The Law of Pseudonymous Litigation

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When may parties in American civil cases proceed pseudonymously? The answer turns out to be deeply unsettled. This Article aims to lay out the legal rules (such as they are) and the key policy arguments, in a way intended to be helpful to judges, lawyers, pro se litigants, and academics.

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INTRODUCTION

One defining question about any system of procedure is: Public or secret? American juvenile justice is secret. Criminal justice, generally public. Bar discipline, mostly secret in many states. Internal employer and university disciplinary proceedings, generally secret. Arbitration, generally secret. Civil justice, public.

The answer to the public-or-secret question of course affects the level of public supervision of the system, as well as the likely public confidence in the system. But the answer can also sharply affect the shape of litigation within the system: the incentives to bring or not bring various kinds of cases, the incentives to settle (or plea bargain), the likely settlement values, which witnesses testify, and more. Indeed, the implicit threat of publicity is common in many prefiling negotiations, though it may need to be kept implicit to avoid negotiations being treated as criminal extortion.[1]

The follow-up question, of course, is: When a system is generally public, what provisions still allow some degree of secrecy?[2] In particular, within our civil justice system, how do courts decide what can or must be sealed or redacted, and when parties can proceed pseudonymously? This too can sharply affect what cases get filed, what cases get dropped, and on what terms cases settle.

Yet the Federal Rules of Civil Procedure, unlike some state court rules,[3] say little to answer this question.[4] This Article's overarching goal is to try to push these questions—especially the one about pseudonymity—to their rightful place in our discussions about civil procedure.

This question has become especially important because court records are more visible than ever, including to casual Internet searchers. For many litigants

1. *See, e.g.*, Flatley v. Mauro, 139 P.3d 2 (Cal. 2006).

2. A related question: When a system is generally secret, what provisions are there for public access?

3. *See, e.g.*, CAL. R. CT. 2.550–2.551 (2016); 1 WESLEY W. HORTON, KAREN L DOWD, KENNETH J. BARTSCHI, & BRENDON P. LEVESQUE, SUPERIOR COURT CIVIL RULE ANNOTATED, CONNECTICUT PRACTICE SERIES § 11-20A(h)(1) (2021 ed.); PA. STAT. & CONS. STAT. § 1018 (West 2019); VA. CODE ANN. § 8.01-15.1 (2022)—though all these statutes merely set forth procedures for seeking sealing or pseudonymity and offer a general multi-factor balancing test, without elaborating further on how the test is applied. This article is mostly about federal courts, because just reviewing what they do is daunting enough; but I will sometimes cite relevant state cases, since many state courts seem to take an approach similar to that of the federal courts. *See, e.g.*, Doe v. Empire Ent., LLC, No. A16-1283, 2017 WL 1832414, at *4 (Minn. Ct. App. May 8, 2017); Doe v. Hewitt, No. 504-8-16 WNCV, 2016 WL 10860914, at *2 (Vt. Super. Ct. Dec. 06, 2016). I don't compare American practices to those of foreign courts, though that would be a very interesting article; as I understand it, for instance, German and Austrian courts routinely pseudonymize all cases. Krisztina Kovács, *The Anonymity Requirement in Publishing Court Decisions*, EUR. COMM'N FOR DEMOCRACY THROUGH L., at 3, July 1, 2011, https://perma.cc/JR2A-AKET.

4. Rules 5.2 and 10(a) do provide that minors are to be pseudonymized and adults are not, but federal courts have viewed the nonpseudonymity of adult parties as just a presumption that can be rebutted—and the Rules say nothing about the criteria for rebutting it. Though many local rules in federal trial courts discuss sealing, I could find only one court's local rules that discuss pseudonymity: U.S. TAX CT. R. 227, 345.

these days, one of the most important questions is: Can I keep my name, and its connection to the case and its facts, out of Google search results?[5]

Before, a typical employment lawsuit, for instance, would rarely be reported in newspapers. But now, Googling people's names will often find many of the cases in which they have participated, even if no reporter has ever written about those cases.[6] Pseudonymity is thus a question of interest to privacy scholars, and not just civil procedure scholars. (Note that this is a different issue from whether private parties' publishing information from court records is restrictable—it isn't[7]—or whether a European-style "right to be forgotten" should be adopted. This Article focuses solely on what information should be released by the government in government records in the first place.)

And many litigants would love pseudonymity. That's particularly obvious for defendants, most of whom are being sued over alleged misconduct.[8] Say someone sues you for alleged embezzlement, fraud, or sexual assault, or even

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5. *See, e.g.*, Doe v. Boulder Valley School Dist. No. RE-2, No. 11-cv-02107-PAB, at 3 (D. Colo. Aug. 30, 2011); Doe v. Regents of Univ. of Cal, No. D073328, 2018 WL 6252013, at *1 n.2 (Cal. Ct. App. Nov. 29, 2018); Jayne S. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff in the Information Age*, 53 U. KAN. L. REV. 195, 197 (2004).

6. "Over a century ago, Samuel Warren and Louis Brandeis . . . wrote that 'modern enterprise and invention have, through invasions upon [an individual's] privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.' The modern invention of today includes access to court files by those surfing the Internet." EW v. New York Blood Ctr., 213 F.R.D. 108, 112–13 (E.D.N.Y. 2003); *see also* Gen. Orders of Div. III, Wash. Cts., In re the Use of Initials or Pseudonyms for Child Victims or Child Witnesses, https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2012_001&div=III (ordering that child victims or witnesses be referred to using "initials or pseudonyms," "[i]n light of the increased availability of court documents through electronic sources").

7. *See, e.g.*, Florida Star v. B.J.F., 491 U.S. 524 (1989) (striking down ban on publishing names of rape victims, which included names that had been erroneously released as government records); Gates v. Discovery Commc'ns, Inc., 101 P.3d 552 (Cal. 2004) (holding that publishing information about past court cases can't be actionable disclosure of private facts); Eugene Volokh, *Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People from Speaking About You*, 52 STAN. L. REV. 1049 (2000) (arguing against such speech restrictions).

8. Indeed, defendants can claim a stronger case for pseudonymity, on the theory that such a defendant "is not the one who has chosen to avail herself of the public forum of the Court." Heineke v. Santa Clara Univ., No. 17-cv-05285-LHK, 2017 WL 6026248, at *23 (N.D. Cal. Dec. 5, 2017); *see also* Painter v. Doe, No. 3:15-cv-369-MOC-DCK, 2016 WL 3766466, at *6 (W.D.N.C. July 13, 2016); Malibu Media, LLC v. Doe, No. 13 C 6312, 2014 WL 2514643, at *5 (N.D. Ill. June 4, 2014); *cf.* Doe v. Butler Univ., No. 1:16-cv-1266-TWP-DML, at *9 (S.D. Ind. Jan. 8, 2018) (using this as an argument against pseudonymity for plaintiff, who sought pseudonymity while naming particular defendants). On the other hand, practically speaking, plaintiffs are the ones who can most easily seek pseudonymity. The plaintiff of course chooses how to style the case in the Complaint, and thus how the case docket appears in Internet searches; if the plaintiff names the defendant, then a defendant's motion to proceed pseudonymously may come too late to do much practical good. *See* Adam A. Milani, *Doe v. Roe: An Argument for Defendant Anonymity When a Pseudonymous Plaintiff Alleges a Stigmatizing Intentional Tort*, 41 WAYNE L. REV. 1659, 1707 (1995) (arguing that plaintiffs should be required "to notify defendants before an anonymous complaint is filed," so that defendants could "file a motion supporting their own request for anonymity before their names become a matter of public record"); Colleen E. Michuda, Comment, *Defendant Doe's Quest for Anonymity: Is the Hurdle Insurmountable*, 29 LOY. U. CHI. L.J. 141, 177–79 (1997) (arguing more generally for defendant anonymity in certain cases). Still, some defendants have managed to litigate pseudonymously, perhaps in part because plaintiffs might think their own chances of getting pseudonymity from the judge will be improved by showing a willingness to allow pseudonymity to the defendant. *See infra* Part I.E.4.

malpractice or breach of contract. You'd surely prefer that your friends, neighbors, and prospective clients and business partners not know about it.[9] And while some defendants simply want to hide their misdeeds, others are innocent and don't want to be linked to incorrect accusations—whether temporarily, pending the trial and verdict, or perhaps forever.[10]

Many plaintiffs would want pseudonymity, too; to offer a few examples:

- Sexual assault plaintiffs may not want to be publicly identified.[11]
- Libel plaintiffs may not want to further publicize the allegedly libelous allegations over which they are suing.[12]
- Employment law plaintiffs who were fired for alleged misconduct, but are claiming that this was a pretext, may not want a Google search for their names to lead to those allegations (however forcefully denied).[13]
- People suing over politically controversial behavior (for example, an employee fired for allegedly racist or unpatriotic statements[14]) or suing using legal theories that some might condemn or mock[15] may not want to be publicly shamed or humiliated.
- Even ordinary employment law or housing law plaintiffs may not want future employers or landlords to reject them as dangerously litigious.[16]

Yet for good reason, most lawsuits are nonetheless litigated in the parties' own names. That is obviously true of adult criminal cases, even though nearly all criminal defendants would much prefer pseudonymity.[17] And it's true of civil cases—our legal system generally calls for public proceedings and publicly filed

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9. "[I]t is the rare civil lawsuit in which a defendant is not accused of behavior of which others may disapprove." Patrick Collins, Inc. v. John Does 1–54, No. 11-cv-1602-PHX-GMS, 2012 WL 911432, at *4 (D. Ariz. Mar. 19, 2012).

10. I am generally not discussing here (except briefly in the text accompanying notes 125–128 *infra*) the separate question of defendants who are unknown to the plaintiffs (e.g., anonymous online libelers), and who are anonymous because of that. Many other articles have been written on this subject. *See, e.g.*, Helen Norton, *Setting the Tipping Point for Disclosing the Identity of Anonymous Online Speakers: Lessons from Other Disclosure Contexts*, 49 WAKE FOREST L. REV. 565 (2014); Paul Alan Levy, *Developments in Dendrite*, 14 FLA. COASTAL L. REV. 1 (2012).

11. *See infra* Part III.E.4.

12. *See infra* Part III.F.1.

13. *See infra* Part III.F.1.e.

14. *See* Eugene Volokh, *Private Employees' Speech and Political Activity: Statutory Protection Against Employer Retaliation*, 16 TEX. REV. OF L. & POL. 295 (2012) (discussing statutes that authorize such lawsuits).

15. *See, e.g.*, Jayne S. Ressler, *#WorstPlaintiffEver: Popular Public Shaming and Pseudonymous Plaintiffs*, 84 TENN. L. REV. 779 (2017).

16. *See infra* Part III.F.1.

17. Pseudonymous prosecutions of adults are highly disfavored. *See, e.g.*, United States v. Wares, 689 F. App'x 719, 724 (3d Cir. 2017); United States v. Maling, 737 F. Supp. 684, 705–06 (D. Mass. 1990); United States v. Pilcher, 950 F.3d 39, 45 (2d Cir. 2020) (concluding that pseudonymity is generally unavailable as to habeas petitions as well); Doe v. Greiner, 662 F. Supp. 2d 355, 360 (S.D.N.Y. 2009) (likewise). But they do happen, on rare occasions. *See, e.g.*, United States v. Doe, 488 F.3d 1154, 1156 n.1 (9th Cir. 2007) (keeping case pseudonymous because the district court had allowed pseudonymity, but not describing the reasons for that or whether they were sufficient); People v. P.V., 64 Misc. 3d 344 (N.Y. Crim. Ct. 2019) (pseudonymizing published opinion discussing a transgender prostitute's criminal conviction, and concluding that defendant was a victim of sex trafficking).

documents, and the names of the parties are viewed as part of the information that needs to be kept public.[18]

Such openness is viewed as important for letting the public (usually through the media) supervise what happens in courtrooms that are publicly funded and exercise coercive power in the name of the people. Many major stories and some scandals have been broken in part because of the availability of civil court records.[19] And even for the many cases that go largely unnoticed, the possibility of public review helps deter shenanigans.

Some cases conclude that the First Amendment itself thus secures a presumptive right of the public to know litigants' names, as it has been held to secure a presumptive right of public access to court records.[20] And more broadly, this openness is a matter of free speech and the public right to know (whether constitutionally secured or not). Pseudonymity should thus interest free speech and freedom of information scholars, as well as privacy and civil procedure scholars.

How then are these interests reconciled? It turns out that the law is largely unsettled, for instance with regard to:[21]

- whether plaintiffs alleging sexual assault can proceed pseudonymously (Part III.E.4 below and Appendices I and II);
- whether plaintiffs may proceed pseudonymously to avoid disclosure of their mental illnesses (Part I.F.8 bellow and Appendices III and IV);
- whether pseudonymity is more justified in lawsuits against governmental defendants or less justified (Part I.G below);
- when defendants may proceed pseudonymously just to prevent possible damage to reputation stemming from the allegations at the heart of the lawsuit, allegations that defendants claim are false (Part III.F.1.f below);
- when plaintiffs may proceed pseudonymously when they are suing over allegedly false allegations, for instance in a libel lawsuit (Part III.F.1.e below);
- whether minors' parents may proceed pseudonymously to protect minors' pseudonymity (Part III.D.1 below);

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18. *See infra* Part I.C.1.

19. The Boston Globe's investigation of the Catholic Church's coverup of sexual abuse by priests, dramatized in the film *Spotlight*, is just one especially noted example. *See* Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOSTON GLOBE, Jan. 6, 2002, at A1. And of course this is true of more minor stories as well. *See, e.g.*, Eugene Volokh, *Shenanigans: Internet Takedown Edition*, 2021 UTAH L. REV. 237, 288–91 (2021) (discussing various frauds that the author uncovered in large part because of public access to court records).

20. *See infra* Part I.B.

21. *Cf.* Donald P. Balla, *John Doe Is Alive and Well: Designing Pseudonym Use in American Courts*, 63 ARK. L. REV. 691, 692 (2010) (noting the lack of uniformity); Ressler, *supra* note 5, at 234 (likewise); Carol M. Rice, *Meet John Doe: It Is Time for Federal Civil Procedure to Recognize John Doe Parties*, 57 U. PITT. L. REV. 883 (1996) (noting such lack of uniformity even then, before the recent spurt in pseudonymous litigation).

- whether young adults may proceed pseudonymously on the theory that they are nearly minors (Part III.D.2 below);
- whether adult litigants may proceed pseudonymously when they allege they were assaulted when they were minors (Part III.D.3 below).

And many of the distinctions that the cases do appear to implicitly draw are hard to explain. Imagine, for instance, that Arnold is an adult university student accused of sexually assaulting his classmate Veronica:

- The criminal prosecution would almost certainly be *People v. Arnold*, not *People v. Doe*, notwithstanding the harm to Arnold's reputation (a harm that would be present even if he's later acquitted or the charges are dropped).
- The civil lawsuit would often be *Veronica v. Arnold*.
- But some courts would allow it to be *Doe v. Arnold*, to protect Veronica's privacy.[22]
- A few courts would allow it to be *Doe v. Roe*,[23] seemingly on the theory that, just as it can be unjustly humiliating for many sexual assault victims to be publicly identified as such (assuming they are telling the truth that they were indeed victimized), so too it can be unjustly humiliating for many of the accused to be publicly identified as such (assuming they are telling the truth that they were not guilty).[24] But most courts do not accept this theory.[25]
- If Arnold sues Veronica for libel, claiming Veronica's accusations were lies, most courts would require it to be *Arnold v. Veronica* or perhaps *Arnold v. Roe*,[26] but not *Doe v. Roe*.[27]
- But many courts routinely allow the pseudonymous *Doe v. University of Northern South Dakota*, a lawsuit in which Arnold is claiming that the university acted improperly in expelling him for the alleged

22. *See infra* Part III.E.4.

23. *See infra* Part I.E.4.

24. If the accused *is* guilty, and is lying about the defense, then it may be only fair that the public learns of the guilt. But equally, if the accuser is lying about the claim, then it may be only fair that the public learns about that.

25. Of course, as a general matter Arnold would need to know Veronica's identity; I focus here on pseudonymity that shields the parties' identity from the general public, and not from other parties (or at least their lawyers) or the court. *See, e.g.*, United States v. Microsoft Corp., 56 F.3d 1448, 1463 (D.C. Cir. 1995) ("We are not aware of any case in which a plaintiff was allowed to sue a defendant and still remain anonymous to that defendant. Such proceedings would, as Microsoft argues, seriously implicate due process."); *In re* Sealed Case, 971 F.3d 324, 326 n.1 (D.C. Cir. 2020); W.N.J. v. Yocom, 257 F.3d 1171, 1172 (10th Cir. 2001); Zocaras v. Castro, 465 F.3d 479, 484 (11th Cir. 2006); Montgomery v. Wellpath Medical, No. 3:19-cv-00675, at 7 (M.D. Tenn. Dec. 15, 2020); De Angelis v. Nat'l Ent. Grp. LLC, No. 2:17-cv-00924, 2019 WL 1071575, at *4–5 (S.D. Ohio Mar. 7, 2019); Doe 1 v. Madison Metro. Sch. Dist., 963 N.W.2d 823, 834 (Wis. Ct. App. 2021); Doe v. Heritage Academy, No. 2:16-cv-03001, 2017 WL 6001481, at *11 (D. Ariz. June 9, 2017).

26. *See infra* note 257.

27. *See, e.g.*, Roe v. Does 1–11, No. 20-cv-3788-MKB-SJB, 2020 WL 6152174, at *3 (E.D.N.Y. Oct. 14, 2020). *But see* Doe v. Doe 1, No. 1:16-cv-07359 (N.D. Ill. Aug. 24, 2016); Alexander v. Falk, No. 2:16-cv-02268-MMD-GWF, 2017 WL 3749573, at *5 (D. Nev. Aug. 30, 2017).

> misconduct—even though there, as in the libel case, Arnold wants pseudonymity to protect his reputation.[28]

It's hard for me to see a sound justification for this pattern.

In this Article, I will try to (1) lay out the general legal rules, as reflected in court decisions (which I hope will be useful to judges and lawyers as well as academics) and (2) lay out the main policy arguments cutting in favor of and against pseudonymity. I may also offer (3) some normative suggestions about what should be done. In general, I'm not sure what the right answer is in most of those cases, but I do want to make five related observations:

a. *The ubiquity of the desire for pseudonymity:* I noted above that many plaintiffs and defendants would prefer to keep their names out of the court record and therefore off Google and out of the newspapers. Courts have observed this and often cite this as a reason to reject pseudonymity—if we let this litigant be pseudonymous, we'd, in fairness, have to let all these other litigants do the same, and then we'd have a very different and much less transparent system of procedure.[29]

b. *The puzzle of dealing with reputational damage:* In particular, a vast range of cases involves material risk of reputational damage to one or both parties—chiefly, damage to the ability to earn a living. Courts often remark that mere risk of reputational damage (including unjust reputational damage, for instance, if the accusations against a defendant ultimately prove to be unfounded) is not enough to justify pseudonymity.[30] But not all cases so hold. This is in part because the reputational concerns can seem so serious and salient. And the cases that allow pseudonymity to protect privacy rather than to protect reputation sometimes boil down to risk of reputational damage as well (for instance, if a plaintiff seeks pseudonymity to conceal information about a mental illness).

c. *Settlement skew:* The settlement value of a case generally turns in large part on the ongoing costs of the lawsuit to the two parties—litigation costs, emotional costs, or reputational costs. All else being equal, if the plaintiff's costs go down, the plaintiff will be emboldened, and the settlement value of the case will likely increase. Likewise, if the defendant's costs go down, the settlement value of the case will likely decrease; most obviously, the settlement value will decrease if the defendant can reduce its litigation costs, perhaps if a defendant gets ideologically minded *pro bono* counsel.

It follows that, in cases where both sides have reputational or privacy costs stemming from the litigation, giving pseudonymity to one party but not the other would decrease the pseudonymous party's costs and would change the likely settlement value. All else being equal, a *Doe v. Smith* will tend to yield a larger settlement than *Jones v. Smith* or *Doe v. Roe*, which in turn will tend to yield a

28. *See infra* Part III.F.3; Appendices 5 and 6.

29. *See infra* Part I.C.5; Appendix 6.

30. *See* Appendix 7.

larger settlement than *Jones v. Roe*.[31] This can be an argument for rejecting pseudonymity—or for pseudonymizing both parties.

d. *Pseudonymity creep:* Simply pseudonymizing a party seems easy enough, and seems like only a modest restriction on public access. But, of course, other information in the case can lead interested researchers to the party's identity. Even if a minor's name is abbreviated L.V., if the case is *Volokh on behalf of L.V. v. Los Angeles Unified School District*, it might not be hard for people to identify L.V. based on her representative's (likely her parent's) name.[32] Likewise, if a complaint filed by John Doe in a libel case quotes the alleged libel, a quick Google search for the libel could identify its target. If a woman sues her ex-boyfriend alleging sexual assault, people who know the ex-boyfriend may easily identify the woman.[33]

To make pseudonymity effective, more needs to be done than just pseudonymizing one particular party. This may include sealing important material outright, pseudonymizing the other party as well, or enjoining the other party from revealing the pseudonymous party's name (or other details of the lawsuit) in public comments.[34] But then pseudonymity would also interfere more with public right of access and may further undermine the interests of the opposing parties.[35]

e. *Sharp variability among cases:* As noted above, and as Part II documents in detail, cases are sharply split on whether to allow pseudonymity, in nearly every category of cases. And that is unsurprising, given how vague the factors are—factors such as "the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases" and "the magnitude of the public interest in maintaining the confidentiality of the litigant's identity" (quoted in more detail at p. 13).

There are three possible explanations for these different results (all of which may be present in some measure):

- *Differences in circumstances*: Perhaps the multi-factor balancing tests that various courts have announced are working well, and judges are carefully drawing distinctions based on real differences between the cases.
- *Differences in litigants*: Or perhaps courts sometimes just decide based on sympathies (perhaps subconscious) for certain kinds of litigants[36]—

31. *See infra* Part I.E.3.

32. *See infra* Part III.D.1.

33. *See infra* note 263.

34. *See infra* Part I.C.4.

35. *See infra* Part I.C.2.

36. This risk has often been noted as to balancing tests in other fields, and there's no reason to think it would be absent here. *Cf.* Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 MISS. L.J. 1133, 1147–57 (2012); Craig Nickerson, *Gender Bias in a Florida Court: "Mr. Mom" v. "The Poster Girl for Working Mothers,"* 37 CAL. W. L. REV. 185, 203 (2000); Mary Kreiner Ramirez, *Into the Twilight Zone: Informing Judicial Discretion in Federal Sentencing*, 57 DRAKE L. REV. 591, 635 (2009).

for example, for fellow lawyers,[37] promising young college students,[38] or people who are bereaved (even though such bereavement is generally not seen as a basis for pseudonymity).[39]

- *Differences in judges*: Or maybe different judges have different attitudes about pseudonymity generally, with some taking a sharp public-right-to-know attitude[40] and others being much more sympathetic to litigant privacy.[41]

To the extent the explanation is a difference in circumstances, it is a virtue of the vague balancing tests that appellate courts have set forth for pseudonymity decisions. To the extent the explanation is a difference in litigants or judges (or both), it is a vice.

37. *See* Doe v. Doe, No. 20-cv-5329, 2020 WL 6900002, at *3 (E.D.N.Y. Nov. 24, 2020) (allowing pseudonymity because defendant "is a partner of a well-known law firm in New York and an adjunct law school instructor").

