANCED BY THE PERMISSION OF PSEUDONYMS FOR ADULTS ABUSED AS CHILDREN

¹ Child perpetrators typically have multiple victims and do not stop abusing children as they get older. Thus, whenever a victim comes forward, it can prevent the creation of future victims through public identification of a perpetrator. Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis*, 37 (4th ed. 2001) available at http://www.cyberline.com/en_US/publications/NC70.pdf (“Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Permitting adults to use pseudonyms in child sex abuse cases serves the compelling public interest of encouraging the public identification of child perpetrators. A small percentage of victims ever report their abuse. While approximately one in every three to four women and one in five to six men are sexually abused as children, only about 10% report their abuse to the authorities. Mary Gail Frawley-O’Dea, Perversion of Power: Sexual Abuse in the Catholic Church 6-7 (Vanderbilt University Press 2007); What Do U.S. Adults Think About Child Sexual Abuse? Measures of Knowledge and Attitudes Among Six States, Stop It Now!, 7 (2010), www.StopItNow.org/rdd_survey_report (“Nearly 30% of women and 14% of men reported on the survey that they had been sexually abused as children. The percentage of adults in our survey who experienced sexual abuse in childhood is consistent with prevalence rates established in other research with adults.”); J. Briere and D.M. Eliot, Prevalence and Psychological Sequence of Self-Reported Childhood Physical and Sexual Abuse in General Population, 27 (10) Child Abuse & Neglect, 1205-1222 (2003) (finding that as many as one in three girls and one in seven boys will be sexually abused at some point in their childhood); R. F. Hanson, et al., Factors Related to the Reporting of Childhood Sexual Assault, 23 Child Abuse & Neglect 559-569 (1999) (noting that in the U.S., only 12% of child sexual abuse is reported to authorities).

To stop child sexual abuse, perpetrators must be identified and prosecuted, which is only achieved by encouraging victims to come forward. I have written about this in my book “Justice Denied: What America Must Do to Protect its Children”, Cambridge University Press (2008), in which I advocate for the need for statute of limitations reform to increase the likelihood that victims will come forward. The system currently disfavors victims, which means the public is at risk of unidentified perpetrators. Other barriers to public identification of perpetrators, like forcing victims to disclose their names in court proceedings, must be reduced if children are to be protected.

Because child sex abuse inflicts lifelong harm, Laura P. Chen, BS, et al., Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders, 85 (7) Mayo Clin. Proc. 618 (July 2010) (concluding that history of sexual abuse is associated with increased risk of lifetime diagnosis of multiple psychiatric disorders), victims are routinely psychologically disabled by the abuse and need to be protected from public embarrassment and shame even into adulthood. Many victims will not pursue their claims or report child sexual abuse to authorities if they fear public embarrassment resulting from disclosure of their identities.

Numerous studies establish the fact that it typically takes years and often decades for survivors of abuse to disclose their abuse to anyone, let alone the justice system. Thus, they face serious psychological disorders and need protection even as adults. See State v. Schnabel, 952 A.2d 452, 462 (N.J. 2008) (observing that Child Sexual Abuse Accommodation Syndrome involves five behavior patterns that may be exhibited by a sexually abused child: secrecy, helplessness, entrapment and accommodation, delayed reporting, and

recantation); Mic Hunter, Abused Boys, 59 (Ballantine Books, 1991) (“Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past.”); Ramona Alaggia MSW, PhD, RSW, An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health, 19 J. Can. Acad. Child Adolesc. Psychiatry 32, 32 (2010) (“By some estimates between 60-80% of CSA victims withhold disclosure[.]”); Laura P. Chen, BS, et al., Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders, 85 (7) Mayo Clin. Proc. 618, 627 (July 2010) (“[S]exual abuse survivors face a challenging spectrum of physical and mental health concerns, with associated higher health care use and greater medical expenditures. . . . [S]exual abuse is associated with multiple psychiatric disorders, including lifetime diagnosis of anxiety disorders, depression, eating disorders, PTSD, sleep disorders, and attempted suicide. Improved recognition of the link between a history of sexual abuse and mental health disorders may increase the identification of abuse survivors and lead to better treatment and outcomes.”); Guy R. Holmes, See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?, 17(1) Clinical Psychol. Rev. 69, 69-88 (1997) (noting the difficulty victims face making connection between serious problems typical of survivors in adulthood and the sexual abuse suffered as children); David Lisak, The Psychological Impact of Sexual Abuse: Content Analysis of Interviews with Male Survivors, 7(4) J. of Traumatic Stress 525, 525-526, 544 (1994) (noting that unlike victim of a toxic tort, there is no medical necessity that sexual abuse will lead to a scientifically dispositive injury. Child sex abuse victims simply do not apprehend that the abuse, which they may not even experience as abuse, could lead to devastating effects in adulthood); Mary L. Paine & David J. Hansen, Factors Influencing Children to Self-Disclose Sexual Abuse, 22 Clinical Psychol. Rev. 271, 271-75 (2002) (discussing shame and embarrassment about abuse, making victim feel to blame for abuse); Richard L. Sjoberg & Frank Lindblad, M.D., Ph.D., Limited Disclosure of Sexual Abuse in Children Whose Experiences Were Documented by Video Tape, 159 Am. J. Psychiatry 312, 312-13 (2002) (“[T]here [i]s a significant tendency of . . . abused children to deny or belittle their experiences.”). In light of these studies, the default position for the courts should be to permit victims of child sex abuse at any age to employ pseudonyms.

The Defendants’ position that the age of eighteen should be the cut-off for the use of initials or pseudonyms rests on false assumptions about the reality of child sex abuse and its impact on the victims. Their position does not take into account the experience of the vast majority of victims, who typically disclose the abuse years after they have turned eighteen and who need and deserve protection from further psychological injury.

For these reasons, the National Center for Victims of Crime, as *Amicus Curiae*, supports the use of pseudonyms by both adult and minor victims of child sexual abuse pursuing civil remedies, especially, as is the case here, where professionals have identified definitive harm that would result from public disclosure of their identities in publicly filed documents.

Respectfully submitted,

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