38. Doe v. Univ. of St. Thomas, No. 16-cv-1127, 2016 WL 9307609, at *4 (D. Minn. May 25, 2016) (discussing the "permanent[] harm" potentially facing "a young man found to have committed a non-consensual sexual act at a university—in an administrative proceeding requiring a preponderance of the evidence—. . . even if he later prevails in his challenge to the validity of the process that judged him guilty")*; see also* Doe v. Alger, 317 F.R.D. 37, 41 (W.D. Va. 2016) (allowing pseudonymity because, though the plaintiff and other students were adults, "they are *young* adults and so 'may still possess the immaturity of adolescence,' as many college students do").

39. See, for example, *C.R.M. v. United States*, No. 1:20-cv-00404 (E.D. Va. Apr. 13, 2020), which allowed pseudonymity based on the deaths of plaintiff's three newborn children, and miscarriage of two fetuses at nineteen weeks of pregnancy. Anyone would sympathize with the plaintiff's desire "'to preserve privacy in a matter of sensitive and highly personal nature'—a soul shattering family tragedy," Motion ¶ 9, *id.* (Apr. 10, 2020). But it is hard to meaningfully distinguish this plaintiff from almost any wrongful death plaintiff, since all such cases stem from family tragedies that can be "soul shattering" in their own ways; yet wrongful death litigation routinely happens under the plaintiff's real name, and it seems unlikely that the decision in *C.R.M.* would be applied evenhandedly to other such cases.

40. *See, e.g.*, Student PID A54456680 v. Mich. State Univ., No. 1:20-cv-984, 2020 WL 12689852, at *2 (W.D. Mich. Oct. 15, 2020) (noting that "the undersigned normally denies pseudonym requests in Title IX cases"); Doe v. Bodwin, 326 N.W.2d 473, 476 (Mich. Ct. App. 1982) (reversing denial of pseudonymity on the grounds that the trial judge "would never permit anonymity").

41. *See* Balla, *supra* note 21, at 695 (noting the risk that pseudonymity decisions often "boil down to the arbitrary leanings of individual judges").

I. THE PRESUMPTION AGAINST PSEUDONYMITY

Different circuits have come up with similar but differently worded multi-factor balancing tests[42] for pseudonymity[43] (also often labeled "anonymity" or "the use of a fictitious name"); consider for instance, the Third Circuit test, from *Doe v. Megless*:[44]

> The factors in favor of anonymity include[]: "(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."
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> On the other side of the scale, factors disfavoring anonymity include[]: "(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."
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> [The] list of factors is not comprehensive, and that trial courts "will always be required to consider those [other] factors which the facts of the particular case implicate."[45]

But, to quote District Judge Matthew Brann, "even well-crafted multifactor tests can be difficult to apply, difficult to predict, and invite needless litigation. And the *Megless* factors are not the crown jewels of multifactor tests."[46]

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42. Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 189–90 (2d Cir. 2008); Doe v. Megless, 654 F.3d 404, 409 (3d Cir. 2011); James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993); Doe v. Stegall, 653 F.2d 180, 185–86 (5th Cir. 1981); Doe v. Porter, 370 F.3d 558, 560 (6th Cir. 2004); Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1068 (9th Cir. 2000); Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992); *In re* Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019). Two circuits have not articulated specific factors, but have recognized that pseudonymity is an exception and have identified some cases in which the exception is justified. Doe v. Village of Deerfield, 819 F.3d 372, 377 (7th Cir. 2016); M.M. v. Zavaras, 139 F.3d 798, 802–03 (10th Cir. 1998). The remaining circuits have not opined on pseudonymity, but have announced a broad presumption of public access and against sealing. Nat'l Org. for Marriage v. McKee, 649 F.3d 34, 70 (1st Cir. 2011); IDT Corp. v. eBay, 709 F.3d 1220, 1223 (8th Cir. 2013); *In re* Violation of Rule 28(D), 635 F.3d 1352, 1356 (Fed. Cir. 2011).

43. I refer here to any replacement of a known person's name with something intended to hide identity, whether John Doe, A.B., Alice B., Hester Prynne (from *The Scarlet Letter*), Whistleblower #579, or the like. For a brief discussion on the pluses and minuses of each kind of pseudonym, see Eugene Volokh, *If Pseudonyms, Then What Kind?*, 107 JUDICATURE __ (forthcoming 2023).

44. 654 F.3d at 409.

45. *Id.* (citations omitted).

46. Doe v. Pa. Dep't of Corr., No. 19-1584, 2019 WL 5683437, at *3 & n.10 (M.D. Pa. Nov. 1, 2019).

> To start, they are hopelessly imprecise and redundant . . . . These inquiries [into various factors] meander and criss-cross into each other's paths, to the extent they differ at all. What's more, the test does not provide what weight each enumerated factor should be given, let alone how unenumerated factors should tip the balance . . . . [O]pinions applying *Megless* and similar tests from other circuits frequently read as a rote recitation of factors with a conclusion tacked on the end. This style is not conducive to the reader scrying which factors were determinative in the court's decision. Or, perhaps more troublingly, the court may in fact have treated all the factors as coequal.[47]

Rather than try to track a particular list of factors, then, I thought I would lay out the general structure of the analysis that I have seen in the cases, with particular attention to how these generalities have been concretely applied (for example, what counts as a "substantial[]" "bas[i]s," to quote *Megless*, for rejecting disclosure). I turn, at Judge Brann's suggestion, to "the heart of the inquiry: Does the Plaintiff risk severe harm by proceeding under his or her real name? And, if so, is this risk outweighed by a particularly strong public interest in knowing the Plaintiff's identity?"[48] Because fully naming the parties is the default, I begin with the presumption against (and justifications for) pseudonymity.

A. THE FEDERAL RULES AND THE COMMON LAW

Federal Rule of Civil Procedure 10(a) provides that "The title of the complaint must name all the parties," and Rule 17(a) provides that "An action must be prosecuted in the name of the real party in interest." Many courts have read these statements as generally condemning pseudonymity.[49] The same is true of many state law rules;[50] some are even more explicit.[51] A strong presumption against party pseudonymity is generally well settled.[52]

This presumption might be strengthened to the extent that, "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."[53] But even

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47. *Id.*

48. *Id.*

49. *See, e.g.*, Doe v. Frank, 951 F.2d 320, 322 (11th Cir. 1992). Perhaps Rule 10(a) should instead be read as "simply seek[ing] to distinguish the more formal caption in the complaint from all others, which for economy need not list every party," without "necessarily dictat[ing] the substance of the name designation," Rice, *supra* note 21, at 915; *see also* Ressler, *supra* note 5, at 216. But most courts that have considered the matter have concluded that it does set forth a strong presumption that people must litigate in their own names.

50. *See, e.g.*, Doe v. Empire Ent., LLC, No. A16-1283, 2017 WL 1832414, at *2 (Minn. Ct. App. May 8, 2017).

51. *See, e.g.*, DEL. R. SUPER. CT. Rule 10(e); ALASKA R. CT.—R. OF ADMIN. 40.

52. *E.g.*, Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1067–68 (9th Cir. 2000).

53. Doe v. Megless, 654 F.3d 404, 409 (3d Cir. 2011); *see also* Doe v. Byrd, No. 1:18-cv-00084, at 12–13 (M.D. Tenn. Dec. 17, 2019) ("the fact that this case may have gained media and community attention is reflective of why the public interest in open judicial proceedings should be respected"). On the other hand, some courts view public interest in a lawsuit as cutting *against* naming the parties, because they are concerned that the

ordinary litigation must generally be carried on in the parties' names—as everyday practice indeed reflects—based on "the universal level of public interest in access to the identities of litigants."[54]

B. THE FIRST AMENDMENT RIGHT OF ACCESS

Besides the limits on sealing that stem from the common-law tradition of open access, the First Amendment is also generally seen as limiting the sealing of court records, including in civil cases.[55] Some courts have taken the view that this limits pseudonymity as well.[56]

C. VALUE TO THE PUBLIC OF ACCESS TO PARTY NAMES

1. Generally

Public naming of litigants is one aspect of the broader "presumption, long supported by courts, that the public has a common-law right of access to judicial records."[57] "Public access to civil trials . . . provides information leading to a better understanding of the operation of government as well as confidence in and respect for our judicial system."[58] In particular, the right to public access "protects the public's ability to oversee and monitor the workings of the Judicial Branch,"[59] and "promotes the institutional integrity of the Judicial Branch."[60] "'Public confidence [in the judiciary] cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view.'"[61]

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publicity may increase the intrusion on parties' privacy and damage to their reputation. *See, e.g.*, Doe v. Bd. of Trustees of Univ. of Ill., No. 2:20-cv-02265, at 5 (C.D. Ill. Nov. 9, 2020); Doe v. La. State Univ., No. 20-379, at 4 (M.D. La. June 30, 2020); Doe v. Colgate Univ., No. 515-cv-1069, 2016 WL 1448829, at *2 (N.D.N.Y. Apr. 12, 2016); Doe v. American Univ., No. 1:19-cv-03097, at 5–6 (D.D.C. Oct. 10, 2019).

54. *Megless*, 654 F.3d at 409.

55. *See, e.g.*, Courthouse News Serv. v. Planet, 947 F.3d 581, 589 (9th Cir. 2020).

56. *See, e.g.*, DePuy Synthes Prod., Inc. v. Veterinary Orthopedic Implants, Inc., 990 F.3d 1364, 1370 (Fed. Cir. 2021); *In re* Sealed Case, 931 F.3d 92, 96 (D.C. Cir. 2019); United States v. Microsoft Corp., 56 F.3d 1448, 1464 (D.C. Cir. 1995); Doe v. Stegall, 653 F.2d 180, 185 (5th Cir. 1981); Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *2 (M.D. Tenn. June 28, 2021); Doe v. Paychex, Inc., No. 3:17-cv-2031, 2020 WL 219377, at *10 (D. Conn. Jan. 15, 2020); Doe v. Del Rio, 241 F.R.D. 154, 156 (S.D.N.Y. 2006); Doe v. Kidd, 19 Misc. 3d 782, 788 (N.Y. Sup. Ct. 2008).

57. Eugene S. v. Horizon Blue Cross Blue Shield of N.J., 663 F.3d 1124, 1135 (10th Cir. 2011).

58. Publicker Industries, Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984); *see also* Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 188–89 (2d Cir. 2008).

59. Doe v. Public Citizen, 749 F.3d 246, 263 (4th Cir. 2014).

60. *Id.*

61. *Id.* (quoting United States v. Cianfrani, 573 F.2d 835, 851 (3d Cir. 1978), and applying its reasoning in a civil case).

This right of access extends to "pretrial court records" as much as to trial proceedings.[62] And the right presumptively forbids redactions as well as outright sealing, though redactions can be justified on a somewhat lesser showing than sealing since they are sometimes viewed as the least restrictive means of protecting important privacy rights.[63]

In principle, pseudonymity is less of a burden on public access than is sealing, or even redaction:

> The public right to scrutinize governmental functioning is not so completely impaired by a grant of anonymity to a party as it is by closure of the trial itself. Party anonymity does not obstruct the public's view of the issues joined or the court's performance in resolving them. The assurance of fairness preserved by public presence at a trial is not lost when one party's cause is pursued under a fictitious name.[64]

Indeed, pseudonymity is sometimes offered as a less public-access-restrictive alternative to outright sealing.[65]

Nonetheless, even courts that take this view acknowledge that "there remains a clear and strong First Amendment interest" in "[p]ublic access" to the parties' names.[66] Other courts put it even more strongly:

> [L]awsuits are public events and the public has a legitimate interest in knowing the facts involved in them. Among the facts is the identity of the parties. We think that as a matter of policy the identity of the parties to a lawsuit should not be concealed except in the unusual case.[67]

"[T]he public[]" has a "legitimate interest in knowing all of the facts involved, including the identities of the parties."[68] "The people have a right to know who

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62. Mokhiber v. Davis, 537 A.2d 1100, 1119 (D.C. Cir. 1988); *see also, e.g.*, Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 124 (2d Cir. 2006); Republic of Philippines v. Westinghouse Elec. Corp., 139 F.R.D. 50, 56 (D.N.J. 1991).

63. *See, e.g.*, United States v. Raffoul, 826 F.2d 218, 227 (3d Cir. 1987); HouseCanary, Inc. v. Title Source, Inc., 622 S.W.3d 254, 263 (Tex. 2021).

64. Doe v. Stegall, 653 F.2d 180, 185 (5th Cir. 1981); *see also* Doe v. Pittsylvania Cty., 844 F. Supp. 2d 724, 728 (W.D. Va. 2012); Doe v. Tsai, No. 08-1198, 2008 WL 11462908, at *3 (D. Minn. July 23, 2008); Doe v. Good Samaritan Hospital, 66 Misc. 3d 444, 449 (2019); Doe v. Barrow Cty., 219 F.R.D. 189, 193 (N.D. Ga. 2003); Doe v. Szul Jewelry, Inc., No. 0604277/2007, slip. op. 31382(U), at *13 (N.Y. Sup. May 8, 2008); Benjamin P. Edwards, *When Fear Rules in Law's Place: Pseudonymous Litigation As a Response to Systematic Intimidation*, 20 VA. J. SOC. POL'Y & L. 437, 443 (2013); Ressler, *supra* note 15, at 823; *see also* Lior J. Strahilevitz, *Pseudonymous Litigation*, 77 U. CHI. L. REV. 1239, 1246–47 (2010) (arguing that sealing or fuzzing over the facts makes it harder for litigants to understand what exactly is forbidden or permitted by a precedent, while pseudonymity doesn't have that effect).

65. *See, e.g.*, Whistleblower 14106-10W v. Commissioner, 137 T.C. 183, 191 (2011); *In re* Application of N.Y. Times Co. for Access to Certain Sealed Ct. Documents, 585 F. Supp. 2d 83, 91 (D.D.C. 2008).

66. *Stegall*, 653 F.2d at 185; *see also* Doe v. Pub. Citizen, 749 F.3d 246, 273 (4th Cir. 2014).

67. Doe v. U.S. Dep't of Just., 93 F.R.D. 483, 484 (D. Colo. 1982); Doe v. Deschamps, 64 F.R.D. 652, 653 (D. Mont. 1974); A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 502 (App. Div. 1995). For an early case enunciating such an "only in the rare case" principle, see Buxton v. Ullman, 147 Conn. 48, 60 (1959), a challenge to Connecticut's contraceptive statute, which reached the court under the name of Poe v. Ullman, 367 U.S. 497 (1961) (but was dismissed on standing grounds).

68. Doe v. Frank, 951 F.2d 320, 322 (11th Cir. 1992); United States v. Microsoft Corp., 56 F.3d 1448, 1463 (D.C. Cir. 1995); *In re* Sealed Case, 971 F.3d 324, 326 (D.C. Cir. 2020).

is using their courts."[69] "[A]nonymous litigation runs contrary to the rights of the public to have open judicial proceedings and to know who is using court facilities and procedures funded by public taxes."[70] "The Court is a public institution and the public has a right to look over our shoulders and see who is seeking relief in public court."[71]

Those, at least, are the generalities. Let's now turn to how pseudonymity may be concretely harmful, and how open disclosure of party names may be valuable.

2. Pseudonymity Interfering with Reporting on Cases

To begin with, the names of the parties are often key to investigating the case further—for instance, by helping reporters and researchers answer questions such as:

- Is the case part of a broad pattern of litigation by, say, an ideological advocate, a local businessperson or professional with an economic interest in the cases,[72] or a vexatious litigant?[73]
- Is there evidence that the litigant is untrustworthy, perhaps in past cases or in past news reports?[74]
- Do past cases brought by the same litigant reveal similar allegations made by the litigant, which past authorities have concluded were not corroborated?[75]

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69. Doe v. Blue Cross & Blue Shield United of Wis., 112 F.3d 869, 872 (7th Cir. 1997); United States v. Pilcher, 950 F.3d 39 (2d Cir. 2020) (quoting *Blue Cross* favorably); Doe v. Megless, 654 F.3d 404, 408 (3d Cir. 2011) (same); United States v. Stoterau, 524 F.3d 988, 1013 (9th Cir. 2008) (same); *In re* Sealed Case, 971 F.3d 324 (D.C. Cir. 2020) (same).

70. Doe v. Village of Deerfield, 819 F.3d 372, 377 (7th Cir. 2016).

71. Gibson v. Pfizer, Inc., No. 3:20-cv-03870, at 2 (N.D. Cal. Oct. 28, 2020).

72. Even once the defendant learns the plaintiff's name in this case, the defendant might be unable to easily find plaintiff's past pseudonymous filings; and journalists might never learn the pseudonymous plaintiff's name. In principle, a court could use "a unique pseudonym" for a serial litigant, to make clear to the public that several cases are being filed by the same person. *See In re* Sealed Case, 931 F.3d 92, 98 (D.C. Cir. 2019). But that still wouldn't inform researchers of the litigants' possible outside motivations that might not appear on the face of the court filings, and it wouldn't help researchers connect this litigation to other cases filed by the plaintiff in other courts.

73. *See infra* Part I.F.8.

74. Thus, for instance, a plaintiff in a recent federal case had apparently been found, in an earlier state case, to have "perpetrated acts of domestic violence" and to have been "evasive" in her statements. *See* Motion for Reconsideration, Doe v. Wang, No. 1:20-cv-02765 (D. Colo. Aug. 27, 2021) (noting, in redacted form but with enough details to allow the case to be identified, Czodor v. Luo, No. G056955, 2019 WL 4071771, at *1 (Cal. Ct. App. Aug. 29, 2019)); *see also* People v. Luo, No. 30-2021-01216615 (Cal. Super. Ct. App. Div. Orange Cty. Apr. 27, 2022) (discussing what appear to be the same plaintiff's convictions for vandalism, restraining order violation, and revenge porn, stemming from a sexual relationship hone bad).

75. For instance, in *Luo v. Wang*, No. 1:20-cv-02765 (D. Colo. Nov. 7, 2021) (originally filed as *Doe v. Wang*), Luo is suing Wang for libel, based on defendant's allegations that Luo had falsely accused a mutual acquaintance of rape. It appears that Luo had made similar accusations against other people, which the police had not acted on—something that would be relevant to a reporter writing about the case, though of course it wouldn't be dispositive of the soundness of Luo's current claims. *See* Doe v. Newsom, No. 2:20-cv-04525, at *2 (C.D. Cal. Mar. 26, 2021) (noting two such similar accusations); Reply to Opposition to Plaintiff's Request

- Does the litigant have a possible ulterior motive—whether personal or political—that isn't visible from the court papers?
- Was the incident that led to the lawsuit covered or investigated in some other context? For instance, if the plaintiff is suing for libel or wrongful firing or wrongful expulsion based on accusations that plaintiff had committed a crime, had the plaintiff been arrested for the crime? How did the police investigation or criminal prosecution turn out?
- Is there online chatter from possibly knowledgeable people about the underlying incident?
- Is there some reason to think the judge might be biased in favor of or against the litigant?[76]

Knowing the parties' names can help a reporter or an interested local activist quickly answer those questions, whether by an online search or by asking around. The parties themselves might be willing to talk; but even if they aren't, others who know them might answer questions, or might voluntarily come forward if the party is identified.[77]

And litigation of course deploys the coercive power of the state, even as it also accomplishes private goals. For instance, a libel lawsuit, even between two private parties, is aimed at penalizing (and sometimes enjoining) supposedly constitutionally unprotected speech. An employment lawsuit is aimed at implementing a set of legal rules that constrain employers, protect employees, and affect the interests of the public in various ways, direct or indirect. In the words of Justice Holmes, writing about the fair report privilege:

> It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every

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to Proceed Under a Pseudonym at 3, Doe v. City of Concord, No. 3:20-cv-02432 (N.D. Cal. Sept. 10, 2020) (Doe plaintiff stating that *O.L. v. City of El Monte*, *Doe v. Newsom*, *Doe v. Cty. of Orange*, and *Doe v. Weamer* were all brought by plaintiff); Declaration in Support of Response to Motion for Sanctions, Luo v. Wang, No 1:20-cv-02765-RMR-MEH (D. Colo. Dec. 9, 2021) (Luo stating that *Doe v. Weamer* was brought by Luo). With some effort, I was able to see that Luo had brought the past Doe cases; but this stemmed partly from defendant Wang's extensive investigation, coupled with incomplete covering of tracks by Luo, who had been pro se in many of the cases. In other cases, a reporter trying to figure out the plaintiff's history in *Doe v. Wang* might have been stymied by the pseudonymity both of that case and of past cases.

76. Joan Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants Be Permitted to Keep Their Identities Confidential?,* 37 HASTINGS L.J. 1, 19 (1985).

77. To quote a media brief opposing pseudonymity in a challenge to a vaccination mandate,

> Anonymity greatly hinders, for example, a journalist's ability to research the litigant's background, including business or political interests. Anonymity also prohibits journalists from identifying family members, friends, employers, coworkers, classmates and other acquaintances who may help the journalist put a given dispute in context. Knowing a litigant's identity may help illuminate details like a plaintiff's motivation for suing; his or her relationship with the defendants, other trial participants, or the court; or the litigant's credibility, among other things.

Motion to Unseal Plaintiffs' Identities, Does 1–6 v. Mills, No. 1:21-cv-00242-JDL, at *3 (D. Me. Jan. 27, 2022).

> citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.[78]

Courts have recognized that this rationale applies also to the openness of court records,[79] including to the presumption against pseudonymity.[80] And evaluating the credibility of the parties, whether as to their in-court statements or as to their court filings, will often require knowing their identities.

3. Pseudonymity Leading to Sealing or Heavy Redaction

Filed documents will often contain information that make it possible to identify a pseudonymous party. Sometimes it will be as simple as the name of another party—for instance, if a named parent is suing on behalf of a pseudonymous child. This can lead to motions to pseudonymize the parent as well, which are usually granted.[81] But sometimes it also leads to pseudonymizing the name of the defendant (say, a sexual assault defendant), if the lawsuit reveals the parties' relationship so that knowing the defendant's name can identify the plaintiff.[82]

And sometimes maintaining pseudonymity may require redacting or sealing documents filed in court. This is most clear in libel cases based on material published online, even in obscure publications. In many states, libel complaints must set forth the specific libelous words;[83] but even if the complaint can paraphrase or just quote the key words, the full material would need to be precisely quoted at some point, for instance, in a motion to dismiss or a motion for summary judgment.

If the material remains available online, then a simple Google search will often uncover the full statement, which would include the plaintiff's name. Any attempt to prevent this would require much broader redaction or sealing of the alleged libel, which may, in turn, make it much harder to understand the legal issues in the case.[84] And the same can apply in other situations.[85]

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78. Cowley v. Pulsifer, 137 Mass. 392, 394 (1884); *see also* Steinman, *supra* note 76, at 19 ("Intuitively, one feels less able to judge the fairness of judicial proceedings pursued by unknown parties. Even if the record reveals enough about the plaintiff or defendant to allow an apparently adequate appraisal of the proceedings, the record may not quell all suspicions that the secret identity of a party or parties influenced the decision.").

79. Goesel v. Boley Int'l (H.K.) Ltd., 738 F.3d 831, 833 (7th Cir. 2013); Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1069 (3d Cir. 1984); NBC Subsidiary (KNBC-TV) v. Superior Court, 980 P.2d 337, 351 n.14 (1999); Hammock by Hammock v. Hoffmann-LaRoche, Inc., 662 A.2d 546, 553 (N.J. 1995).

80. *Goesel*, 738 F.3d at 833; Qualls v. Rumsfeld, 228 F.R.D. 8, 13 (D.D.C. 2005).

81. *See infra* Part III.D.1.

82. *See infra* Part III.E.5.

83. *See, e.g.*, Adamo Demolition Co. v. Int'l Union of Operating Engineers Loc. 150, AFL-CIO, 3 F.4th 866, 875 (6th Cir. 2021) ("A plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory."); Stead-Bowers v. Langley, 636 N.W.2d 334, 342 (Minn. App. 2001).

84. *See, e.g.*, Doe v. Doe 1, No. 1:16-cv-07359 (N.D. Ill. Aug. 24, 2016).

85. *Cf.* Ressler, *supra* note 15, at 831 (generally supporting pseudonymity in cases that are likely to draw public criticism, but acknowledging that "while it might be simple to redact the plaintiff's name from relevant documents, redacting identifying information contained therein could be anything but straightforward").

Pseudonymization in one case can also lead to sealing in other cases in which the earlier case is relevant. To give one example, Xingfei Luo sued Paul Wang for libel and disclosure of public facts arising from Wang's having accused Luo of falsely accusing a third party of rape.[86] Luo, a frequent litigant who had been found in a past case to have acted evasively,[87] was originally allowed to proceed pseudonymously; but the judge eventually reversed that decision.[88]

But that order reversing the pseudonymity decision, and several related party filings, were initially sealed because they discussed other pseudonymous cases that Luo had filed in other courts. The theory for the sealing was that, "[b]ecause the Court relied, in part, on those other cases, the Court risked undermining the orders granting pseudonymous status by not restricting its order or the briefing."[89] The judge ultimately agreed that redacting the other case names was the better alternative to outright sealing—but only after a third party moved to intervene and unseal, something that wouldn't happen in most cases.[90] The sealing of court orders is generally viewed as improper,[91] and even redaction is viewed as costly to public understanding of the court's operations, even if sometimes necessary;[92] yet pseudonymization here led to at least temporary sealing of an order, which could have easily remained permanent.

Likewise, certain other facts mentioned in a lawsuit can make it easy to identify a party. Say, for instance, that a lawsuit is a follow-up to an earlier, nonpseudonymous lawsuit, and mentions the circumstances of that lawsuit; a bit of court records research or LexisNexis searching through newspaper archives can uncover the plaintiff's name. To give one example, consider *Doe v. Doe*, a 2018 lawsuit in which the plaintiff claimed that an enemy of his was trying to deliberately promote past newspaper articles that mentioned the plaintiff's

86. Third Amended Complaint, Doe v. Wang, No. 1:20-cv-02765 (D. Colo. July 28, 2021).

87. *See supra* note 74.

88. Doe v. Wang, No. 1:20-cv-02765, 2022 WL 89172 (D. Colo. Nov. 8, 2021).

89. Luo v. Wang, No. 1:20-cv-02765, 2021 WL 8445256, at 3–4 (D. Colo. Dec. 22, 2021) (order granting Plaintiff's Motion to Restrict Document, understanding that a redacted version of Plaintiff's objections will be filed).

90. That third party was me. Motion to Intervene and Unrestrict Document, *Wang*, No. 1:20-cv-02765 (D. Colo. Nov. 19, 2021); Motion to Unrestrict Document, *id.* (Nov. 29, 2021).

91. *See, e.g.*, United States v. Mentzos, 462 F.3d 830, 843 n.4 (8th Cir. 2006) (concluding that defendant's "motion to file this opinion under seal" should be denied "because the decisions of the court" are presumptively "a matter of public record"); Union Oil Co. of Cal. v. Leavell, 220 F.3d 562, 568 (7th Cir. 2000) ("[I]t should go without saying that [a] judge's opinions and orders belong in the public domain."); Pepsico, Inc. v. Redmond, 46 F.3d 29, 31 (7th Cir. 1995) (Easterbrook, J., one-judge order) ("Opinions are not the litigants' property. . . . They belong to the public, which underwrites the judicial system that produces them."); Doe v. Pub. Citizen, 749 F.3d 246, 267 (4th Cir. 2014) ("Without access to judicial opinions, public oversight of the courts, including the processes and the outcomes they produce, would be impossible."); *In re* Application of Jason Leopold, 964 F.3d 1121, 1128 (D.C. Cir. 2020) ("There is no doubt that the court orders themselves are judicial records. . . . The issuance of public opinions is core to the transparency of the court's decision-making process.").

92. *See, e.g.*, *In re* Nat'l Prescription Opiate Litig., 927 F.3d 919, 939 (6th Cir. 2019) (stating that both outright sealing or partial redaction are forbidden unless they are necessary to serve a compelling interest).

name.[93] Those past articles stemmed from an employment discrimination lawsuit that Doe had filed nonanonymously, which claimed that the named employer had discriminated against Doe because he was a Muslim.[94] Armed with this information, it was easy for me to find Doe's name; only much heavier redaction of the facts would have prevented that.[95]

This phenomenon, which one might call "penetrable pseudonymity," may not be that bad for the pseudonymous party. Often the pseudonymous party's goal is simply to keep cases from coming up on casual Google searches (by prospective employers, prospective romantic partners, friends, neighbors, or classmates). Even if someone—say, a news reporter—uncovers the party's real name, there is a good chance that the name won't be used in the final story.[96]

Indeed, penetrable pseudonymity might be seen as a reasonable compromise (in some measure like the partial pseudonymity, limited to court opinions, discussed in Part IV): Those who really want to learn the party's name can find it, but it takes a bit of work and possibly expense, just as in the past going to the courthouse to get court records was allowed but involved work and expense.[97]

Still, penetrable pseudonymity might not be enough for many litigants, their lawyers, and even judges who take the view that, once they allow a party to proceed pseudonymously, they need to do what it takes to make that pseudonymity effective.[98] Indeed, many decisions allowing pseudonymity have led to sealing decisions,[99] including ones that have sealed entire court orders or

93. Complaint at 6–7, Doe v. Doe, No. 2:18-cv-02129 (C.D. Ill. May 09, 2018). 1; Eugene Volokh, *Is Wrongful Search Engine Optimization a Tort?*, VOLOKH CONSPIRACY (REASON) (July 5, 2019, 3:08 PM), https://reason.com/volokh/2019/07/05/is-wrongful-search-engine-optimization-a-tort/.

94. *See, e.g.*, Matt O'Connor, *Muslim Ex-Employee Sues Sears; Workers Derided Him, He Charges*, CHI. TRIB., Aug. 18, 2004, at 2C.7.

95. Likewise, for instance, the Complaint in *Doe v. Sebrow*, 2:21-cv-20706 (D.N.J. Dec. 23, 2021), pseudonymizes the plaintiff but not the defendant; searching for the defendant's name in Bloomberg Law finds another lawsuit based on the same underlying fact pattern, which appears to disclose the plaintiff's name. *See also* Complaint, Doe v. Underwood, No. 21STCV46709 (Cal. Super. Ct. L.A. Cty. Dec. 22, 2021) (mentioning details about the case that allows one to identify the plaintiff, for instance by searching trellis.law for the name "Lipnicki" mentioned in the Complaint); Motion to Reconsider at 4, Doe v. Wang, No. 1:20-cv-02765 (D. Colo. Aug. 27, 2021) (citing a California Court of Appeal case involving plaintiff, redacting the case number, party names, and citation, but including the date and a short quote, which sufficed to find the case and thus plaintiff's name on Westlaw); Complaint at 4, Doe v. Bd. of Regents, No. 2:21-cv-13032 (E.D. Mich. Dec. 29, 2021) (giving enough details about the plaintiff's credentials and prominent positions to allow one to easily identify the plaintiff).

96. For instance, when I blogged about *Doe v. Doe*, No. 2:18-cv-02129, *Doe v. Sebrow*, 2:21-cv-20706, *Doe v. Underwood*, No. 21STCV46709, and *Doe v. Bd. of Regents*, No. 2:21-cv-13032, I didn't include the plaintiffs' names, though I had figured them out.

97. *See, e.g.*, Roe v. Doe, No. 18-cv-666, 2019 WL 1778053, at *1 (D.D.C. Apr. 23, 2019) (retroactively pseudonymizing in court files the opinion published at 319 F. Supp. 3d 422 (D.D.C. 2018), though the printed opinion of course still includes the parties' names).

98. *See* Eugene Volokh, *The Mechanisms of the Slippery Slope*, 116 HARV. L. REV. 1026, 1051 (2003) (discussing such "enforcement needs slippery slopes").

99. *See, e.g.*, Unknown Party v. Ariz. Bd. of Regents, No. 18-cv-01623, 2021 WL 5002593, at *6 (D. Ariz. Oct. 27, 2021); Unknown Party v. Ariz. Bd. of Regents, No. 18-cv-01623, 2021 WL 1967392, at *3 (D. Ariz. May 17, 2021) (granting Defendant's Motion to Redact Small Amounts of Identifying Information).

significant portions of such orders.[100] And some judges have actually concluded that plaintiffs' willingness to mention facts that make their pseudonymity penetrable cuts *against* allowing pseudonymity, because it suggests that the plaintiff is not actually committed to staying unidentified.[101]

4. Pseudonymity Leading to Gag Orders on the Other Party

A pseudonymity order is not itself an injunction banning parties from revealing a pseudonymous party's true name.[102] In principle, a pseudonymity order only deals with how the parties are to be referred to in court, not outside it. But a judge who really believes that a party would be harmed by being named, and therefore requires pseudonymity in legal filings, may easily feel that the order would be frustrated if the opposing party is free to publicize the pseudonymous party's actual name:[103] "If defendants could reveal plaintiff's . . . identit[y] to third parties at will, there would be little point in allowing plaintiff to proceed pseudonymously."[104]

As a result, many pseudonymity orders include such speech-restrictive injunctions as well.[105] In one case, a judge ordered a blog that covers the

100. *See supra* notes 89–90 and accompanying text (discussing *Doe v. Wang*); Doe v. Does 1–3, No. 1:16-cv-07359 (N.D. Ill. Aug. 24, 2016).

101. *See, e.g.*, Doe v. Tr. of Ind. Univ., No. 1:21-cv-02903, 2022 WL 36485, at *8 (S.D. Ind. Jan. 3, 2022) ("First, Plaintiff's Complaint does not hide the fact that he was elected President of the Pi Lambda Phi fraternity for the 2020–2021 schoolyear. A quick Google search utilizing this information reveals Plaintiff's identity, illustrating how even Plaintiff has not fully attempted to keep his identity confidential when initiating this lawsuit."); *see also infra* Part II.B (citing cases where pseudonymity was denied in part because the party's identity had already been disclosed).

102. Indeed, even a sealing order might not itself be a gag order. *See* United States v. Dougherty, No. 07-cr-0361, 2014 WL 3676002, at *3 (E.D. Pa. July 23, 2014) (concluding that a sealing order was addressed only to the Clerk of Court, requiring that the Clerk not make the materials available to the public, and "sa[id] nothing about what [the prosecutor], let alone anybody else, . . . could do with the documents"), *aff'd on other grounds*, 627 F. App'x. 97, 102 (3d Cir. 2015).

103. *Cf., e.g.*, Doe v. Fitzgerald, No. 20-cv-10713, 2022 WL 425016, at *6 (C.D. Cal. Jan. 6, 2022) (justifying an earlier order that defendant not publicly identify the pseudonymous plaintiffs on the grounds that "[a]ny litigant respectful of the litigation process—any decent person—would have no interest" in so publicizing the plaintiffs' identities); Notice of Removal at 1 n.1, Doe v. Gilead Sciences, Inc., No. 2:21-cv-01859 (W.D. Pa. Dec. 23, 2021) (expressing defendant's intent to object, "in its responsive pleading," "to Plaintiff's use of a pseudonym," but stating that "it will not identify Plaintiff by name until the Court has ruled on the issue," even though there is no court order so requiring).

104. Doe v. Univ. of Ore., No. 6:17-CV-01103, at 3 (D. Ore. Sept. 27, 2017).

105. *See, e.g.*, Doe v. Maywood Hous. Auth., 71 F.3d 1294, 1296 (7th Cir. 1995); Lawson v. Rubin, No. 1:17-cv-06404-BMC-CLP, at 4 (E.D.N.Y. Nov. 8, 2017); Doe v. PreCheck Inc., No. 21-cv-01129, at *1–2 (D. Ariz. Sept. 30, 2021); C.M. v. United States, No. 21-cv-00234, 2021 WL 1822305, at *3 (W.D. Tex. Mar. 31, 2021); Doe v. Nygard, No. 1:20-cv-06501, at 6 (S.D.N.Y. Aug. 20, 2020); Doe v. Proskauer Rose LLP, No. 1:17-cv-00901, at *1 (D.D.C. May 7, 2017); Doe v. Gwyn, 3:17-cv-00504, at *3 (E.D. Tenn. Apr. 5, 2018); Does 151–166 v. Ohio State Univ., No. 2:20-cv-03817, at 1–3 (S.D. Ohio Aug. 7, 2020); J.A.A. v. St Hans Bros. Indus., No. 2:20-cv-00156, at *5 (S.D. Tex. June 17, 2020); Hester Prynne v. Northam, No. 1:19-cv-00329, at *X (E.D. Va. May 1, 2019); Doe v. Borderland Beat, No. 3:20-cv-06822, at *1 (N.D. Cal. Oct. 5, 2020); Thomas v. Rubin, No. 159367/2019, 2021 WL 1040526, at *4 (N.Y. Sup. Ct. N.Y. Cty. Mar. 11, 2021); Doe v. Jackson City School Dist., No. 2:13-cv-00112, at 1 (S.D. Ohio Feb. 12, 2013); Doe v. Univ. of Mass.-Amherst, No. 3:14-cv-30143, at *X (D. Mass. Mar. 30, 2015), *granting* Motion for Leave to File Complaint as Pseudonymous Plaintiff (Aug. 11, 2014); Doe v. Topheavy Studios, Inc., No. GN404142, 2004 WL 5353369, at *7 (Tex. Dist.

Mexican drug war not to disclose the name of a plaintiff who was suing it over a post on the blog.[106] In another, a judge ordered a sexual assault plaintiff not to disclose the name of the defendant she was accusing.[107]

When a party learns information through discovery—essentially invoking the coercive power of the court—a court may impose a protective order limiting the publication of this information.[108] But the cases mentioned above involve injunctions against parties revealing information that they already knew before filing the case. Such injunctions are generally unconstitutional prior restraints on speech and can seriously interfere with plaintiffs' ability to discuss what they allege were serious wrongs done to them, with defendants' ability to rebut the allegations against them, and with media parties' ability to cover the news by interviewing the parties. They therefore, I think, violate the First Amendment.[109]

To be sure, courts have at times concluded that pretrial restrictions on trial participants, aimed at preventing prospective jurors from learning too much about the case, may be upheld even if similar restrictions on third parties are not.[110] But even those restrictions are generally disfavored.[111] And the gag orders I describe are broader still than those restrictions, because they are potentially perpetual, rather than just lasting until trial.

Ct. Jan. 10, 2004), *aff'd*, Topheavy Studios, Inc. v. Doe, No. 03-05-00022-CV, 2005 WL 1940159, at *7 (Tex. App. Aug. 11, 2005) (not reaching the First Amendment challenge, on procedural grounds); Doe v. Swearingen, No. 18-cv-24145, 2019 WL 95548, at *6 (S.D. Fla. Jan. 3, 2019); Doe v. Dordt Univ., 5:19-cv-04082-CJW-KEM, at 2 (N.D. Iowa Mar. 3, 2020); Doe v. Trustee of Hamilton Coll., No. 6:22-cv-00214 (N.D.N.Y. Mar. 8, 2022) (docket entry); *see also* Ressler, *supra* note 15, at 829 (advocating for such orders); Doe No. 1 v. Fitzgerald, No. 20-cv-10713, 2021 WL 6104395, at *6, *8 (C.D. Cal. Oct. 28, 2021) (imposing such an order, in response to what the court characterized as the defendant's attempts at "harassment" of plaintiffs).

106. Doe v. Borderland Beat, No. 3:20-cv-06822, at *1 (N.D. Cal. Oct. 5, 2020); Eugene Volokh, *Media Outlets Forbidden from Identifying Recently Released Drug Cartel Ex-Boss as Plaintiff in Privacy Lawsuit*, VOLOKH CONSPIRACY (REASON) (Oct. 12, 2021), https://perma.cc/SS4V-AJAJ.

107. Doe v. Anonymous #1, No. 520605/2020 (N.Y. Sup. Ct. Kings Cty. Sept. 27, 2021) (treating earlier order, No. 520605/2020 (Feb. 23, 2021), as a gag order); Eugene Volokh, *Court Orders #MeToo Plaintiff Not to Mention Defendant's Name in Public*, VOLOKH CONSPIRACY (REASON) (Oct. 11, 2021), https://perma.cc/8Q86-G5PH.

108. *See* Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984); *cf.* Doe v. Del. Valley Sch. Dist., No. 3:21-cv-01178, at 3 (M.D. Pa. Oct. 27, 2021) (involving a *Seattle-Times*-like protective order barring defendants from publicizing the names that plaintiffs were required to disclose to defendants).

109. *See, e.g.*, Kilroy v. L.A. Unif. Sch. Dist., No. 13-cv-6373, 2016 WL 11758009, at *2–3 (C.D. Cal. Feb. 29, 2016) (concluding that proposed injunction barring plaintiff's speech was prior restraint, when it wasn't limited to information "produced in discovery"); R.W. v. Hampe, 626 A.2d 1218, 1223 (Pa. Super. Ct. 1993) (noting, and apparently agreeing with, defendant's argument "that his free speech rights have been subjected to a prior restraint by the trial court, as he cannot discuss the case by reference to appellee's full name"); Mayorga v. Ronaldo, No. 2:19-cv-00168-JAD-DJA, 2022 WL 741032, *5 (D. Nev. Mar. 11, 2022) ("For the Court to apply its protective order to documents a third party obtained independently from the discovery process would almost certainly raise the specter of government censorship." (cleaned up)), *report & recommendation adopted*, No. 2:19-cv-00168-JAD-DJA, 2022 WL 1015814 (D. Nev. Apr. 5, 2022).

110. *See, e.g.*, United States v. Brown, 218 F.3d 415, 428 (5th Cir. 2000); *In re* Dow Jones & Co., 842 F.2d 603, 612 (2d Cir. 1988); Neb. Press Ass'n v. Stuart, 427 U.S. 539, 564 (1976) (suggesting that gag orders on witnesses may be a suitable, less restrictive alternative to gag orders on nonparty newspapers). *But see In re* Murphy-Brown, LLC, 907 F.3d 788, 797 (4th Cir. 2018) (rejecting such a gag order).

111. The cases cited *supra* note 109 acknowledge that such restrictions are prior restraints and are presumptively unconstitutional.

5. Pseudonymity in One Case Leading to Pseudonymity in Too Many Others

The typical case is unlikely to draw much public attention. Allowing pseudonymity, or even sealing, in just that one case may thus not be seen as taking much away from the public's power to supervise the judicial process.

But courts are, of course, aware of their obligation to treat like cases alike. If they allow pseudonymity for one case, they must be prepared to allow it for similar cases. And if the case is seen as run-of-the-mill within its category, then allowing pseudonymity would imply that other cases in the category should be pseudonymized as well.

Courts often deny pseudonymity relying precisely on this concern.[112] For instance, in a disability discrimination case:

> Plaintiff offers no specific information suggesting that disclosure of his identity would expose him to a risk of physical or mental harm, relying instead on vague generalizations about risks that all civil rights plaintiffs bear . . . (explaining that civil rights plaintiffs are "sometimes thought of as troublemakers" . . .). It cannot be, however, that every plaintiff alleging . . . discrimination has the right to litigate . . . pseudonymously. A rule so broad would be inconsistent with both the plain language of Rule 10(a), and the federal courts' general policy favoring disclosure.[113]

Or in a case in which a state judge sued the FBI, claiming that the FBI improperly disclosed certain information about its criminal investigation of him and where he sought pseudonymity to avoid the reputational damage that would stem from further publicizing the investigation:

> If [the plaintiff's interest in reputation justified pseudonymity], then any defamation plaintiff could successfully move to seal a case and proceed by pseudonym, in order to avoid 'spreading' or 'republishing' the defamatory statement to the public. However, this is not the customary practice.[114]

Or in a sexual abuse case in which a defendant sought pseudonymity, arguing that, though he was innocent, the mere allegations would ruin his reputation:

> If, as J.C. suggests, these mere accusations are tantamount to an irreparable injury sufficient to outweigh the public's interests in open proceedings, then he is really asking us to effectively grant all defendants accused of sexual abuse in civil cases the right to defend anonymously, a result which hardly comports with a philosophy granting anonymity only in rare circumstances.[115]

I give many more examples in Appendix 6.

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112. *See, e.g.*, Doe v. United States, No. 1:20-cv-01052, 2020 WL 7388095, at *3, *5 (E.D. Cal. Dec. 16, 2020) ("This Court regularly sees similar allegations and Plaintiff has failed to show that his case is unusual"; this was said in a case involving a prisoner suing over an alleged assault by prison workers, where the prisoner claimed that publicly identifying him would risk retaliation).

113. Smith v. Patel, No. 09-cv-04947, 2009 WL 3046022, at *2 (C.D. Cal. Sept. 18, 2009).

114. Doe v. FBI, 218 F.R.D. 256, 259 (D. Colo. 2003).

115. T.S.R. v. J.C., 671 A.2d 1068, 1074 (N.J. Super. App. Div. 1996).

Of course, one possible answer is that we should allow pseudonymity to all these litigants—discrimination plaintiffs, libel and invasion of privacy plaintiffs, sexual abuse defendants, and the like. But so long as our legal system insists on generally naming parties, anyone seeking pseudonymity must explain how his case is different from everyone else's.

D. REDUCED VALUE TO THE PUBLIC: PURELY LEGAL CHALLENGES

The presumption against pseudonymity may be weakened when, "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."[116] This is particularly likely in facial challenges to government actions, where the litigant's identity is generally not important to analyzing the substantive questions (though it might bear on ancillary matters, such as the litigant's standing to bring the challenge).[117]

Many famous Supreme Court cases fit this mold, though they don't expressly discuss pseudonymity. They also generally involve topics that are seen as private or as risking improper retaliation against plaintiffs (since even in a purely legal challenge, pseudonymity is still an exception rather than the rule, and some positive justification for pseudonymity is required[118])—abortion in *Roe v. Wade*,[119] signing of an initiative petition in *Doe v. Reed*,[120] sex offender status in *Connecticut Dep't of Public Safety v. Doe*,[121] a highly controversial Establishment Clause challenge to football game prayer in *Santa Fe Indep. School Dist. v. Doe*,[122] and the like.

This position is also consistent with the court decisions dealing with libel plaintiffs' subpoenas aimed at identifying anonymous defendants. Courts have generally required such plaintiffs to show that their claims are at least legally plausible so that the subpoena is not used to unmask critics who are behaving

116. Doe v. Megless, 654 F.3d 404, 409 (3d Cir. 2011); *see also* Edwards, *supra* note 64, at 448.

117. *See, e.g.*, Publius v. Boyer-Vine, 321 F.R.D. 358, 365 (E.D. Cal. 2017); Doe v. Google LLC, No. 5:20-cv-07502, at 1 (N.D. Cal. Jan. 26, 2021); Doe v. Barrow Cty., 219 F.R.D. 189, 193 (N.D. Ga. 2003). For a similar case involving a lawsuit against a private entity, see *Gomez v. Buckeye Sugars*, 60 F.R.D. 106, 107 (N.D. Ohio 1973), which allowed temporary pseudonymity "until the Court determines whether the defendants . . . are joint employers of the plaintiffs," a matter as to which "all of the information that would determine this question is in the possession of the defendants."

118. *See, e.g.*, NRA, Inc. v. Bondi, No. 4:18-cv-137, 2018 WL 11014101, at *4 (N.D. Fla. May 13, 2018) ("Here, the NRA has not really identified any information of 'utmost intimacy' that would be revealed if Jane and John Doe were forced use their real names. All we know so far is that they're nineteen years old, they live in Florida, they're members of the NRA, they haven't been convicted of a felony, they haven't been adjudicated mentally defective, they want to buy firearms, and they want to support the NRA with this [Second Amendment] lawsuit.").

119. *See* Doe v. C.A.R.S. Prot. Plus, Inc., 527 F.3d 358, 371 n.2 (3d Cir. 2008) (expressly citing *Roe v. Wade* as "giv[ing] the practice [of pseudonymity] implicit recognition"), *clarified*, 543 F.3d 178, 179 (3d Cir. 2008).

120. 561 U.S. 186, 202 (2010).

121. 538 U.S. 1, 7–8 (2003).

122. 530 U.S. 290, 294 (2000).

perfectly legally.[123] While this legal question is being resolved, the defendant's identity is unimportant precisely because the underlying issues (for example, whether plaintiff's statements are opinion and therefore not actionable) don't turn on any facts that the defendants are asserting.

But once a sufficient legal case can be shown, and the matter comes down to a factual dispute (for instance, about whether the defendant spoke with "actual malice," or at least negligently), then the defendant can be identified to the plaintiff precisely so that the factual investigation can properly proceed.[124] And indeed the defendant's identity should then presumptively be made available to the public,[125] though that presumption can be rebutted.[126]

A few cases have likewise allowed pseudonymity until a motion to dismiss is decided,[127] presumably on the theory that such a motion likewise raises only questions of law and does not require any inquiry into the parties' credibility. But I have seen this only rarely, perhaps because some of the concerns about the unfairness of allowing anonymous plaintiffs to lodge serious factual accusations against named defendants arise as soon as the Complaint is filed, even if it is then dismissed in an opinion that doesn't decide whether the accusations are true.

E. FAIRNESS TO OPPONENT

1. Generally

Pseudonymity can also create a "risk of unfairness to the opposing party,"[128] even when—as I generally assume in this Article—the defendant knows the plaintiff's identity.[129] This is often articulated in general terms that would apply to most pseudonymity requests (except perhaps those in lawsuits against the government[130]):

> [F]undamental fairness suggests that defendants are prejudiced when required to defend themselves publicly before a jury while plaintiffs make accusations

123. *See, e.g.*, Doe v. Cahill, 884 A.2d 451, 454 (Del. 2005); Dendrite Intern. v. Doe No. 3, 775 A.2d 756, 760 (N.J. Super. Ct. App. Div. 2001); *In re* Does 1–10, 242 S.W.3d 805, 821 (Tex. Ct. App. 2007); Krinsky v. Doe 6, 159 Cal. App. 4th 1154, 1159 (2008).

124. *See, e.g.*, ZL Techs., Inc. v. Does 1–7, 13 Cal. App. 5th 603, 631 (2017).

125. Signature Mgmt. Team, LLC v. Doe, 876 F.3d 831, 837–39 (6th Cir. 2017).

126. Signature Mgmt. Team, LLC v. Doe, 323 F. Supp. 3d 954, 957–61 (E.D. Mich. 2018).

127. *See, e.g.*, Doe v. Wright State Univ., No. 3:16-cv-469, 2017 WL 3671240, at *9 (S.D. Ohio Aug. 24, 2017); Alma v. Noah's Ark Processors, LLC, No. 4:20-cv-3141, 2020 WL 7246602, at *2 (D. Neb. Dec. 9, 2020) (allowing anonymity while "this case is at an extremely early stage"—before defendant has even appeared in the case—but "reserv[ing] the right to readdress this issue should this case proceed to further stages"); Rural Cmty. Workers All. v. Smithfield Foods, Inc., 459 F. Supp. 3d 1228, 1228 n.1 (W.D. Mo. 2020) (likewise).

128. *In re* Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019).

129. Courts almost always insist that a defendant is entitled to know the plaintiff's identity. *See supra* note 25. Likewise, if a plaintiff sues defendants that are unknown to it, the plaintiff can usually get discovery of the defendants' identity, at least once the plaintiff shows some plausible claim for relief. *See supra* text accompanying notes 120–21.

130. *See infra* Part I.G.

> from behind a cloak of anonymity. C.D. actively has pursued this lawsuit—including by recruiting his co-plaintiff. He seeks over $40 million in damages. He makes serious charges and, as a result, has put his credibility in issue. Fairness requires that he be prepared to stand behind his charges publicly.[131]

More specifically, in a case where the plaintiff accused the defendant of having distributed revenge porn of plaintiff:

> [Plaintiff] has denied [defendant] Smith the shelter of anonymity—yet it is Smith, and not the plaintiff, who faces disgrace if the complaint's allegations can be substantiated. And if the complaint's allegations are false, then anonymity provides a shield behind which defamatory charges may be launched without shame or liability.[132]

2. Public Self-Defense

Plaintiffs' pseudonymity may also make it hard for defendants to defend themselves in public:

> The defendants . . . have a powerful interest in being able to respond publicly to defend their reputations [against plaintiff's allegations] . . . in . . . situations where the claims in the lawsuit may be of interest to those with whom the defendants have business or other dealings.
>
> Part of that defense will ordinarily include direct challenges to the plaintiff's credibility, which may well be affected by the facts plaintiff prefers to keep secret here: his history of mental health problems and his history of substance abuse. Those may be sensitive subjects, but they are at the heart of plaintiff's credibility in making the serious accusations he has made here. He cannot use his privacy interests as a shelter from which he can safely hurl these accusations without subjecting himself to public scrutiny, even if that public scrutiny includes scorn and criticism.[133]

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131. Rapp v. Fowler, 537 F. Supp. 3d 521, 531–32 (S.D.N.Y. 2021) (cleaned up); *see also* Appendix 5 (citing many cases, sorted by circuit); Balla, *supra* note 21, at 726 ("In tort cases, it may be difficult to justify allowing reputational harm to the defendant for being sued, while allowing the plaintiff to avoid reputational harm through pseudonym use."). *But see* Doe v. Tsai, No. 08-cv-1198, 2008 WL 11462908, at *3 (D. Minn. July 23, 2008) (expressly rejecting this argument, in case involving parents suing over allegedly false claims of abuse of their children); Doe v. Word of Life Fellowship, Inc., No. 11-cv-40077, 2011 WL 2968912, at *2 (D. Mass. July 18, 2011) (expressly rejecting this argument in case against alleged child molester); Doe v. Diocese Corp., 43 Conn. Supp. 152, 167–68 (Conn. Super. Ct. 1994) (likewise).

132. Doe v. Smith, 429 F.3d 706, 710 (7th Cir. 2005); *see also* United States v. Microsoft, 56 F.3d 1448, 1457 (D.C. Cir. 1995) ("Anonymity may well confer a kind of immunity which permits a plaintiff to hurl rhetorical weapons that could cause a unique kind of harm not faced in ordinary litigation."). Ressler, *supra* note 5, at 247–48, notes that publicly available court decisions denying plaintiffs pseudonymity might themselves injure the defendant's reputation, because they will name the defendants and describe the allegations against them. From there, the article concludes that, "courts concerned about fairness to defendants should be more liberal in permitting plaintiffs to bring their actions pseudonymously. Doing so will enable defendants to defend the charges brought against them and avoid the publication of unsubstantiated allegations." *Id.* at 248. But I don't think that's likely to be so—the "publication of unsubstantiated allegations" would still happen if the media cover the Complaint, if the Complaint is available online, or if future decisions in the case (say, on a motion to dismiss) lead to publicly available opinions.

133. Doe v. Ind. Black Expo., Inc., 923 F. Supp. 137, 142 (S.D. Ind. 1996) (paragraph break added); Doe v. Purdue Univ., No. 4:18-cv-72, 2019 WL 1960261, at *4 (N.D. Ind. Apr. 30, 2019) ; Doe v. Leonelli, No. 1:22-

Sometimes, as Part I.C.4 notes, pseudonymity orders are enforced with gag orders that do indeed prevent defendants from defending themselves against pseudonymous plaintiffs' allegations (or plaintiffs from defending themselves against allegations in pseudonymous defendants' counterclaims). And even in the absence of a gag order, I expect that few litigants would feel fully comfortable publicly identifying an adversary as to whom the judge had issued a pseudonymity order.[134] In entering the pseudonymity order, the judge has presumably concluded that identifying the plaintiff would be both harmful and not particularly valuable. It seems likely that the opposing party's publicly identifying the victim, even if not forbidden by the letter of the order, would be seen as defying its spirit. And a litigant whose case will be supervised by that judge might be reluctant to engage in anything that can be perceived as defiance.[135]

3. Effect on Settlement Value of Case

Allowing one side to be pseudonymous can change the settlement value of the case. Courts recognize this, and sometimes give it as a justification against pseudonymity: "[S]ome cases suggest that a court should consider whether allowing a party to proceed under a pseudonym will create an imbalance in settlement negotiating positions."[136] Likewise,

> Defendants contend that anonymity creates an imbalance when it comes to settlement negotiations: While a publicly accused defendant might be eager to settle in order to get its name out of the public eye, a pseudonymous plaintiff might hold out for a larger settlement because they face no such reputational risk. . . . Allowing Plaintiff to proceed anonymously would put Defendants at a genuine disadvantage [and cause significant prejudice], particularly when it comes to settlement leverage.[137]

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cv-03732-CM, 2022 WL 2003635, at *5 (S.D.N.Y. June 6, 2022). Courts sometimes try to minimize this unfairness by allowing plaintiffs to be pseudonymous but threatening to revoke that if, for instance, plaintiff "attempts to gain an advantage through the use of the media, including social media," by "further unnecessary dissemination of public comment about this case." Doe 1 v. George Wash. Univ., 369 F. Supp. 3d. 49, 68 n.9 (D.D.C. 2019).

134. *See supra* Part I.C.4.

135. *Cf.* Vargas v. LaBella, No. CV0650019415, 2007 WL 155158, at *4 n.6 (Conn. Super. Ct. Jan. 2, 2007) (considering media coverage of a case as a basis to deny pseudonymity, but generally warning litigants in future cases that "[a]n outcome where parties intentionally seek publication of sensitive details" in order to avoid pseudonymity "would not serve the public or parties' interests, particularly in cases involving sexual molestation charges brought by children").

136. Doe v. MacFarland, 117 N.Y.S.3d 476, 497 (Sup. Ct. 2019); Doe v. McLellan, No. 20-cv-5997, 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020).

137. Doe v. Fedcap Rehab. Servs., Inc., No. 17-cv-8220, 2018 WL 2021588, at *3 (S.D.N.Y. Apr. 27, 2018); *see also* Doe v. Zinsou, No. 19-cv-7025, 2019 WL 3564582, at *7 (S.D.N.Y. Aug. 6, 2019); Doe v. Gooding, No. 20-cv-06569-PAC, 2022 WL 1104750, at *7 (S.D.N.Y. Apr. 13, 2022) (noting this, though ultimately allowing pseudonymity, at least until trial).

Of course, one could also say that the non-pseudonymity default itself causes improper settlement leverage, which pseudonymity might solve.[138] Say, for instance, that David Defendant is in a field where even the accusation (however unfounded) of some misconduct would mean massive financial cost. Paul Plaintiff's threatening to file a *Paul v. David* lawsuit might yield an unfairly inflated settlement compared to *Paul v. Doe* (where David could defend himself on the merits, and perhaps win without the allegations being disclosed) or even compared to a fully pseudonymous *Poe v. Doe* (since pseudonymity wouldn't help Paul much).

Conversely, say Polly Plaintiff wants to sue Donna Defendant for discrimination based on Polly's mental illness, but is reasonably fearful that disclosing the mental illness would ruin her future employment prospects. In pre-filing negotiations, Donna (who might not worry too much about publicity related to allegations that she discriminated this way) may know that Paula dreads the publicity and may be able to settle the case for a pittance, even if Paula has a solid case on the law. Paula's being able to file a *Poe v. Donna* lawsuit or even a *Poe v. Doe* lawsuit would then yield a likely settlement value that's more in line with the expected value of the case at trial.

It's not clear in general, then, whether non-pseudonymous litigation yields fairer settlement values than pseudonymous litigation. But it seems clear that pseudonymity can change settlement values in many cases, for better or for worse.

4. Mutual Pseudonymity as a Solution?

Of course, the fairness concern could be satisfied by allowing both parties to be pseudonymous. Some courts have indeed taken that view: "[I]f the plaintiff is allowed to proceed anonymously, . . . it would serve the interests of justice for the defendant to be able to do so as well, so that the parties are on equal footing as they litigate their respective claims and defenses."[139] "If we are to have a policy of protecting the names of individual litigants from public disclosure,

138. *See, e.g.*, Balla, *supra* note 21, at 696.

139. Doe v. Doe, No. 20-cv-5329, 2020 WL 6900002, at *4 (E.D.N.Y. Nov. 24, 2020); *see also* Roe v. Doe, No. 18-cv-666, 2019 WL 1778053, at *3 (D.D.C. Apr. 23, 2019); Doe v. Smith, No. 119-cv1121, 2019 WL 6337305, at *2–3, *3 n.1 (N.D.N.Y. Nov. 27, 2019). Conversely, if someone claiming to have been falsely accused of sexual assault tries to sue pseudonymously, but names either the accuser or the defendants, courts seem less likely to go along. *See, e.g.*, Doe v. Garland, No. 1:22-cv-00722, at 5–6 (D.D.C. Mar. 10, 2022); Doe v. Va. Polytech. Inst., No. 7:21-cv-00306, 2022 WL 67324, at *3 (W.D. Va. Jan. 6, 2022); Ayala v. Butler Univ., No. 1:16-cv-1266, at 6 (S.D. Ind. Jan. 8, 2018). Compare *Doe v. Ind. Univ.*, No. 1:19-cv-02204 (S.D. Ind. Oct. 2, 2019), where the judge who decided *Ayala* nonetheless allowed plaintiff to proceed pseudonymously, distinguishing *Ayala* in part on the grounds that "the plaintiff's complaint here respects the privacy interests of others in ways the complaint in *Ayala* had not."

there is a very substantial interest in doing so on a basis of equality."[140] Others have cited fairness as a basis for rejecting pseudonymity for either party.[141]

But of course, such mutual pseudonymity, while providing more protection to the parties' privacy and reputations, also undermines public access still more. Imagine being a reporter who has to write about a *Doe v. Roe* lawsuit, with no ability to track down people who can offer the story behind the case (except to the extent that the lawyers are willing to provide access to those people)—you could still see the allegations, the parties' arguments, and the court's decisions, but without any ability to independently investigate the facts. And of course, if that is accepted as the norm in, say, sexual assault lawsuits (or libel lawsuits over allegations of sexual assault), whole areas of the law could become difficult for the media and the public to monitor, outside the constrained accounts of the facts offered up by judges and lawyers. This may be a reason why such mutual pseudonymity is so rare.[142]

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140. Doe v. City of New York, 201 F.R.D. 100, 102 (S.D.N.Y. 2001); *see also* B.R. v. F.C.S.B., No. 1:19-cv-00917RDATCB, 2020 WL 12435689, at *24 (E.D. Va. Mar. 10, 2020) ("[T]his Court will do what Plaintiff's counsel should have done at the outset of this litigation, and order that, from this point forward, in this litigation, each party will be referred to by the initials set forth on page one of this Order. The Court recognizes the seriousness of the alleged offenses and the wide-ranging ramifications that these accusations may hold for each of the named parties. The Court finds it necessary to not only protect the privacy interests of the accuser, but also the accused."), *aff'd as to other matters*, 17 F.4th 485 (4th Cir. 2021); Doe v. Am. Fed. of Gov't Emp., No. 1:20-cv-01558, at 6 n.2 (D.D.C. June 19, 2020); Doe v. Anonymous #1, No. 520605/2020E (N.Y. Sup. Ct. Kings Cty. Feb. 24, 2021); Affidavit in Support of Defendants' Motion to Dismiss the Complaint, *id.* (Dec. 21, 2020); Doe v. Moravian College, No. 5:20-cv-00377, at 2 (E.D. Pa. Jan. 11, 2021); Doe v. Smith, 105 F. Supp. 2d 40, 43–44 (E.D.N.Y. 1999); Doe v. Immaculate Conception Church Corp., No. CV09-501-1968, 2009 WL 4845449, at *1 (Conn. Super. Ct. Sept. 22, 2009); Doe v. Doe, No. CV146015861S, 2014 WL 4056717, at *2 (Conn. Super. Ct. Ansonia-Milford Dist. July 9, 2014); Doe v. Weill Cornell Medical College of Cornell Univ, No. 1:16-cv-03531, at *1 (S.D.N.Y. May 12, 2016) (so providing "as a temporary measure," but the order was apparently never modified during the six months while the case was being litigated between filing and settlement); Doe v. Tenzin Masselli, No. MMXCV145008325, 2014 WL 6462077, at *2 (Conn. Super. Ct. Oct. 15, 2014) (endorsing such mutual pseudonymity in principle, but rejecting it when the defendant had already pleaded no contest to a criminal charge arising out of the same facts); Notice of Removal, Doe v. Tyler Clementi Found., No. 2:20-cv-05202-JWF-PVC, Exh. A (C.D. Cal. June 11, 2020) (containing Complaint, No. 19STCV43398 (Cal. Super. Ct. L.A. Cty. filed Dec. 3, 2019)) (progressing with the individual defendant being pseudonymous, though without an explicit court decision allowing this); *see also* Milani, *supra* note 8, at 1698–1706 (arguing for such mutual pseudonymity, at least "until judgment is entered" in cases against "defendants accused of stigmatizing intentional torts").

141. A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 501 (App. Div. 1995) (noting that the state high court had concluded that "a sexual harassment plaintiff" would not be pseudonymized, so "there is no reason in logic or law that a perpetrator [of sexual misconduct, such as exhibitionism,] should be protected, when a victim is not").

142. *See, e.g.*, Doe v. Doe, 189 A.D.3d 406, 406–07 (N.Y. App. Div. 2020) (allowing pseudonymity for such a plaintiff but rejecting it for the defendant); Doe v. Diocese Corp., 43 Conn. Supp. 152, 163–64 (1994) ("In the instance where a plaintiff presents a credible case for anonymity based on neither economic harm nor on hope of gain but, rather, on concerns for substantial privacy interests, the court should not consider whether it might give the same relief to the defendant. To do so unfairly treats the privacy claim and allows the introduction of considerations having no relevance to the merits of the plaintiff's particular claim, which should stand or fall on its own."); Doe v. Purdue Univ., No. 4:18-cv-89, 2019 WL 1757899, at *6 (N.D. Ind. Apr. 18, 2019) (likewise).

F. ACCURACY AND EFFICIENCY OF THE JUDICIAL PROCESS

Pseudonymity can also cause difficulties in the judicial process, especially as the case gets closer to trial.

1. Encouraging Party Honesty in Testimony or Affidavits

A named witness, including a party witness, "may feel more inhibited than a pseudonymous witness from fabricating or embellishing an account."[143]

> It is one thing to accuse someone of something anonymously; it is quite another to do so out in the open. Anonymity makes people feel less restrained in what they say. *See, e.g.*, The Internet. Speaking behind a curtain can create a false sense of security, tempting whoever-they-are to say things that they wouldn't say if everyone knew who was talking. People tend to be a little more careful about what they say and write when they have to put their name to it. (Judges are no exception.)[144]

"'Public access creates a critical audience and hence encourages truthful exposition of facts, an essential function of a trial.'"[145]

And if the party witness is not telling the truth, "there is certainly a countervailing public interest in knowing the [witness's] identity."[146] It's hard to tell the extent of this tendency, but it probably exists in some measure.

2. Drawing in Witnesses

When the Court recognized a public right of access to criminal trials, in *Richmond Newspapers, Inc. v. Virginia*, it noted the possibility that such publicity can cause otherwise unknown witnesses to come forward.[147] Witnesses might likewise come forward in a civil case: "It is conceivable that witnesses, upon the disclosure of Doe's name, will 'step forward [at trial] with valuable information about the events or the credibility of witnesses.'"[148] And if only one

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143. Doe v. Delta Airlines Inc., 310 F.R.D. 222, 225 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016); Roe v. Does 1–11, No. 20-cv-3788, 2020 WL 6152174, at *3 (E.D.N.Y. Oct. 14, 2020); Lawson v. Rubin, No. 17-cv-6404, 2019 WL 5291205, at *3 (E.D.N.Y. Oct. 18, 2019); Doe v. Zinsou, No. 19-cv-7025, 2019 WL 3564582, at *7 (S.D.N.Y. Aug. 6, 2019); San Bernardino Cty. Dep't of Pub. Soc. Servs. v. Super. Ct., 232 Cal. App. 3d 188 (1991); *see also* Doe v. McLellan, No. 20-cv-5997, 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020) ("defendants would not be able to fully and adequately cross-examine the plaintiff" because of plaintiff's anonymity); Doe v. Gooding, No. 20-cv-06569-PAC, 2022 WL 1104750, at *7 (S.D.N.Y. Apr. 13, 2022) (stating that "at trial, [a plaintiff's] anonymity could affect witness confrontation, evidence presentation, and jury perception," citing *Doe v. Delta Airlines Inc.*). *But see* Doe v. Smith, 105 F. Supp. 2d 40, 45 n.8 (E.D.N.Y. 1999) ("While the court's order authorizes the plaintiff to proceed under a pseudonym, it does not prevent the defendant from cross-examining the plaintiff regarding her professional activities either in a deposition or at trial.").

144. *In re* Boeing 737 MAX Pilots Litig., No. 1:19-cv-5008, 2020 WL 247404, at *2 (N.D. Ill. Jan. 16, 2020).

145. Doe v. Byrd, No. 1:18-cv-00084, at 12 n.7 (M.D. Tenn. Dec. 17, 2019) (quoting Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165, 1177 (6th Cir. 1983) (a case involving sealing rather than pseudonymity)).

146. Roe v. Does 1–11, No. 20-cv-3788, 2020 WL 6152174, at *5 (E.D.N.Y. Oct. 14, 2020).

147. Richmond Newspapers, Inc. v. Virginia., 448 U.S. 555, 596–97 (1980) (Brennan, J., concurring).

148. Doe v. Delta Airlines, Inc., 310 F.R.D. 222, 225 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016); *see also* Ramsbottom v. Ashton, No. 3:21-CV-00272, 2021 WL 2651188, at *5 (M.D. Tenn. June 28,

side is pseudonymous, "information about only [the other] side may thus come to light."[149] At the same time, such claims are by their nature hypothetical, and some judges view them as too speculative.[150]

3. Avoiding Alienating Prospective Witnesses Through Gag Orders

A party will often need to disclose a pseudonymous adversary's identity in conducting discovery. If you want to ask a witness questions about the plaintiff, you must mention the plaintiff's name. But if the court really wants to keep the plaintiff's identity secret, then the witness would have to be put under some sort of protective order to remain quiet about that identity as well.[151]

Many people are likely to resist becoming witnesses if that means agreeing to a protective order, at least if they have no personal stake in the matter. Legally enforceable confidentiality obligations are a burden, especially when the obligation relates to an acquaintance. If you learn that your colleague Mary Jones has accused your mutual employer of sexual harassment, you may not want to be legally bound to indefinitely keep that secret fact segregated from everything else that you know about Jones and that you might say about her to coworkers or friends.

2021); Rapp v. Fowler, 537 F. Supp. 3d 521, 531 (S.D.N.Y. May 3, 2021); Doe v. Leonelli, No. 1:22-cv-03732-CM, 2022 WL 2003635, at *5 (S.D.N.Y. June 6, 2022); Roe v. Does 1–11, No. 20-cv-3788, 2020 WL 6152174, at *3 (E.D.N.Y. Oct. 14, 2020); Doe v. Del Rio, 241 F.R.D. 154, 159 (S.D.N.Y. 2006); San Bernardino Cty. Dep't of Pub. Soc. Servs. v. Super. Ct., 232 Cal. App. 3d 188, 202 (1991); Steinman, *supra* note 76, at 19; *see also* Doe v. MacFarland, 117 N.Y.S.3d 476, 495 n.18 (Sup. Ct. 2019) (noting that pseudonymity could harm even the pseudonymous party this way, though allowing pseudonymity nonetheless).

149. *Doe v. Del Rio*, 241 F.R.D. at 159; *Rapp*, 537 F. Supp. 3d at 531; Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *5 (M.D. Tenn. June 28, 2021).

150. Doe v. Purdue Univ., No. 4:18-cv-00072, 2019 WL 1960261, at *4 (N.D. Ind. Apr. 30, 2019); *see also* Ressler, *supra* note 5, at 223 ("At least in civil litigation, the notion [that open trials help bring out witnesses] seems rather archaic, even quaint, in this era of wide-ranging discovery. . . . With the net cast so wide [by disclosure obligations and discovery] from the very start of the litigation, it seems unlikely that any potential witness would have escaped it, only to appear voluntarily and spontaneously upon reading press accounts of the case.").

151. *See, e.g.*, *Rapp*, 537 F. Supp. 3d at 531 (discussing would-be pseudonymous plaintiff's suggestion that defendant be allowed "to use and disclose [plaintiff]'s name for discovery purposes on the condition that anyone who becomes privy to his identity would be obliged to keep it confidential"); C.S. v. Choice Hotels Int'l, Inc., No. 2:20-cv-635, 2021 WL 2792166, at *13 (M.D. Fla. June 11, 2021) (approving of such an order), *report & recommendations rejected*, *id.* (M.D. Fla. Sept. 14, 2021) (rejecting such an order because "requiring the written agreement of potential witnesses before *any* disclosures can be made would significantly hamper defendants' ability to investigate"); J.C. v. Choice Hotels Int'l, Inc., No. 20-cv-00155, 2021 WL 1146406, at *6 (N.D. Cal. Mar. 4, 2021) (approving of such an order); Doe v. Topheavy Studios, Inc., No. GN404142, 2004 WL 5353369 (Tex. Dist. Ct. Jan. 10, 2004) (issuing such an order), *aff'd*, No. 03-05-00022-CV, 2005 WL 1940159, at *7 (Tex. App. Aug. 11, 2005); Doe v. PreCheck Inc., No. 21-cv-01129, at 1–2 (D. Ariz. Sept. 30, 2021) (issuing such an order); Does v. Whitmer, No. 2:22-cv-10209-MAG-CI, at 2 (E.D. Mich. May 26, 2022) (issuing such an order); Doe No. 2 v. Kolko, 242 F.R.D. 193, 199 (E.D.N.Y. 2006) (issuing such an order); Ressler, *supra* note 15, at 829 (advocating for such orders).

Of course, a court might also conclude that simply pseudonymizing the party in court papers would suffice even without a gag order on witnesses, on the theory that it's unlikely that witnesses will widely publicize the party's name. *See, e.g.*, Doe v. Topheavy Studios, Inc., 2005 WL 1940159, at *7 (rejecting claim that pseudonymization order will interfere with interviewing witnesses, and not mentioning any gag order on the witnesses), *aff'g*, 2004 WL 5353369 (discussing gag order on the party but not mentioning any gag order on witnesses).

We lawyers must keep such secrets about people as part of our jobs, but we're used to it, and we're handsomely compensated for it—not so for prospective witnesses, who may already be skittish about the justice system. And having to incur such an obligation without compensation may be enough to deter some witnesses from testifying.[152]

This concern has discouraged some courts from allowing pseudonymity. In one of the sexual assault lawsuits against Harvey Weinstein, for instance, the court reasoned:

> The Court cannot accept Plaintiff's "mere speculation" that Weinstein's defense would not be prejudiced by the condition that he "not disclose her name to the public," with no clear definition of what would constitute disclosure to "the public." Plaintiff implicitly concedes that Weinstein might need to disclose her name to at least some third parties, since she appears to suggest that he redact her name from witness depositions.[153]

In another case, the court reasoned,

> Having Plaintiff remain anonymous will prejudice Defendants' ability to test the credibility of and rebut Plaintiff's claims of humiliation, shame, embarrassment, fear, and emotional distress. For example, if Plaintiff remains anonymous, Defendants are unable to question Plaintiff's friends, classmates, family, and others concerning his claims of emotional distress, humiliation, shame, and fear. Without identifying Plaintiff, Defendant could not possibly test his credibility or his claims through other people.[154]

4. Allowing Class Members to Evaluate Class Representative

Some courts have rejected pseudonymity for would-be class representatives on the grounds that it "may . . . preclude potential class members

152. *See, e.g.*, S.Y. v. Choice Hotels Int'l, Inc., No. 2:20-cv-00602, 2021 WL 4167677, at *4–5 (M.D. Fla. Sept. 14, 2021) (rejecting such witness gag orders, apparently based on concerns about "a situation where an acquaintance or family member of plaintiff would need to sign an agreement prohibiting them from ever revealing information related to plaintiff's identity, thus making it impracticable and likely to deter witnesses," or "a potential witness [being] asked to agree to be bound by a Court order without knowing what information he or she was agreeing to maintain confidential or even whether he or she had knowledge of information that should be maintained as confidential"); Hurvitz v. Hoefflin, 84 Cal. App. 4th 1232, 1245 (2000) (rejecting a confidentiality order aimed at protecting material covered by the physician-patient privilege, because "Every third party witness must be shown the order, and agree to be bound thereby, before counsel can interview them about the case. Thus, unless a witness agrees to voluntarily have his or her right of free speech curtailed on penalty of contempt of court, he or she may not be interviewed or deposed. This burden on the parties' ability to freely communicate with witnesses and potential witnesses is not justified, even by the patients' right to privacy.").

153. Doe v. Weinstein, 484 F. Supp. 3d 90, 97 (citing Michael v. Bloomberg L.P., No. 14-cv-2657, 2015 WL 585592, at *4 (S.D.N.Y. Feb. 11, 2015)). For more generally phrased concerns that plaintiff pseudonymity may interfere with defendants' discovery, see Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118, 1125 (10th Cir. 1979); Doe v. McLellan, No. 20-cv-5997, 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020); De Angelis v. Nat'l Ent. Grp. LLC, No. 2:17-cv-00924, 2019 WL 1071575, at *4 n.1 (S.D. Ohio Mar. 7, 2019); Doe v. Tr. of Ind. Univ., No. 1:21-cv-02903, 2022 WL 36485, at *7 (S.D. Ind. Jan. 3, 2022).

154. Doe v. Byrd, No. 1:18-cv-00084, at 12 (M.D. Tenn. Dec. 17, 2019).

from properly evaluating the qualifications of the class representative."[155] Others have disagreed.[156]

5. Preventing Jury Prejudice

Letting a party testify pseudonymously might also prejudice the jury, by "risk[ing] . . . giving [the party's] claim greater stature or dignity,"[157] or by implicitly "tarnish[ing]" a defendant by conveying to the jury "the unsupported contention that the [defendant] will seek to retaliate against [the plaintiff]."[158] And it could also make "witnesses, who know Plaintiff by her true name, . . . come across as less credible if they are struggling to remember to use Plaintiff's pseudonym."[159] Query whether these risks could be minimized through suitable jury instructions.[160]

6. Preventing Confusion and Lack of Witness Credibility

Especially in oral testimony, pseudonyms can confuse witnesses and thus jurors. To quote one such case,

> [In depositions,] "Moira Hathaway" could not recall her pseudonym's first name, and "Hillary Lawson" could not recall her close friend and co-plaintiff's pseudonym. . . . "[C]onduct[ing] a trial in such an atmosphere, all the while using pseudonyms, promises trouble and confusion." In the event a witness inadvertently testified to a plaintiff's real name, the Court would have to immediately excuse the jury in the middle of critical testimony, admonish the

155. *See* Michael v. Bloomberg L.P., No. 14-cv-2657, 2015 WL 585592, at *4 (S.D.N.Y. Feb. 11, 2015); *In re* Ashley Madison Customer Data Security Breach Litig., MDL No. 2669, 2016 WL 1366616, at *4 (E.D. Mo. Apr. 6, 2016); Doe v. City of Indianapolis, No. 1:06-cv-865, 2006 WL 2289187, at *3 (S.D. Ind. Aug. 7, 2006); Sherman v. Trinity Teen Sols., Inc., 339 F.R.D. 203, 206 (D. Wyo. 2021); Doe v. U.S. Healthworks Inc., No. 15-cv-05689, 2016 WL 11745513, at *6 (C.D. Cal. Feb. 4, 2016).

156. *See* Doe v. City of Apple Valley, No. 20-cv-499, 2020 WL 1061442, at *3 (D. Minn. Mar. 5, 2020); Roe v. Operation Rescue, 123 F.R.D. 500, 505 (E.D. Pa. 1988); Doe v. Mundy, 514 F.2d 1179, 1181–82 (7th Cir. 1975).

157. Lawson v. Rubin, No. 17-cv-6404-BMC-SMG, 2019 WL 5291205, at *3 (E.D.N.Y. Oct. 18, 2019); James v. Jacobson, 6 F.3d 233, 240–41 (4th Cir. 1993); Doe v. Delta Airlines, Inc., 310 F.R.D. 222, 225 (S.D.N.Y. 2015) ("As many jurors and any reader of New York area newspapers surely would be aware, parties to lawsuits routinely contend, at trial, with disclosure of embarrassing incidents such as public intoxication—indeed, trials commonly bring to light far more prejudicial, damning, and colorful episodes. Were Doe permitted to proceed on a no-name basis, one or more jurors might conclude that she, for unknown reasons, merited extra-solicitous treatment. This might skew the jury's assessment of Doe's credibility and her claims."), *aff'd*, 672 F. App'x 48 (2d Cir. 2016); Doe v. Rose, No. 15-cv-07503, 2016 WL 9150620, at *3 (C.D. Cal. Sept. 22, 2016); Doe v. Cabrera, 307 F.R.D. 1, 10 (D.D.C. 2014); EEOC v. Spoa, LLC, No. CCB-13-1615, 2013 WL 5634337, at *3 (D. Md. Oct. 15, 2013); Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 68 n.8 (D.D.C. 2019); Doe v. Tr. of Ind. Univ., No. 1:21-cv-02903, 2022 WL 36485, at *7 (S.D. Ind. Jan. 3, 2022); Doe v. Ayers, 789 F.3d 944, 946 (9th Cir. 2015) (dictum); Doe v. Gooding, No. 20-cv-06569-PAC, 2022 WL 1104750, at *7 (S.D.N.Y. Apr. 13, 2022) (stating that "at trial, [a plaintiff's] anonymity could affect witness confrontation, evidence presentation, and jury perception," citing *Doe v. Delta Airlines Inc.*).

158. Tolton v. Day, No. 19-cv-945, 2019 WL 4305789, at *4 (D.D.C. Sept. 11, 2019); A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 504 (App. Div. 1995).

159. Doe v. Elson S Floyd Coll. of Med. at Wash. State Univ., No. 2:20-cv-00145, 2021 WL 4197366, at *3 (E.D. Wash. Mar. 24, 2021).

160. *See James*, 6 F.3d at 242 (reasoning that they could be).

> witness, and provide a limiting instruction, which may signal to the jury that either the attorney or the witness acted improperly.[161]

And "a witness's credibility in front of the jury may be undermined by unnatural demeanor" if the witness must deal with a pseudonym (or, worse, multiple pseudonyms):[162]

> Defendants would have to memorize and recall the pseudonyms of six plaintiffs, while attempting to remember their past experiences with those separate plaintiffs whom defendants knew by another name—in a matter of milliseconds during cross-examination. Although testifying may be stressful in and of itself, attempting to testify while using pseudonyms may lead to frequent unnatural pauses, unintentional mistakes, or confusion. Despite a defendant's best efforts to be honest, a juror may be inclined to disbelieve a defendant who appears to be evasive, fabricating testimony, or minimizing behavior while under oath, when in reality, the witness may simply be trying to abide by the Court's order . . . to use pseudonyms. In short, a witness's credibility in front of the jury may be undermined by unnatural demeanor.[163]

Likewise, in a student lawsuit over a medical school's disciplinary actions, the court agreed that, "witnesses, who know Plaintiff by her true name, may come across as less credible if they are struggling to remember to use Plaintiff's pseudonym."[164]

7. Protecting Parties' Abilities to Research Each Other's Past Cases

If you are sued, one of the first things you might want to do is look up any other lawsuits the plaintiff has filed to see if they may reveal some facts that might be relevant to this case. Has the plaintiff made similar allegations in other cases?[165] Has the plaintiff made allegations arising out of the same fact pattern, which might bear on the allegations against you? For instance, might a plaintiff who claims an injury from your product have already sued someone else over the same injury, claiming that it was the result of an accident or of medical malpractice?

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161. Lawson v. Rubin, No. 17-cv-6404, 2019 WL 5291205, at *3 (E.D.N.Y. Oct. 18, 2019) (quoting Guerrilla Girls, Inc. v. Kaz, 224 F.R.D. 571, 572, 575 (S.D.N.Y. 2004), which expressed a similar concern). Alternatively, depositions could be conducted without pseudonyms, but then the deposition transcripts could be redacted, but that would cause its own problems. "In a practical sense, anonymous litigation imposes great burdens on all involved—parties, attorneys, witnesses, and court staff—to ensure that the anonymous party's identity is never actually revealed. Exhibits that identify the anonymous party by name must be carefully redacted . . . deposition transcripts must be extensively sanitized to substitute the pseudonym for the party's real name. . . ." Peru v. T-Mobile USA, Inc., No. 10-cv-01506-MSK-BNB, 2010 WL 2724085, at *2 (D. Colo. July 7, 2010).

162. *Id.*

163. *Id.*

164. Doe v. Elson S Floyd Coll. of Med. at Wash. State Univ., No. 2:20-cv-00145, 2021 WL 4197366, at *3 (E.D. Wash. Mar. 24, 2021).

165. *See, e.g.*, Affidavit of Dawn Ceizler, Luo v. Wang, No. 1:20-cv-02765-RMR-MEH, at ¶ 2 (D. Colo. May 24, 2022).

Were there some findings in those lawsuits that might have collateral estoppel effects? Did the plaintiff make some statements that could be viewed as judicial admissions,[166] or could in any event undermine the plaintiff's case? Did the plaintiff say something about his domicile, for instance, that might be relevant to whether his citizenship is diverse from yours?[167] Might either the written opinions in some of the past cases, or a conversation with the plaintiff's opposing counsel in some of those cases,[168] offer a helpful perspective on facts that may bear on the plaintiff's credibility or other traits?[169]

Conversely, if you are a plaintiff, you might want to research the defendant: Have there been past verdicts against the defendant in similar cases? Has the defendant you are suing for malpractice or sexual harassment, for instance, been found liable in similar cases before? You might be able to check the records of the cases to see what relevant facts might have emerged, or consult with other plaintiffs to see if they are at liberty to tell you anything helpful.

But if the plaintiff's or defendant's past cases have been pseudonymous, that information may be largely unavailable (at least until you ask for information about the party's past cases in discovery,[170] and the party accurately answers). And in particular, "without [a party's] identity in the public record, it is difficult to apply legal principles of res judicata and collateral estoppel"[171]—

166. *Cf.* Ergo Sci., Inc. v. Martin, 73 F.3d 595, 598 (5th Cir. 1996) ("[J]udicial estoppel prevents a party from asserting a position . . . contrary to a position taken in . . . some earlier proceeding," when "a court has relied on the position urged.").

167. *See, e.g.*, Ceglia v. Zuckerberg, 772 F. Supp. 2d 453, 456 n.1 (W.D.N.Y. 2011) ("Having successfully persuaded a different federal district court that his domicile as of September 2004 was New York, [Facebook founder Mark] Zuckerberg would be judicially estopped from denying otherwise now."); Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC, 692 F.3d 983, 1000 (9th Cir. 2012) (likewise); Techno-TM, LLC v. Fireaway, Inc., 928 F. Supp. 2d 694, 698 (S.D.N.Y. 2013) (likewise, as to less famous litigants); Sarauw v. Fawkes, 66 V.I. 253, 268–69 (2017) (citing other such cases); Drake v. U.S. Freedom Cap., LLC, No. 1:20-CV-03935, 2021 WL 3566859, at *9 (N.D. Ga. Aug. 12, 2021) (noting that, "By assuming a barrage of pseudonyms . . . Drake has flooded state and federal courts in numerous jurisdictions with a myriad of baseless complaints," and noting that plaintiff's domicile claims in some of his many cases contradicted the claims in other cases).

168. Thanks to Megan Gray for pointing this out.

169. To quote one lawyer (Jonathan Haderlein) with whom I discussed this, in one case "we were researching a named plaintiff to see if they had a history of frivolous litigation and found a district court's opinion describing them as unreliable." *See also* Bormuth v. Cty. of Jackson, 870 F.3d 494, 524–25 (6th Cir. 2017) (en banc) (Sutton, J., concurring) ("Other materials, including lower court decisions mentioned in one of the amicus briefs, . . . show why the council members became frustrated with Mr. Bormuth and confirm that this frustration had little to do with his religious beliefs and more to do with his methods of advocacy. This was not his first legal grievance, to put it mildly.").

170. *Cf.* Green v. Seattle Art Museum, No. 07-cv-00058, 2008 WL 624961, at *2 (W.D. Wash. Feb. 8, 2008) ("*Interrogatory No. 1: Any other names or pseudonyms which have been used by Plaintiff and their times and places of use.* Given Plaintiff's string of 15 lawsuits in this court (including two against the Museum), Defendant is entitled to develop a possible defense of vexatious litigation. Defendant is permitted to request this information for the purposes of investigating whether Plaintiff has filed lawsuits under any other names, and also to develop information on Plaintiff's character for truthfulness.").

171. Femedeer v. Haun, 227 F.3d 1244, 1246 (10th Cir. 2000); Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118, 1125 (10th Cir. 1979); Roe v. Ingraham, 364 F. Supp. 536, 541 n.7 (S.D.N.Y. 1973); *see also* Doe v. Univ. of Louisville, No. 3:17-cv-00638, 2018 WL 3313019, at *3 (W.D. Ky. July 5, 2018); Doe v. Ky. Cmty. & Tech. Coll. Sys., No. 20-cv-00006, 2020 WL 495513, at *2 (E.D. Ky. Jan. 30, 2020), *reconsideration denied*, No. 20-

or to apply judicial estoppel, or to similarly check whether the party's past factual assertions and legal positions are consistent with their current ones.

8. Facilitating Tracking of Vexatious Litigants

Courts and litigants often recognize that a litigant in the case before them is vexatious by searching for past cases filed by the litigant in various courts.[172] That becomes impossible or at least much harder if the past cases were pseudonymous.[173] As one court put it, in rejecting a pseudonymity motion,

> Plaintiff fails to address the public's right to know who is filing lawsuits. For example, Plaintiff's identity is relevant also for tracking vexatious litigants.[174]

And another likewise rejected an attempt to retroactively pseudonymize a case—something the plaintiff had tried to do, with varying degrees of success, as to many cases—on the grounds that,

> Plaintiff's collection of sealed court orders, that he has filed here under seal [to support his request to seal and pseudonymize], shows only that plaintiff has engaged in campaign to conceal his litigation history across the country. Plaintiff's behavior may make it more difficult for other courts (and the

cv-00006, 2020 WL 998809 (E.D. Ky. Mar. 2, 2020); Free Mkt. Comp. v. Commodity Exch., Inc., 98 F.R.D. 311, 313 (S.D.N.Y. 1983); EW v. New York Blood Ctr., 213 F.R.D. 108, 110 (E.D.N.Y. 2003). *But see* Osrecovery, Inc. v. One Groupe Int'l, Inc., No. 02-cv-8993, 2003 WL 23313, at *3 (S.D.N.Y. Jan. 3, 2003) (allowing pseudonymity but seeking to protect the res judicata effects of the litigation by "requiring that plaintiffs file with the Clerk, under seal, the names and addresses of the individual plaintiffs corresponding to each numbered Doe plaintiff"; "[i]n the event that any defendant is sued again, that defendant may apply to this Court for an order that would permit determination whether the plaintiff in a subsequent suit was a plaintiff also in this case").

172. *Cf.* Eugene Volokh, *Crafting Statutory Pseudonymity Rules* (work in progress) (describing one particular vexatious litigant's attempt to seal or pseudonymize many of his past cases); *see also* Chaker v. San Diego Sup. Ct., No. D075494, 2021 WL 1523009, at *3 (Cal. Ct. App. Apr. 19, 2021) (declining to take that litigant's name off the vexatious litigant list, in part based on the court's own search for Chaker's past nonpseudonymous cases, beyond the ones he had disclosed to the court); Emrit v. St. Thomas Univ. Sch. of Law, No. 22-cv-20835, 2022 WL 874089, at *3 (S.D. Fla. Mar. 24, 2022) ("A search on the PACER electronic database reveals that Plaintiff has filed over 250 lawsuits in federal district courts across the nation"), *appeal pending*; Clervrain v. Dimon, No. 1:21-cv-02918-TWP-DLP, 2021 WL 6551107 (S.D. Ind. Dec. 27, 2021) (likewise), *appeal pending*; Abalos v. Greenpoint Mortg. Funding, No. 13-cv-00681-JST, 2013 WL 3243907, at *3 (N.D. Cal. June 26, 2013) (likewise).

173. *See, e.g.*, O.L. v. Jara, No. 21-55740, 2022 WL 1499656 (9th Cir. May 12, 2022) (noting that "O.L. makes it difficult to track her cases because she uses initials or pseudonyms," and warning that "[f]lagrant abuse of the judicial process" through vexatious litigation "cannot be tolerated" (cleaned up)).

174. Smith v. Corizon Healthcare, No. 1:16-cv-00461, 2016 WL 3538350, at *3 (E.D. Cal. June 28, 2016), *report & recommendation adopted*, 2016 WL 4679712 (E.D. Cal. Sept. 7, 2016); *see also* Doe v. Washington Post Co., No. 12-cv-5054, 2012 WL 3641294, at *1 (S.D.N.Y. Aug. 24, 2012), *dismissed sub nom.* Doe v. Republic of Poland, 531 F. App'x 113, 116 (2d Cir. 2013); Hernandez v. Bishara, No. 15-cv-8556, 2016 WL 4534009, at *1 (C.D. Cal. Aug. 30, 2016); *see also* Nguyen v. Islamic Republic of Iran, No. 2:21-cv-00134, 2021 WL 4173712, at *2 (D. Nev. Sept. 13, 2021); Doe v. Law Offices of Andrew Weiss, No. 19-cv-2119, 2020 WL 5983929, at *2 (C.D. Cal. July 30, 2020); John v. County of Sacramento, No. 2:16-cv-1640-JAM-DPS, at 2–3 (E.D. Cal. May 22, 2018); Gilbert-Mitchell v. Allred, 583 F. App'x 873, 874 (10th Cir. 2014).

> public) to find his litigation history, which could act to conceal future vexatious litigation or behavior.[175]

9. Pseudonymity Only at Early Stages of Litigation

Some courts deal with some of these problems by only offering pseudonymity at the early stages of litigation, on the theory that "the balance between a party's need for anonymity and the interests weighing in favor of open judicial proceedings may change as the litigation progresses."[176] Many courts are particularly reluctant to allow pseudonymity to extend to trial, but are willing to allow it until then:

> Allowing Plaintiff to proceed via a pseudonym at trial could impermissibly prejudice the jury against Defendant. . . . The Court therefore will not allow Plaintiff to proceed under a pseudonym should this case reach trial. But the Court will allow Plaintiff to proceed under a pseudonym at any other pretrial hearings. Because the Court, not the jury, is the factfinder at pretrial hearings, the risk of prejudice is far reduced.[177]

Likewise, courts might allow pseudonymity while a settlement seems to be looming, but warn the parties that "[t]his is subject to change if the settlement craters."[178] To be sure, such pseudonymity is not as valuable to the party as permanent pseudonymity—though it can still be quite valuable, given that nearly all cases are terminated before trial.[179]

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175. Nero v. Allstate Ins. Co., No. 2:00-cv-01126-GMN-VCF, 2022 WL 1618839, at *3 (D. Nev. May 23, 2022).

176. Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1069 (9th Cir. 2000); Minute Entry Granting Plaintiff's Motion to Proceed Anonymously, Doe v. Loyola Univ. Chi., No. 1:20-cv-07293 (N.D. Ill. Dec. 30, 2020); Doe v. Haynes, No. 4:18-cv-1930, 2019 WL 2450813, at *4 (E.D. Mo. June 12, 2019); Moe v. Grinnell College, No. 4:20-cv-00058, 2020 WL 12617299, at *2 (S.D. Iowa Apr. 24, 2020); *see also* Steinman, *supra* note 76, at 36.

177. Doe v. Elson S Floyd Coll. of Med. at Washington State Univ., No. 2:20-cv-00145-SMJ, 2021 WL 4197366, at *3 (E.D. Wash. Mar. 24, 2021) (paragraph break omitted); *see also, e.g.*, Doe v. MacFarland, 117 N.Y.S.3d 476, 498 (Sup. Ct. 2019); Doe v. Rose, No. 15-cv-07503-MWF-JCX, 2016 WL 9150620, at *2 (C.D. Cal. Sept. 22, 2016); Doe 1 v. Ogden City Sch. Dist., 1:20-cv-00048-HCN-DAO, 2021 WL 4923728, at *3 n.2 (D. Utah Oct. 21, 2021); S.Y. v. Uomini & Kudai, LLC, No. 2:20-cv-602-JES-MRM, 2021 WL 3054871, at *6 (M.D. Fla. June 11, 2021); Al Otro Lado, Inc. v. Nielsen, No. 17-cv-02366-BAS-KSC, 2017 WL 6541446, at *8 (S.D. Cal. Dec. 20, 2017); Doe v. Regis Univ., No. 1:2-cv-00580-DDD-NYW, 2021 WL 5329934, at *3 (D. Colo. Nov. 16, 2021); Doe v. Gooding, No. 20-cv-06569-PAC, 2022 WL 1104750, at *7 (S.D.N.Y. Apr. 13, 2022); Doe v. Hobart & William Smith Colleges, No. 6:20-cv-6338, 2021 WL 1062707, at *4 (W.D.N.Y. Mar. 19, 2021); Lawson v. Rubin, No. 17-cv-6404, 2019 WL 5291205, at *2 (E.D.N.Y. Oct. 18, 2019). *But see* Doe v. Neverson, 820 F. App'x 984, 987–88 (11th Cir. 2020) (suggesting that pseudonymity could be allowed at trial as well).

178. SEB Inv. Mgmt. AB v. Symantec Corp., No. 18-cv-02902-WHA, 2021 WL 3487124, at *2 (N.D. Cal. Aug. 9, 2021).

179. In the 12 months ending September 2019, less than 1% of federal cases reached trial. ADMIN. OFF. OF THE U.S. CTS., JUD. BUS. OF THE U.S. CTS., 2019 ANNUAL REPORT OF THE DIRECTOR, Tbl. C-4 (2019), https://www.uscourts.gov/sites/default/files/data_tables/jb_c4_0930.2019.pdf. At the state level, the fraction seems higher—nearly 15% (2019 data), largely because of the high bench trial rates for small claims filings and unlawful detainer filings—but it's still small. *See* Court Statistics Project, *CSP STAT Civil / Caseload Detail—Total Civil* (2020), https://www.courtstatistics.org/csp-stat-nav-cards-first-row/csp-stat-civil. Focusing just on tort filings (and thus excluding small claims and landlord-tenant cases, among others), less than 5% of state

On the other hand, some courts have refused pseudonymity at the very start of the case on the grounds that "proceeding anonymously now is no cure, as the full facts of the case will emerge if the litigation proceeds to trial."[180]

G. LITIGATION AGAINST THE GOVERNMENT

Some cases reason that, when plaintiffs sue the government, the lawsuits "involve no injury to the Government's 'reputation,'" whereas "the mere filing of a civil action against other private parties may cause damage to their good names and reputation and may also result in economic harm."[181] This reasoning counsels in favor of allowing pseudonymity more often in such cases.[182]

But other cases take the view that lawsuits against a government entity often include a "claim to relief [that] involves the use of public funds, and the public certainly has a valid interest in knowing how state revenues are spent,"[183] especially when plaintiff makes serious charges of misconduct by government officials.[184] Other courts reason that the interest in openness "is heightened because Defendants are public officials and government bodies."[185] "The public has a strong interest in knowing the accusations against its tax-funded entities as well as the identities of the individuals making those accusations. . . . The public's interest . . . weighs heavily against anonymity because the defendants are public servants who stand accused of a gross abuse of power."[186]

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filings lead to trials; likewise with employment law filings. (Note that the state data comes from just a minority of states, but the overall pattern seems likely to be the same throughout the country.).

180. Doe v. MIT, No. 1:21-cv-12060 (D. Mass. Dec. 21, 2021).

181. S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979); Roe v. Doe, No. 18-cv-666-CKK, 2019 WL 2058669, at *4 (D.D.C. May 7, 2019) (internal citations and quotations omitted); Doe v. Skyline Automobiles Inc., 375 F. Supp. 3d 401, 406 (S.D.N.Y. 2019); Doe v. Drake Univ., No. 4:16-cv-00623-RGE-SBJ, 2017 WL 11404865, at *3 (S.D. Iowa June 13, 2017); Doe v. JBF RAK LLC, No. 2:14-cv-00979–RFB–GWF, 2014 WL 5286512, at *5 (D. Nev. Oct. 15, 2014); Rose v. Beaumont Indep. Sch. Dist., 240 F.R.D. 264, 266–67 (E.D. Tex. 2007); Doe v. Bd. of Trustees of Univ. of Ill., No. 2:20-cv-02265-CSB-EIL, at 4 (C.D. Ill. Nov. 9, 2020); S.D. v. Decker, No. 1:22-cv-03063-VSB-BCM, 2022 WL 1239589, at *3 (S.D.N.Y. Apr. 27, 2022). *See also* EW v. New York Blood Ctr., 213 F.R.D. 108, 112 (E.D.N.Y. 2003) (applying this to a nongovernmental blood bank).

182. *See also* Ressler, *supra* note 5, at 245 (arguing that "the importance of ensuring all citizens a voice with which to challenge governmental actions, and the reluctance of many to do so for fear of reprisal, warrants liberal permission by the courts to permit plaintiffs to proceed pseudonymously when suing governmental agencies").

183. M.M. v. Zavaras, 139 F.3d 798, 803 (10th Cir. 1998); *cf.* Doe v. Pub. Citizen, 749 F.3d 246, 274 (4th Cir. 2014) ("[T]he public interest in the underlying litigation is especially compelling given that Company Doe sued a federal agency."); Doe v. Megless, 654 F.3d 404, 411 (3d Cir. 2011).

184. Doe v. Cook Cty., No. 1:20-cv-5832, 2021 WL 2258313, at *7 (N.D. Ill. June 3, 2021); Doe v. Greiner, 662 F. Supp. 2d 355, 360–61 (S.D.N.Y. 2009).

185. *Megless*, 654 F.3d at 411 (internal quotation marks omitted); Doe v. Pub. Citizen, 749 F.3d 246, 274 (4th Cir. 2014); Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-00016, 2018 WL 1594805, at *3 (W.D. Va. Apr. 2, 2018); B.L. v. Zong, No. 3:15-cv-1327, 2016 WL 11269933, at *13 (M.D. Pa. Aug. 30, 2016); E.A. v. Brann, No. 18-cv-7603 (CM), 2018 U.S. Dist. LEXIS 143208, at *10 (S.D.N.Y. Aug. 22, 2018).

186. *Cook Cty.*, No. 1:20-cv-5832, 2021 WL 2258313, at *7; F.B. v. East Stroudsburg Univ., No. 3:09-cv-525, 2009 WL 2003363, at *2 (M.D. Pa. July 7, 2009); *see also* E.A. v. Brann, No. 18-cv-7603-CM, 2018 U.S. Dist. LEXIS 143208, at *10 (S.D.N.Y. Aug. 22, 2018).

Thus, though courts often note "whether the action is against a governmental or private party"[187] as a factor in the pseudonymity analysis, it is not clear which way this factor cuts.[188] Perhaps the better inquiry would be not into whether the defendant is a government entity, but into whether the plaintiff is challenging government action as a matter of law without regard to the factual details related to the plaintiff (see Part I.D above); such a purely legal challenge indeed makes the plaintiff's identity less important.[189]

II. REBUTTING THE PRESUMPTION OF NON-PSEUDONYMITY: GENERALLY

A. LITIGANT INTERESTS

Yet despite all these costs of pseudonymity—to the public, to opposing parties, and potentially to the accuracy and efficiency of fact-finding—pseudonymity is sometimes allowed if there is a "substantial[]"[190] basis. The "substantiality" threshold is high, because it requires some showing of costs to the would-be pseudonymous litigant beyond that routinely borne by the many litigants who litigate over matters that might intrude on their privacy or reputation.[191] The cases dealing with such substantial basis claims can be helpfully divided into several categories, laid out below.[192]

187. *In re* Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019); James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993).

188. *Cook Cty.*, No. 1:20-cv-5832, 2021 WL 2258313, at *7; Doe v. Teti, No. 1:15-mc-01380, 2015 WL 6689862, at *3 (D.D.C. Oct. 19, 2015).

189. *See also* Balla, *supra* note 21, at 731 (likewise arguing against focus on the presence of government defendants as such).

190. *Megless*, 654 F.3d at 409; Does I thru XXIII v. Advanced Textile, 214 F.3d 1058, 1068 (viewed there as an inquiry into "the severity of the threatened harm").

191. *See supra* Part I.C.5.

192. In the citations below, I focus on cases that actually discuss whether to allow parties to proceed pseudonymously (or, on a few occasions, decisions that grant motions for pseudonymity without discussion). I generally don't discuss cases in which there was no apparent focus on pseudonymity at all, perhaps because the opposing party didn't seek to challenge pseudonymity. "'Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.'" Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S. 157, 170 (2004) (quoting Webster v. Fall, 266 U.S. 507, 511 (1925)); Doe v. Empire Ent., LLC, No. A16-1283, 2017 WL 1832414, at *3 (Minn. Ct. App. May 8, 2017) (applying this reasoning in concluding that past pseudonymous cases didn't set a binding precedent as to pseudonymity when "none of those cases raised on appeal the question of whether a party may sue using a pseudonym"); Doe v. Milwaukee Cty., No. 18-cv-503, 2018 WL 3458985, at *1 (E.D. Wisc. July 18, 2018) (dismissing out-of-circuit precedents on the grounds that "none of those cases discusses the plaintiff's right to proceed under a pseudonym"); Doe v. Trustees of Indiana Univ., No. 1:21-cv-02903-JRS-MJD, 2022 WL 36485, at *7 n.2 (S.D. Ind. Jan. 3, 2022); Doe v. Settle, 24 F.4th 932, 938–39 n.5 (4th Cir. 2022) (noting the possible impropriety of the plaintiff's proceeding pseudonymously, but leaving the matter to the District Court to decide, presumably because no party had raised the objection); Wescott v. Middlesex Hosp., No. MMXCV186020250, 2018 WL 2292916, at *3 (Conn. Super. Ct. May 1, 2018) ("Courts have granted pseudonym status to those with psychiatric issues. *See,* [*e.g.*]*, Doe v. Town of West Hartford*, 328 Conn. 172 (2018). However, in the foregoing *Doe* case, no one objected to pseudonym status and the issue was not addressed.").

B. LITIGANT INTERESTS DIMINISHED WHEN LITIGANT'S IDENTITY HAS ALREADY BEEN DISCLOSED

Note that all the arguments for pseudonymity discussed above are weakened or outright eliminated once "the identity of the litigant has" already been revealed, whether in the litigation itself or otherwise.[193] They may also be weakened when the litigant has sought to publicize the case without his name attached,[194] though court decisions are mixed on this.[195]

C. SYSTEMIC INTEREST: DIMINISHING UNDERENFORCEMENT OF MERITORIOUS CLAIMS

In most cases where denying pseudonymity can harm parties (whether through harming privacy or reputation or otherwise), denying pseudonymity can also undermine the public policy that the civil causes of action are aimed to serve. Plaintiffs faced with the prospect of these harms might choose not to litigate. They might decline to sue or might decline to continue with their

193. *Megless*, 654 F.3d at 409; Doe v. Drake Univ., No. 4:16-cv-00623-RGE-SBJ, 2017 WL 11404865, at *4 (S.D. Iowa June 13, 2017); Doe v. Wolf, No. 1:20-cv-03299-DLF (D.D.C. Nov. 12, 2020); United States v. Stoterau, 524 F.3d 988, 1013 (9th Cir. 2008); Vargas v. LaBella, No. CV06-5001941S, 2007 WL 155158, at *4 (Conn. Super. Ct. Jan. 2, 2007); Doe v. Wash. Univ., No. 4:21-cv-00205-SRC, 2021 WL 4504387, at *2 (E.D. Mo. Sept. 30, 2021); A.B. v. Hofstra Univ., No. 2:17-cv-5562-DRH-AYS, 2018 WL 1935986, at *3 (E.D.N.Y. Apr. 24, 2018); Doe v. Burkland, 808 A.2d 1090, 1097 (R.I. 2002); Doe v. Cornell Univ., No. 3:19-cv-01189-MAD-ML, 2021 WL 6128807, at *3 (N.D.N.Y. Sept. 22, 2021); B.L. v. Zong, No. 3:15-cv-1327, 2017 WL 1036474, at *4 (M.D. Pa. Mar. 17, 2017); Lopez v. Sedgwick Cty. D.A., 437 P.3d 1033, at *4 (Kan. Ct. App. 2019); Vargas v. Doe, 96 Conn. App. 399, 408–09 (2006); Doe v. Burkland, 808 A.2d 1090, 1095 (R.I. 2002); Roe v. Bernabei & Wachtel PLLC, 85 F. Supp. 3d 89, 96–97 (D.D.C. 2015); Doe v. Drake Univ., No. 4:16-cv-623, at *4 (S.D. Iowa June 13, 2017); Doe v. Univ. of Louisville, No. 3:17-cv-00638-RGJ, 2018 WL 3313019, at *3 (W.D. Ky. July 5, 2018); Doe v. Univ. of R.I., No. 93-cv-0560B, 1993 WL 667341, at *3 (D.R.I. Dec. 28, 1993); Doe v. Carleton College, No. 0:19-cv-01878-MJD-LIB, at 4–5 (D. Minn. Oct. 25, 2019); Doe v. Word of Life Fellowship, Inc., No. 11-cv-40077-TSH, 2011 WL 2968912, at *3 (D. Mass. July 18, 2011); Mateer v. Ross, Suchoff, Egert, Hankin Maidenbaum & Mazel, P.C., No. 96-cv-1756-LAP, 1997 WL 171011, at *6 (S.D.N.Y. Apr. 10, 1997); Doe v. Berg, No. 15:cv-9787-RJS, 2016 WL 11597923, at *3 (S.D.N.Y. Feb. 10, 2016); Doe v. New England Stair Co., Inc., No. 3:18-cv-756-JBA, 2020 WL 12863508, at *3 (D. Conn. June 12, 2020); S.D. v. Decker, No. 1:22-cv-03063-VSB-BCM, 2022 WL 1239589, at *2 (S.D.N.Y. Apr. 27, 2022). *But see* Plaintiff v. Verizon Commc'ns, Inc., No. 22-cv-00018, 2022 WL 168324, at *3 (D.D.C. Jan. 19, 2022) ("Plaintiffs regularly litigate suits under their own names where their personal identity is irrelevant to the substance of the case; even if plaintiff's identity has no bearing on the legal basis for the Select Committee's subpoena, this separation does not justify removing plaintiff's identifying information from the legal proceeding entirely.").

194. Doe v. Kidd, 19 Misc. 3d 782, 789 (N.Y. Sup. Ct. 2008); Doe v. Diocese Corp., 43 Conn. Supp. 152, 162 (Super. Ct. 1994); Doe v. Hopkins Sch., No. CV216110316S, 2021 WL 2303079, at *7 (Conn. Super. Ct. May 14, 2021).

195. *See* Doe v. Colgate Univ., No. 5:15-cv-1069-LEK-DEP, 2016 WL 1448829, at *4 (N.D.N.Y. Apr. 12, 2016) (concluding that, though plaintiff's attempt to publicize the case "weighs against Plaintiff's argument that he wishes to avoid publicity in pursuing this action," "it is not enough to persuade the Court that the public's interest in learning Plaintiff's identity outweighs Plaintiff's significant interest in remaining anonymous"); Doe v. Marvel, No. 1:10-cv-1316-JMS-DML, 2010 WL 5099346, at *3 (S.D. Ind. Dec. 8, 2010) ("Plaintiff only engaged in one interview and took reasonable precautions to conceal her identity. Thus, she had not yet crossed the line. Continued media interviews may, however, cause the Court to reconsider its decision to permit Plaintiff to proceed anonymously.").

lawsuits once pseudonymity is denied.[196] Likewise, defendants might settle before complaints are filed, even if they have sound legal or factual defenses. The underlying causes of action (or defenses) may end up being underenforced, and useful precedent may end up being underproduced.

Sometimes courts allow pseudonymity in part to avoid this deterrent effect.[197] But in most cases they do not view avoiding this deterrent effect as a sufficient basis for pseudonymity: "a plaintiff's stubborn refusal to litigate openly by itself cannot outweigh the public's interest in open trials," they reason.[198] Indeed, in the great bulk of the cases noted below where pseudonymity was denied, some such deterrent effect was present—for instance, if plaintiffs are reluctant to file meritorious libel suits for fear that they will just draw more publicity to the allegedly libelous accusation,[199] libel law will be that much less enforced.

D. LITIGANT AND INSTITUTIONAL INTEREST: INJURY LITIGATED AGAINST WOULD BE INCURRED

Courts often note that plaintiffs can proceed pseudonymously if "the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity."[200] This reasoning appears to date back to a 1973 case challenging New York's policy of recording information about prescription drugs in a centralized database, which plaintiffs believed would compromise their privacy (even

196. For examples of cases in which denial of a motion to proceed pseudonymously was apparently followed by the plaintiff's dropping the case, *see* Doe v. Bogan, No. 1:21-mc-00073, 2021 WL 3855686, at *24 (D.D.C. June 8, 2021); Doe v. Wash. Post Co., No. 1:19-cv-00477-UNA, 2019 WL 2336597, at *4 (D.D.C. Feb. 26, 2019); Doe v. City of Franklin Park, No. 1:20-cv-05583 (N.D. Ill. Oct. 11, 2021) (docket entry); *see also* Ressler, *supra* note 15, at 825–26; Strahilevitz, *supra* note 64, at 1244.

197. Doe v. Lund's Fisheries, Inc., No. 20-cv-11306-NLH-JS, 2020 WL 6749972, at *3 (D.N.J. Nov. 17, 2020) (citing this as a reason for pseudonymity in a sexual assault case); Doe v. Oshrin, 299 F.R.D. 100, 104 (D.N.J. 2014) (likewise in a child pornography case); Does I thru XXIII v. Advanced Textile, 214 F.3d 1058, 1073 (likewise in an employee rights case); Doe v. Innovative Enters, Inc., No. 4:20-cv-00107-RCY-LRL, at 4 (E.D. Va. Aug. 25, 2020) ("There is a special public interest here in allowing litigants to defend their rights under federal law [which bars consumer reporting agencies from disclosing expunged criminal records] without suffering the same injury as Plaintiff."); Doe v. Provident Life & Accident Ins. Co., 176 F.R.D. 464, 468 (E.D. Pa. 1997) ("[D]enying plaintiff the use of a pseudonym[] may deter other people who are suffering from mental illnesses from suing in order to vindicate their rights, merely because they fear that they will be stigmatized in their community if they are forced to bring suit under their true identity. Indeed, unscrupulous insurance companies may be encouraged to deny valid claims with the expectation that these individuals will not pursue their rights in court."); Doe v. Hartford Life & Accident Ins. Co., 237 F.R.D. 545, 550 (D.N.J. 2006); Doe v. Good Samaritan Hosp., 66 Misc. 3d 444, 450 (2019).

198. *Megless*, 654 F.3d at 411; *see also, e.g.*, Doe v. Princeton Univ., No. 19-cv-7853-BRM, 2019 WL 5587327, at *5 (D.N.J. Oct. 30, 2019). "[N]o matter how sincere, a plaintiff's refusal to litigate openly by itself cannot outweigh the public's interest in open trials." Doe v. Temple Univ., Docket No. 14-cv-04729, 2014 WL 4375613, at *2 (E.D. Pa. Sept. 3, 2014). "It may be, as plaintiff suggests, that victims of sexual assault will be deterred from seeking relief through civil suits if they are not permitted to proceed under a pseudonym. That would be an unfortunate result. For the reasons discussed above, however, plaintiff and others like her must seek vindication of their rights publicly." Doe v. Weinstein, 484 F. Supp. 3d 90, 98 (S.D.N.Y. 2020) (quoting Doe v. Shakur, 164 F.R.D. 359, 362 (S.D.N.Y. 1996)) (internal quotation marks omitted).

199. *See infra* Part III.F.1.e.

200. M.M. v. Zavaras, 139 F.3d 798, 803 (10th Cir. 1998).

though the information was required to be kept confidential).[201] Requiring plaintiffs to litigate under their names would undermine the very confidentiality that they sought to protect.[202] And it would in turn in effect deny the courts the ability to effectively adjudicate the claims, which would be rendered either formally or practically moot.

Read broadly, this concern would authorize pseudonymity in nearly all defamation or disclosure of private facts claims (at least when the information had not been already widely spread on the Internet[203]). After all, requiring such plaintiffs to identify themselves would only further exacerbate the injury. And a few cases have taken this view.[204] But the dominant view is contrary, which is why libel and privacy cases (see Part III.F.2) are routinely litigated without pseudonyms.[205]

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201. Roe v. Ingraham, 364 F. Supp. 536, 541 n.7 (S.D.N.Y. 1973).

202. *Cf.* Doe v. City of N.Y., 15 F.3d 264, 269 (2d Cir. 1994) (allowing pseudonymity in lawsuit over unauthorized disclosure of HIV status); Doe v. Civiletti, 635 F.2d 88 (2d Cir. 1980) (likewise, in lawsuit seeking reinstatement to federal witness protection program); Doe v. United States, 210 F. Supp. 3d 1169 (W.D. Mo. 2016) (likewise, in Privacy Act lawsuit claiming the government improperly disclosed certain information); E.B. v. Landry, No. 19-cv-862-JWD-SDJ, 2020 WL 5775148 (M.D. La. Sept. 28, 2020) (likewise, in lawsuit challenging Louisiana expungement law); U.S. Dep't of Just. v. Utah Dep't of Com., No. 2:16-cv-00611-DN-DBP, 2017 WL 963203, at *2 (D. Utah Mar. 10, 2017) (likewise, in lawsuit challenging Utah's Controlled Substance Database procedures); Doe v. Harris, 640 F.3d 972, 974 (9th Cir. 2011) (likewise, in lawsuit challenging plaintiff's inclusion on sex offender registry); Doe I-VIII v. Sturdivant, No. 06-cv-10214, 2006 WL 8432896, at *1 (E.D. Mich. Apr. 7, 2006) (likewise, in lawsuit challenging sex offender registry); M.J. v. Jacksonville Housing Auth., No. 3:11-cv-771-J-37-MCR, 2011 WL 4031099, at *3 (M.D. Fla. Sept. 12, 2011) (likewise, in lawsuit claiming unlawful disclosure of a juvenile arrest report); Doe v. Bonta, No. 3:22-cv-00010-LAB-DEB (S.D. Cal. Jan. 20, 2022) (likewise, in lawsuit claiming unlawful disclosure of firearms purchase and license records).

203. *Cf.* Doe v. FBI, 218 F.R.D. 256, 260 (D. Colo. 2003).

204. *See* Doe v. O'Neill, No. C.A. W.C. 86-354, 1987 WL 859818, at *2 (R.I. Super. Ct. Jan. 6, 1987) (privacy lawsuit, information about curable STDs); *In re* Ashley Madison Customer Data Sec. Breach Litig., MDL No. 2669, 2016 WL 1366616, at *4 (E.D. Mo. Apr. 6, 2016) (data breach lawsuit against dating service for adulterers); Doe v. Trustees of Dartmouth Coll., No. 18-cv-040-LM, 2018 WL 2048385, at *5–6 (D.N.H. May 2, 2018) (quasi-libel challenge to Title IX finding of sexual assault); Doe v. Regis Univ., No. 1:21-cv-00580-NYW, 2021 BL 423775, at *3 (D. Colo. Mar. 2, 2021) (likewise); Doe v. Univ. of St. Thomas, No. 16-cv-1127-ADM-KMM, 2016 WL 9307609, at *2 (D. Minn. May 25, 2016) (likewise); Doe v. Alger, 317 F.R.D. 37, 42 (W.D. Va. 2016) (likewise); Doe v. Grinnell Col., No. 4:17-cv-00079-RGE-SBJ, 2017 BL 555357, at *5 (S.D. Iowa July 10, 2017) (likewise); Doe v. Szul Jewelry, Inc., No. 31382(U) Slip. Op., at *13 (N.Y. Sup. Ct. 2008) (privacy and appropriation of likeness lawsuit, over actions that plaintiff was afraid would damage her reputation).

205. Raiser v. Church of Jesus Christ of Latter-Day Saints, 182 F. App'x 810, 812 n.2 (10th Cir. 2016) ("Raiser argues that . . . if we denied his motion to proceed under a pseudonym he would incur the very injury against which he is litigating. We reject this argument. Preventing disclosure of his identity is not the basis of Raiser's lawsuit. Instead, he seeks monetary compensation for a disclosure that has already occurred."); Doe v. Liberty Univ., No. 6:19-cv-00007, 2019 WL 2518148, at *3 (W.D. Va. June 18, 2019) ("The 'injury litigated against' is 'the damage to [Plaintiff's] reputation.' This is not the type of retaliatory harm an anonymous lawsuit is meant to prevent." (citation omitted)); Free Mkt. Comp. v. Commodity Exch., Inc., 98 F.R.D. 311, 313 (S.D.N.Y. 1983); Doe v. Trs. of Ind. Univ., No. 1:21-cv-02903-JRS-MJD, 2022 WL 36485, at *12 (S.D. Ind. Jan. 3, 2022). In this respect, Judge Sneed's dissent in *United States v. Doe*, 655 F.2d 920, 930 n.1 (9th Cir. 1981), has largely prevailed: "In [most of the cases cited in support of pseudonymity,] the plaintiffs were required to reveal information of an intimate and personal nature in order to vindicate constitutional or statutory rights grounded in the protection of privacy. There is some logic in cooperating to provide anonymity when publicity

III. REBUTTING THE PRESUMPTION OF NON-PSEUDONYMITY: SPECIFIC JUSTIFICATIONS

A. REASONABLE FEAR OF PHYSICAL HARM OR OTHER EXTRAORDINARY RETALIATION

Courts generally allow pseudonymity if there is "reasonable[]" "fear[]"[206] of "retaliatory physical . . . harm to the requesting party or even more critically, to innocent non-parties,"[207] which may be considered in light of "the anonymous party's vulnerability to such retaliation."[208] Express threats of violence would likely qualify,[209] as would specific past incidents of violence or vandalism.[210] Lack of such express threats or incidents—or at least lack of highly plausible predictions of possible future violence[211]—will usually count against pseudonymity.[212]

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would inflict the very injury the litigant seeks to avoid by resort to the courts. The practice of providing pseudonyms should be extended to other situations only rarely."

206. *See, e.g.*, Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est., 596 F.3d 1036, 1045 (9th Cir. 2010); Endangered v. Louisville/Jefferson Cty. Metro Gov't Dep't of Inspections, No. 3:06-cv-250S, 2007 WL 509695, at *2 (W.D. Ky. Feb. 12, 2007); Doe v. Benoit, No. 19-cv-1253-DLF, 2020 WL 11885577, at *3 (D.D.C. July 27, 2020); Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *7 (M.D. Tenn. June 28, 2021); Whistleblower 14377-16W v. Comm'r of Internal Revenue, 122 T.C.M. (CCH) 200, at *31 (T.C. 2021); Doe v. Cook Cty., 542 F. Supp. 3d 779, 784–85 (N.D. Ill. 2021); K.J. v. United States, No. 1:22-cv-00180-JEB, at 6–7 (D.D.C. Jan. 23, 2022); Doe v. Tishman Speyer Properties, L.P., No. 1:22-cv-01682-RJL, at 5–6 (D.D.C. June 7, 2022).

207. *In re* Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019); James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993); *see also* Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1071 (9th Cir. 2000); Doe v. Stegall, 653 F.2d 180, 186 (5th Cir. 1981); Does I–V v. Rodriguez, Nos. 06-cv-00805-LTB & 06-mc-0017-LTB, 2007 WL 684114, at *1 (D. Colo. Mar. 2, 2007).

208. *Advanced Textile*, 214 F.3d at 1068.

209. *See* Doe v. Neverson, 820 F. App'x 984, 988 (11th Cir. 2020) ("[E]ight threatening or harassing comments made by [defendant music star's] fans."); Doe v. Parx Casino, No. 18-cv-5289, 2019 BL 422669, at *3 n.1 (E.D. Pa. Jan. 2, 2019) ("[T]hreats of physical violence" against lesbian employee who "has a masculine gender expression.").

210. Doe v. USD No. 237 Smith Ctr. Sch. Dist., No. 16-cv-2801-JWL-TJJ, 2017 WL 3839416, at *11 (D. Kan. Sept. 1, 2017); Javier H. v. Garcia-Botello, 211 F.R.D. 194, 196 (W.D.N.Y. 2002); Doe v. United States, No. 1:19-cv-1673, 2019 WL 6218832, at *4–5 (M.D. Pa. Nov. 21, 2019); P.S. Zuchowski, No. 2:22-cv-00011-cr (D. Vt. Jan. 21, 2022), *granting* Motion, *id.* (Jan. 21, 2022).

211. *See* United States v. Doe, 655 F.2d 920, 922 n.1 (9th Cir. 1980) ("[R]isk of serious bodily harm if [prison inmate's] role on behalf of the Government were disclosed to other inmates."); Doe No. 1 v. United States, 143 Fed. Cl. 238, 241 (2019) ("[D]isclosing the names of BATF employees could endanger them."); Edwards, *supra* note 64, at 467 (suggesting that such predictions could be based on a history of retaliatory violence or vandalism against plaintiffs in past similar cases, and particularly noting Establishment Clause cases).

212. *In re* Chiquita Brands Int'l, Inc., 965 F.3d 1238, 1248 (11th Cir. 2020); United States v. Stoterau, 524 F.3d 988, 1002, 1013–14 (9th Cir. 2008); Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est., 596 F.3d 1036, 1045 (9th Cir. 2010); Doe v. Gooding, No. 20-cv-06569-PAC, 2022 WL 1104750, at *5 (S.D.N.Y. Apr. 13, 2022); Roe v. Heil, No. 11-cv-01983-WJM-KLM, 2011 WL 3924962, at *3 (D. Colo. Sept. 7, 2011); Does I-V v. Rodriguez, No. 06-cv-00805-LTB, 2007 WL 684114, at *2 (D. Colo. Mar. 2, 2007); Reimann v. Hanley, No. 16 C 50175, 2016 WL 5792679, at *5 (N.D. Ill. Oct. 4, 2016); Doe v. Raimondo, No. 1:21-mc-00127-UNA (D.D.C. Oct. 14, 2021); Doe v. Shakur, 164 F.R.D. 359, 362 (S.D.N.Y. 1996); Doe v. Ct. of Common Pleas of Butler Cty. PA, No. 17-cv-1304, 2017 WL 5069333, at *3 (W.D. Pa. Nov. 3, 2017); Boggs v. United States, 143 Fed. Cl. 508, 513–16 (2019); Doe v. Pleasant Valley School Dist., No. 3:07-cv-854, 2007 WL 2234514, at *3 (M.D. Pa. Aug. 1, 2007); Doe v. Garland, No. 1:22-cv-00722, at 5–6 (D.D.C. Mar. 10, 2022).

Risk of harm in a foreign country or from a foreign government would also qualify.[213] "[R]easonable[] . . . fears" of other kinds of "extraordinary retaliation," such as "deportation, arrest, and imprisonment" in a foreign country, may also qualify,[214] though perhaps mere deportation might not.[215] So might "harassment or other form of retaliation" against a prisoner by guards.[216]

Courts also generally require that the risk of threatened violence flow from the revelation of the party's name in the litigation, not from other factors (such as the party already being known to the people who might want to attack him).[217] And of course, the risk must come from the *public* revelation: If the risk is that, for instance, the defendant will retaliate against the plaintiff, that can't be avoided by pseudonymity, because the defendant would need to know the plaintiff's identity in order to defend the case even if the plaintiff is allowed to

213. *See, e.g.*, Cengiz v. Bin Salman, No. 1:20-cv-03009 (D.D.C. Sept. 16, 2021) (fear of violent retaliation against nonparty by a Saudi crown prince who had been accused of murdering a prominent critic); Chang v. Republic of South Sudan, No. 21-cv-1821, 2021 WL 2946160, at *3 (D.D.C. July 9, 2021) (evidence that plaintiffs have "personally 'been the victims of deliberate attacks orchestrated by the government of South Sudan'" and that "South Sudan has carried out 'cross-border harassment, intimidation, and attacks against critics of the government of South Sudan'"); Las Americas Immigrant Advoc. Ctr. v. Wolf, No. 19-cv-3640-KBJ, 2020 WL 7319297, at *3–4 (D.D.C. Jul 8, 2020) (risk of attack in Mexico and El Salvador); Kiakombua v. McAleenan, No. 19-cv-1872-KBJ, 2019 WL 11322784, at *2–3 (D.D.C. July 3, 2019) (risk of attack in El Salvador and Cuba); Maxwell v. Islamic Republic of Iran, No. 1:22-cv-00173, at *5 (D.D.C. Jan. 19, 2022) (risk of attack in Lebanon); Doe v. U.S. Dep't of Homeland Sec., No. 21-cv-1274-RSM, 2021 WL 6138844, at *2 (W.D. Wash. Nov. 18, 2021) (risk of attack against petitioner's children in the Democratic Republic of the Congo); Doe v. Dordoni, No. 1:16-cv-00074-JHM, 2016 WL 4522672, at *3 (W.D. Ky. Aug. 29, 2016) (risk of attack in Saudi Arabia based on Saudi citizen's conversion to Christianity); Doe v. Biden, No. 1:21-cv-03356-RBW (D.D.C. Jan. 6, 2022) (risk of retaliation by Iranian government); J.O. v. U.S. Citizenship & Immig. Servs., No. 22:cv-1850-AMD (E.D.N.Y. Apr. 5, 2022), *granting* Motion, *id.* (Apr. 4, 2022)) (risk of attack against gay asylum applicant in Jamaica); O.M.C.S. v. Zuchowski, No. 5:22-cv-00048 (D. Vt. Feb. 23, 2022), *granting* Motion, *id.* (Feb. 18, 2022) (risk of attack against petitioner's family by human traffickers in Honduras); Anonymous v. Comm'r of Internal Revenue, 127 T.C. 89, 92 (2006) (evidence that "a member of petitioner's family was kidnapped several years ago and that kidnapping is rampant in the country where petitioner and most of petitioner's family reside," which led to a reasonable fear that "publicizing petitioner's identity and financial circumstances will increase the risk that either petitioner or a member of petitioner's family will be the target of another kidnapping"). *But see* Doe v. U.S. Citizenship & Immig. Servs., No. 1:22-mc-00007-UNA, at *5 (D.D.C. Jan. 21, 2022) (making clear that pseudonymity isn't available in asylum cases generally, absent a showing of some specific "need for secrecy or . . . consequences likely to befall them or others if this case proceeds on the public docket"); S.D. v. Decker, No. 1:22-cv-03063-VSB-BCM, 2022 WL 1239589, at *2 (S.D.N.Y. Apr. 27, 2022) (likewise).

214. Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1071 (9th Cir. 2000); *see also* Haitian Bridge Alliance v. Biden, No. 1:21-cv-03317, at 5 (D.D.C. Dec. 23, 2021).

215. E.A. v. Brann, No. 18-cv-7603-CM, 2018 U.S. Dist. LEXIS 143208, at *10 (S.D.N.Y. Aug. 22, 2018) ("Revealing Petitioner's identity might subject him to the harm of deportation—and it is a harm—but this Court has no business interfering with the enforcement of federal law."); Doe I v. Four Bros. Pizza, No. 13-cv-1505-VB, 2013 WL 6083414, at *10 (S.D.N.Y. Nov. 19, 2013).

216. Doe v. Hebbard, No. 21-cv-00039-BAS-AGS, 2021 WL 1195828, at *1–2 (S.D. Cal. Mar. 30, 2021); *see also* Charles H. v. D.C., No. 1:21-cv-00997, 2021 WL 6619327, at *1–2 (D.D.C. Apr. 9, 2021) (relying on the "risk of retaliation" from "[j]ail staff").

217. *See, e.g.*, Doe v. City of Chi., 360 F.3d 667, 669 (7th Cir. 2004); A.N. v. Landry, 338 F.R.D. 347, 356 (M.D. La. 2021); Doe v. Freydin, No. 21-cv-8371-NRB, 2021 WL 4991731, at *3 (S.D.N.Y. Oct. 27, 2021).

sue pseudonymously (unless perhaps the case involves purely legal questions).[218]

On the other hand, occasionally courts are more open to speculation about possible violent retaliation; consider this, for instance, from a case where a student sued his university based on what he said was an unfair investigation of domestic violence claims levied by a classmate:

> The court thinks that Doe's identification may put him at risk for physical or mental harm by persons who know that he has been found responsible for domestic violence against Roe. Moreover, his identification has the potential to lead persons—especially those who are associated with Doe and Roe or know of Doe and Roe—to identify Roe as his accuser and identify other students who were involved in the investigative process. It is also likely that identification of Roe could result in her facing a risk of harm.[219]

Likewise, one court has allowed such speculation in allowing a police officer accused of misconduct to sue pseudonymously for libel, though that was reversed on appeal, and another appellate court had taken the opposite view.[220] As with many such tests that turn on speculation and predictions, much depends on the instincts of each judge, and the judge's reactions to the factual allegations.

B. REASONABLE FEAR OF MENTAL, EMOTIONAL, OR PSYCHOLOGICAL HARM

The cases that say pseudonymity can be justified if naming a party risks physical harm also usually say the same as to "mental harm."[221] And courts

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218. *See* Does v. Shalushi, No. 10-cv-11837, 2010 WL 3037789, at *4 (E.D. Mich. July 30, 2010); Doe v. Freydin, No. 21-cv-8371-NRB, 2021 WL 4991731, at *2 (S.D.N.Y. Oct. 27, 2021).

219. Doe v. Va. Polytechnic Inst. & State Univ., No. 7:19-cv-00249, 2020 WL 1287960, at *4 (W.D. Va. Mar. 18, 2020). *See also* Doe v. Heil, No. 08-cv-02342-WYD-CBS, 2008 WL 4889550, at *3 (D. Colo. Nov. 13, 2008) (allowing pseudonymity even in the absence of specific threat of harm to a prisoner from having his sex offender status being disclosed, based on the prisoner's health condition making him especially vulnerable to harm from attacks); Doe v. School Dist. 214, No. 1:16-cv-07642, at 10 (N.D. Ill. Mar. 24, 2017) (allowing pseudonymity to plaintiff who was suing over having been racially harassed in high school, in part because "plaintiff's case will require the naming of various classmates, any of whom might feel justified in retaliating against plaintiff on account of his accusations against them"); Osrecovery, Inc. v. One Groupe Int'l, Inc., No. 02-cv-8993-LAK, 2003 WL 23313, at *2 (S.D.N.Y. Jan. 3, 2003) (finding a threat of physical harm based on messages containing unpleasant but mostly ambiguous expressions of hostility).

220. M.R. v. Niesen, No. A2002596, 2020 WL 5406791, at *1 (Ohio Ct. Com. Pl. Hamilton Cty. July 24, 2020) (allowing pseudonymity), *rev'd sub nom.* State *ex rel.* Cincinnati Enquirer v. Shanahan, 185 N.E.3d 1089, 1098–1100 (Ohio 2022) (rejecting pseudonymity); Doe v. Mckesson, 935 F.3d 253, 266 n.8 (5th Cir. 2019) (rejecting pseudonymity); *see also* Doe v. Town of Lisbon, No. 1:21-cv-00944 (D.N.H. Apr. 21, 2022) (motion to oppose pseudonymity pending) (police officer's pseudonymous federal litigation aimed at getting name removed from list of police officers as to whom credible misconduct allegations had been made and had to be disclosed to defense counsel). *Cf.* Bird v. Barr, No. 19-cv-1581, 2019 WL 2870234, at *5 (D.D.C. July 3, 2019) (allowing pseudonymity on the grounds that plaintiffs could serve as undercover/intelligence workers, and their ability to do so safely could be hindered by publicly identifying them as FBI agents); Navy Seal 1 v. Austin, No. 1:22-cv-00688-CKK, at 5–6 (D.D.C. Mar. 11, 2022) (allowing pseudonymity on the grounds that plaintiffs are Navy Seals, and "public disclosure of their identities 'may compromise past and future sensitive operations'"); Doe v. Tishman Speyer Properties, L.P., No. 1:22-cv-01682-RJL, at 5–6 (D.D.C. June 7, 2022) (likewise as to Green Beret).

221. *See, e.g.*, Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 190 (2d Cir. 2008).

sometimes apply that prong of the test; a psychologist coauthor and I discuss it in some detail in a separate article.[222]

C. AVOIDING SELF-INCRIMINATION IN FACIAL CHALLENGES TO GOVERNMENT ACTION

Courts sometimes allow pseudonymity to prevent a party from having "to admit [an] intention to engage in illegal conduct, thereby risking criminal prosecution" in order to challenge potential future government action.[223] Modern examples of this are rare, but the ones that do exist appear to generally involve facial challenges in which the plaintiff's identity is in any event less important.[224]

D. PROTECTING MINORS (AND NEAR-MINORS?)

1. Pseudonymizing Minors and Their Parents

Federal Rule of Civil Procedure 5.2(a)(3) presumptively requires pseudonymizing minors as to all matters, whether or not such matters would be seen as private as to adults,[225] though that presumption can be rebutted.[226] Likewise, some cases allow parents who are suing on behalf of their minor children to proceed pseudonymously,[227] at least when the case involves highly personal information about the children, reasoning that, "[s]ince a parent must proceed on behalf of a minor child, the protection afforded to the minor would

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222. Kathryn Baselice & Eugene Volokh, *Avoiding Mental Harm as a Basis for Litigant Pseudonymity* (in draft).

223. Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1068 (9th Cir. 2000). This formulation first appears in *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981), which in turn cites *S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979), which in turn cites cases where the plaintiffs facially challenged abortion laws and limits on welfare payments to illegitimate children.

224. *See generally* Balla, *supra* note 21, at 709–10 (generally endorsing pseudonymity in such situations). For one modern exception, see Doe 1 v. Mich. Dep't of Corr., No. 13-14356, 2014 WL 2207136, at *10 (E.D. Mich. 2014) (concluding that discovery in the matter could have revealed the "extraordinary means" which plaintiffs used to protect themselves in prison, thus resulting in potential exposure to punishment from prison authorities). *Cf.* Doe v. Cook Cty. Land Bank Auth., No. 1:20-cv-06329, 2020 WL 11627484, at *2 (N.D. Ill. Nov. 23, 2020) ("Plaintiff's most compelling argument is that he fears retaliation in the form of arrest and prosecution, as well as associated physical or mental harm. His arguments, though, are only speculative—he fails to advance any cogent reason for his fear of arrest or prosecution and how this can be a legitimate basis for anonymity."); Doe v. Dart, No. CIV. A. 08 C 5120, 2009 WL 1138093, at *2 (N.D. Ill. Apr. 24, 2009) (pure speculation of risk of retaliatory arrest for "unsuccessfully attempt[ing] to report her [government] supervisors about the[ir] alleged improper use of improper funds" inadequate to justify pseudonymity).

225. FED. R. CIV. P. 5.2(a)(3). In this respect, minors' names are treated like social security numbers or financial account numbers. *Id.; see also* M.P. v. Schwartz, 853 F. Supp. 164, 168 (D. Md. 1994) (concluding that redaction of minors' names is consistent with the right of access to court records).

226. Lobisch v. United States, No. 1:20-cv-00370-HG-KJM, 2020 WL 12893930, at *2 (D. Haw. Aug. 31, 2020) (rejecting pseudonymity where "both minors' full names and pictures are readily and publicly available on various media outlets that reported on Plaintiffs' filing of this lawsuit"); Doe v. Epic Games, Inc., 435 F. Supp. 3d 1024, 1053–54 (N.D. Cal. 2020) (rejecting pseudonymity when minor plaintiff filed a class action over supposed fraud in in-video-game purchases).

227. *See* Appendix 1a.

be eviscerated unless the parent was also permitted to proceed using initials."[228] Minor defendants (and their parents) are generally pseudonymized as well.[229] A few courts, however, have declined to pseudonymize parents in such situations.[230]

2. Pseudonymizing Young Adults

In cases involving alleged sexual assaults of and by college students:

- Some courts have been willing to allow pseudonymity because of the students' youth, even though they were not minors.[231]
- Others suggest a rigid cutoff at the age of majority.[232]
- Still others suggest the cutoff should be around age twenty.[233]

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228. P.M. v. Evans-Brant Cent. Sch. Dist., No. 08-cv-168A, 2008 WL 4379490, at *3 (W.D.N.Y. Sept. 22, 2008).

229. Doe v. Immaculate Conception Church Corp., No. CV09-501-1968, 2009 WL 4845449, at *1 (Conn. Super. Ct. Sept. 22, 2009); Black v. Redacted, No. FA064007232S, 2007 WL 1321729, at *2 (Conn. Super. Ct. Apr. 19, 2007). *But see* Roe v. Wetmore, No. CV085006610S, 2009 WL 1532501, at *1 (Conn. Super. Ct. May 6, 2009) (rejecting pseudonymity of defendant, when "[t]he plaintiffs allege in their complaint that the minor plaintiff, while in the child care services of the defendant, was sexually abused by the minor son of the defendant," even though identifying the defendant would enable people to identify her minor son).

230. Doe v. Tsai, No. 08-cv-1198-DWF-AJB, 2008 WL 11462908, at *4 (D. Minn. July 23, 2008) (lawsuit over allegedly false claims of sexual abuse of minor by parents); Irvin v. Grand Rapids Public School Dist., No. 1:14-cv-1161 (W.D. Mich. Jan. 16, 2015), *denying* Motion, *id.* (Nov. 11, 2014); Doe v. Lake Oswego Sch. Dist., No. 3:15-cv-00385-ST, 2015 WL 5023093, at *5 (D. Or. Aug. 20, 2015); C.H. v. School Bd. of Okaloosa Cty., No. 3:18-cv-2128-MCR-CJK, 2018 WL 11267720, at *2 (N.D. Fla. Dec. 7, 2018); United Fin. Cas. Co. v. R.A.E., Inc., No. 20-cv-2467-KHV, 2020 WL 6117895, at *2 (D. Kan. Oct. 16, 2020); Doe v. Hopkins Sch., No. CV216110316S, 2021 WL 2303079, at *7 (Conn. Super. Ct. May 14, 2021); Bond v. United States, No. 1:22-cv-00136-LEK-KJM, at 6 (D. Haw. Apr. 5, 2022) (rejecting pseudonymity for parent of minors in a wrongful death case because the minors' identities "have ben publicly disclosed in an online obituary for the Decedent"). Even child-only pseudonymity does provide some protection for the children: Many people worry most not about the rare determined researcher but about a casual name-Googler, whether a prospective employer or someone else, and shielding the child's name would likely provide a good deal of protection against that.

231. *See* Doe v. Colgate Univ., No. 5:15-cv-1069-LEK-DEP, 2016 WL 1448829, at *3 (N.D.N.Y. Apr. 12, 2016); Doe v. Alger, 317 F.R.D. 37, 40–41 (W.D. Va. 2016); Doe v. New York Univ., 537 F. Supp. 3d 483, 496–97 (S.D.N.Y. 2021); Doe v. Univ. of Chi., No. 16-cv-08298, 2017 WL 4163960, at *1 n.1 (N.D. Ill. Sept. 20, 2017); Yacovelli v. Moser, No. 1:02-cv-596, 2004 WL 1144183, at *9 (M.D.N.C. May 20, 2014); Doe v. School Dist. 214, No. 1:16-cv-07642, at 8–9 (N.D. Ill. Mar. 24, 2017); Charles H. v. D.C., No. 1:21-cv-00997, 2021 WL 6619327, at *3 (D.D.C. Apr. 9, 2021) (though also noting "plaintiffs' relative youth [ages 18 and 20] in conjunction with their disabilities"); M.F. on behalf of R.L. v. Magellan Healthcare Inc., No. 20-cv-3928, 2021 WL 1121042, at *1 n.2 (N.D. Ill. Mar. 24, 2021) (likewise mentioning young adult plaintiff's "serious behavioral issues" as a factor in favor of pseudonymity); Roe v. Doe, 319 F. Supp. 3d 422, 428 (D.D.C. 2018) (rejecting pseudonymity in part because the defendant was above 18), *rev'd*, 2019 WL 1778053, at *3 (D.D.C. Apr. 23, 2019) (allowing pseudonymity, in part because of the defendant's youth, and in part because "the pending motion now seeks to protect the identities of *both* parties, *both* of whom are young"); *see also* Doe v. Doe, 90 Mass. App. Ct. 1120, 2016 Mass. App. Unpub. LEXIS 1195, at *4 (2016) (upholding trial court's sealing of a college student's unsuccessful abuse prevention order case against another student, partly because "the parties were young college students").

232. *E.g.*, Plaintiff v. Wayne State Univ., No. 2:20-cv-11718-GAD-DRG, 2021 WL 243155, at *6 (E.D. Mich. Jan. 25, 2021); Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 66 (D.D.C. 2019); *see also* Doe v. City Univ. of N.Y., No. 21-cv- 9544-NRB, 2021 WL 5644642, at *4 (S.D.N.Y. Dec. 1, 2021) (non-sexual-assault case).

233. *E.g.*, Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-170, 2018 WL 5929647, at *3 (W.D. Va. Nov. 13, 2018); Doe v. Va. Polytechnic Inst. & State Univ., No. 7:19-cv-00249, 2020 WL 1287960, at *4 (W.D.

- And one unhelpfully opines: "[C]ourts should be careful not to draw a bright line between a plaintiff one day shy of her eighteenth birthday and a plaintiff one day past it. . . . The proper inquiry, as always, is the totality of the circumstances."[234]

3. Pseudonymizing Adult Plaintiffs Suing over Injuries That Occurred When They Were Minors

Some courts allow adults to proceed pseudonymously when they sue over injuries that occurred when they were minors.[235] Others do not.[236]

4. Pseudonymizing Adults to Shield Their Alleged Minor Victims

Alleged child victims of sexual abuse might not want that information revealed in any court case—not just their own lawsuits over having been molested. Thus, then-Judge Sotomayor excluded from an opinion, "for the sake of the privacy of plaintiff's child," the name of a Fourth Amendment plaintiff who claimed that the government falsely charged him with sexually abusing his daughter (though the court did not decide whether the name should have been excluded entirely from the court record).[237] One court likewise allowed pseudonymity in a libel case to "protect[] the minor child of the defendants and the minor children of the plaintiff from exposure in the community of their private situation, which involves allegations that a false accusation concerning

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Va. Mar. 18, 2020); Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-320, 2018 WL 5929645, at *3 (W.D. Va. Nov. 13, 2018); Yacovelli v. Moser, No. 1:02-cv-596, 2004 WL 1144183, at *8 (M.D.N.C. May 20, 2014); Magellan Healthcare Inc., 2021 WL 1121042, at *1 n.2. The Virginia Polytechnic cases involved three different plaintiffs, but the same judge.

234. Doe v. Sheely, 781 F. App'x 972, 973–74 (11th Cir. 2019).

235. *E.g.*, Plaintiff B v. Francis, 631 F.3d 1310, 1316–17 (11th Cir. 2011) (child pornography); Doe v. Streeter, No. 4:20-cv-11609-MFL-APP, 2020 WL 6685099, at *1 (E.D. Mich. Nov. 12, 2020) (child pornography); Doe v. Fowler, No. 3:17-cv-00730-FDW-DSC, 2018 WL 3428150, at *3 (W.D.N.C. July 16, 2018) (child pornography); Doe v. Wairi, No. 1:22-cv-10091 (D. Mass. Jan. 26, 2022) (surreptitious photographing of child's genitals); Doe v. St. John's Episcopal Parish Day School, Inc., 997 F. Supp. 2d 1279, 1290 (M.D. Fla. 2014); Doe v. Clark Cty. Sch. Dist., No. 2:15-cv-00793-APG-GWF, 2016 WL 4432683, at *14–15 (D. Nev. Aug. 18, 2016); Doe v. USD No. 237 Smith Ctr. Sch. Dist., No. 16-cv-2801-JWL-TJJ, 2017 WL 3839416, at *11 (D. Kan. Sept. 1, 2017); Doe-2 v. Richland Cty. School Dist. 2, No. 3:20-cv-02274-CMC, at 2 (D.S.C. Aug. 3, 2020); Doe v. N. Homes, Inc., No. 18-cv-3419-WMW-LIB, 2019 WL 3766380, at *5 (D. Minn. Aug. 9, 2019), *rev'd & remanded as to other matters*, 11 F.4th 633 (8th Cir. 2021); PB-7 Doe v. Amherst Central Sch. Dist., 196 A.D.3d 9 (2021); Doe v. Boulder Valley Sch. Dist. No. RE-2, No. 11-cv-02107-PAB, 2011 WL 3820781, at *3 (D. Colo. Aug. 30, 2011) (though noting that the adult plaintiffs were just a few years out of minority); Doe v. City of Stamford, No. FSTCV215025468S, 2021 WL 6608252, at *3 (Conn. Ct. Super. Ct. Dec. 22, 2021).

236. *E.g.*, Doe v. Rackliffe, 173 Conn. App. 389, 400 (2017); C.S. v. EmberHope, Inc., No. 19-2612-KHV, 2019 WL 6727102, at *2 (D. Kan. Dec. 11, 2019); Doe v. Smith, 429 F.3d 706, 710 (7th Cir. 2005); Doe 1 v. Unified Sch. Dist. 331, No. CIV.A. 11-1351-KHV, 2013 WL 1624823, at *2 (D. Kan. Apr. 15, 2013); Doe v. Holland Christian Ed. Soc'y, No. 1:18-cv-400, at 3 (W.D. Mich. Sept. 11, 2018); Brooks v. Benton Harbor Area Schools, No. 1:17-cv-93 (W.D. Mich. Feb. 2, 2017); Doe v. Bedford City School Dist. Bd. of Ed., No. 1:22-cv-00059 (N.D. Ohio June 17, 2022); Doe v. St. John, No. CV055000443S, 2006 WL 1149224, at *2 (Conn. Super. Ct. Apr. 13, 2006); GCVAWCG-Doe v. Roman Catholic Archdiocese of N.Y., 69 Misc. 3d 648, 653 (2020); Sherman v. Trinity Teen Sols., Inc., 339 F.R.D. 203, 205 (D. Wyo. 2021) (non-sexual abuse).

237. Smith v. Edwards, 175 F.3d 99, 100 n.1 (2d Cir. 1999).

the plaintiff's conduct toward his niece had the effect of alienating him from his own children."[238]

5. Pseudonymizing Adults in Other Cases Related to Nonparty Minors

And children might be upset not just by discussions of their alleged sexual abuse, but also by discussions of the child's having been physically abused by parents or others, or even taunted by classmates.[239] Likewise, in one case, parents sued a doctor who had artificially inseminated the mother with the doctor's own sperm instead of her husband's; the appellate court suggested that, in deciding whether the parents could proceed pseudonymously, the trial judge should weigh "the risk of harm to the children from revelation of the full circumstances of their birth."[240]

In another case, a child's mother sued the child's father, whose identity was secret from the child, alleging that the father failed to supply promised child support and other benefits. The court concluded that both parties should be pseudonymous because "public disclosure of the parties' identities would nullify any privacy protection given to the minor child and would lead to the uncovering of the minor child's identity."[241]

6. Pseudonymizing Adults in Cases Unrelated to Their Children, to Avoid Embarrassment to Children

Indeed, a child could be highly embarrassed (or taunted by classmates) even by revelations about their parents that have nothing to do with the child. Consider, for instance, *Doe v. MacFarland*, in which a woman sued alleging that she was sexually abused by her high school guidance counselor starting thirty-five years earlier;[242] the court let her proceed pseudonymously chiefly because

238. Boe v. Coe, No. CV05-4005684, 2005 WL 941418, at *1 (Conn. Super. Ct. New Haven Dist. Mar. 18, 2005); *see also* M. v. O., No. 1:22-cv-03707 (D.N.J. June 13, 2022), *granting* Motion, *id.* at 4–7 (June 10, 2022) (allowing pseudonymity for both plaintiff and defendant when plaintiff claimed he was abused, when he was a minor, by his mother and uncle). *But see* A.K. v. Ill. Dep't of Child. & Fam. Servs., 2017 IL App (1st) 163255-U, ¶¶ 27–30 (noting the issue but not considering it, for procedural reasons; it appears that on remand the trial court held against pseudonymity, because the case proceeded with the parties named, Kozik v. Ill. Dep't of Child. & Fam. Servs., 2019 IL App (1st) 182022-U); Doe v. Quiring, 686 N.W.2d 918, 923 (S.D. 2004) (3–2 vote) (rejecting statutory argument that incest offenders should be excluded from state sex offender registry because identifying them would identify their victims, and the statute made "confidential" "the name or any identifying information" of a victim).

239. *See* Doe v. Mechanicsburg Sch. Bd. of Educ., 518 F. Supp. 3d 1024, 1027 (S.D. Ohio 2021) (allowing pseudonymity in such a case, in part on the theory that "[p]ublic revelation of Plaintiffs' identities may invite further bullying and harassment and disrupt John Doe's education").

240. James v. Jacobson, 6 F.3d 233, 241 (4th Cir. 1993) (remanding for the trial judge to do the weighing); *see also id.* at 243 (Williams, J., concurring in part and dissenting in part) (concluding that "the risk of substantial harm to these innocent third parties who are minor children so significantly outweighs the minimal risk of prejudice to the defendant . . . that as a matter of law the plaintiffs should be allowed to proceed to trial under the James pseudonyms").

241. Doe v. Roe, No. 17-cv-23333, at 2 (S.D. Fla. Aug. 29, 2018), *granting* Motion, *id.* (Nov. 16, 2017).

242. Doe v. MacFarland, 117 N.Y.S.3d 476, 481 (Sup. Ct. 2019).

of the "potential impact to her children, both of whom attend school in the School District":

> The Court is particularly mindful of the impact of social media and the extent to which children can be readily exposed to taunting and harassing behaviors through such medium. In this Court's view, placing plaintiff into a Hobson's choice of proceeding under a pseudonym or discontinuing her action would negate the intent of the Child Victims Act. Here, issues which are sensitive and intimate have been raised and there is arguably a significant risk of harm to innocent third parties and little chance of prejudice to the only defendant who has opposed the application.[243]

Or consider *Doe v. Doe*, which allowed pseudonymity for a defendant who was accused of sexual assault and of paying for sex, partly because "[t]he defendant's former spouse and minor child are innocent third parties who would be vulnerable to mental harm if his name is disclosed."[244]

Indeed, any publicity related to a parent's alleged misconduct (or even proven misconduct) might deeply embarrass the parent's children[245] and lead them to be taunted at school.[246] It can even sometimes lead to the risk that children will be attacked because of their association with the parent.[247] Yet allowing pseudonymity in such cases seems likely to sharply undermine the general rule of public access, which may be why other courts have rejected such arguments.[248]

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243. *Id.* at 498. *See also* GCVAWCG-Doe v. Roman Catholic Archdiocese of N.Y., 69 Misc. 3d 648, 653 (2020) (noting that, in such a case, "a highly compelling factor might be that the plaintiff has a child or grandchild currently in the school system or church parish in which the [past] abuse [of plaintiff] arose"); Doe v. Yellowbrick Real Est., No. FSTCV205023127S, 2020 WL 6712461, at *3 (Conn. Super. Ct. Oct. 20, 2020) (allowing sexual assault plaintiff to sue under a pseudonym in part because "[p]laintiff has submitted affidavits in which she stated that failure to shield her name subject her, and her minor children, to harassment, injury, revictimization, ridicule, stigmatization, ostracization in their immediate community and church, which hold conservative and anachronistic attitudes toward sexual assault"); Discopolus, LLC v. City of Reno, No. 317-cv-0574-MMD-VPC, 2017 WL 10900550, at *2 (D. Nev. Nov. 16, 2017) (allowing erotic dancer to proceed pseudonymously in part because "plaintiff JT is the mother of two young children and disclosure of her identity may stigmatize them as well"); *see also* Doe v. Roman Cath. Archdiocese of N.Y., 64 Misc. 3d 1220(A), at *2 (2019) (discussing this argument raised by the plaintiff, but rejecting pseudonymity on other grounds); Doe v. Marvel, No. 1:10-cv-1316-JMS-DML, 2010 WL 5099346, at *2 (S.D. Ind. Dec. 8, 2010) (mentioning this argument raised by the plaintiff, but allowing pseudonymity without further discussing this particular point).

244. Doe v. Doe, No. 20-cv-5329-KAM-CLP, 2020 WL 6900002, at *3 (E.D.N.Y. Nov. 24, 2020).

245. Amy B. Cyphert, *Prisoners of Fate: The Challenges of Creating Change for Children of Incarcerated Parents*, 77 MD. L. REV. 385, 385 (2018); *HHS and DOJ Host Listening Session with Youth Who Have an Incarcerated Parent*, YOUTH.GOV (2016), http://youth.gov/feature-article/coip-listening-session-2016.

246. *See, e.g.*, Brief of Appellants, Doe v. Thompson, No. 13-110318-S, 2014 WL 903846, at *57 (Kan. Jan. 22, 2014).

247. Doe v. Butte Cty. Prob. Dep't, No. 2:20-cv-02248-TLN-DMC, 2020 WL 7239583, at *6–7 (E.D. Cal. Dec. 9, 2020); Doe v. Butte Cty. Prob. Dep't, No. 2:20-cv-02248-TLN-DMC, 2021 WL 50471, at *3 (E.D. Cal. Jan. 6, 2021); *cf.* Chang v. Republic of South Sudan, No. 21-cv-1821, 2021 WL 2946160, at *3 (D.D.C. July 9, 2021) (citing risk that "disclosure of plaintiff Nygundeng's personal information might put her three minor children at risk" from the government of South Sudan, though focusing on the personal information and not the plaintiff's name, which was public).

248. *See, e.g.*, Geico Gen. Ins. Co. v. M.O., No. 21-cv-2164-DDC-ADM, 2021 WL 4476783, at *9 (D. Kan. Sept. 30, 2021) ("M.O.'s argument essentially asserts in conclusory fashion that her children should be protected

E. PRIVACY AS TO "SENSITIVE AND HIGHLY PERSONAL" "STIGMATIZED" MATTERS

Courts also sometimes allow pseudonymity to prevent disclosure of people's "sensitive and highly personal" private information[249] that creates a risk of "social stigma."[250] But I stress the "sometimes": The cases are sharply split about what matters can indeed justify pseudonymity.

1. Consensual Sex and Related Matters

a. Abortion

Cases where a party is disclosing having had an abortion are often mentioned as examples of where pseudonymity is proper.[251] But while some such cases allow pseudonymity,[252] others don't.[253]

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from psychological harm because her sex life [and, in particular, her having gotten HPV as a result of having sex in a car] is embarrassing. But the mere fact that a parent's sex life might be embarrassing to the minor children does not present an exceptional case that warrants granting leave to proceed anonymously, particularly when that individual is seeking insurance coverage as a result of his or her sex life."); F.L. v. Doe, 70 Misc. 3d 962, 963 (N.Y. Sup. Ct. 2020) (refusing to allow pseudonymity in legal malpractice claim stemming from divorce case, when the alleged malpractice had to do with division of marital property, though "plaintiff attest[ed] that she seeks to proceed anonymously to protect her minor child from unnecessary bullying and embarrassment"); Doe v. Benoit, No. 19-cv-1253-DLF, 2020 WL 11885577, at *4 (D.D.C. July 27, 2020); Lawson v. Rubin, No. 17-cv-6404-BMC-SMG, 2019 WL 5291205, at *4 (E.D.N.Y. Oct. 18, 2019); Al Otro Lado, Inc. v. Nielsen, No. 17-cv-02366-BAS-KSC, 2017 WL 6541446, at *5 n.5 (S.D. Cal. Dec. 20, 2017); Luckett v. Beaudet, 21 F. Supp. 2d 1029, 1030 (D. Minn. 1998).

249. *In re* Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019); James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993); Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1068 (9th Cir. 2000).

250. *See* Doe v. Blue Cross & Blue Shield of R.I., 794 F. Supp. 72, 74 (D.R.I. 1992); Doe v. Rostker, 89 F.R.D. 158, 161 (N.D. Cal. 1981). In some cases, partial redaction of certain information—say, medical details—can adequately prevent the disclosure of private information this even without pseudonymity, *see, e.g.*, Doe, Inc. v. Roe, No. 21-mc-43-BAH, 2021 WL 3622166, at *3 (D.D.C. June 3, 2021), but when the core of the lawsuit is about some such matter, redaction may make it impossible to understand the facts and the legal arguments, *see, e.g.*, Doe v. Neverson, 820 F. App'x 984, 987–88 (11th Cir. 2020); Oldaker v. Giles, No. 7:20-cv-00224-WLS, 2021 WL 3412551, at *3 (M.D. Ga. Aug. 4, 2021), *reconsideration denied*, No. 7:20-cv-00224-WLS, 2021 WL 3779837 (M.D. Ga. Aug. 25, 2021).

251. *E.g.*, Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe, 599 F.2d 707, 712–13 (5th Cir. 1979).

252. Roe v. Operation Rescue, 123 F.R.D. 500, 505 (E.D. Pa. 1988); Doe v. C.A.R.S. Protection Plus, Inc., 527 F.3d 358, 371 n.2 (3d Cir. 2008); *see also* Roe v. Aware Woman Center for Choice, Inc., 253 F.3d 678, 685 (11th Cir. 2001) (pseudonymity allowed to plaintiff alleging defendants had prevented her from getting an abortion).

253. M.M. v. Zavaras, 139 F.3d 798, 804 (10th Cir. 1998) (concluding that denying pseudonymity in claim against prison for denial of "funds for transportation and medical expenses for abortion services" wasn't an abuse of discretion); Akron Ctr. for Reprod. Health, Inc. v. City of Akron, 651 F.2d 1198, 1210 (6th Cir. 1981) (concluding that denying pseudonymity in challenge to abortion ban wasn't an abuse of discretion), *rev'd in part on other grounds*, City of Akron v. Akron Ctr. For Reprod. Health, Inc., 462 U.S. 416 (1983); *see also Aware Woman Center for Choice*, 253 F.3d at 689–90 (Hill, J., concurring in part and dissenting in part) (arguing against pseudonymity in such a case).

b. Stigmatized Sexual Minorities

Courts have allowed pseudonymity to avoid outing a party as homosexual[254] or transgender,[255] at least when the party has kept that information confidential.[256] But some recent cases have disagreed.[257]

c. Sexual Behavior

Three courts have concluded that pseudonymity was justified to avoid identifying plaintiff as an erotic dancer,[258] but two other courts disagreed.[259] Courts have likewise split with regard to allegations of extramarital affairs,[260] and one allowed pseudonymity in a case involving adultery together with paying for sex (and allegedly transmitting STDs).[261] Another case allowed it for

254. Doe v. Commonwealth's Att'y, 403 F. Supp. 1199, 1200 n.1 (E.D. Va. 1975), *aff'd*, 425 U.S. 901 (1976); Doe v. Hood, No. 3:16-cv-00789-CWR-FKB, 2017 WL 2408196, at *2 (S.D. Miss. June 2, 2017); Doe v. Univ. of Scranton, No. 3:19-cv-1486, 2020 WL 1244368, at *2 (M.D. Pa. Mar. 16, 2020); Doe v. Catholic Relief Servs., No. 1:20-cv-01815-CCB, 2020 WL 4582711, at *2 (D. Md. Aug. 10, 2020); Doe v. Wilson, No. 3:21-cv-04108-MGL, at 2 (D.S.C. Apr. 18, 2022).

255. Delaware Valley Aesthetics, PLLC v. Doe 1, No. CV 20-0456, 2021 WL 2681286, at *7 (E.D. Pa. June 30, 2021); Doe v. Woodward Properties, Inc., No. 2:20-cv-05090-JMY (E.D. Pa. Oct. 20, 2020), *granting* Motion for Order to Proceed Anonymously, *id.* (Oct. 14, 2020); Doe v. Gray, No. 3:20-cv-00129-DRL-MGG, at 3 (N.D. Ind. Apr. 23, 2020); Doe v. Gardens for Memory Care at Easton, No. 18-cv-4027, at *2 (E.D. Pa. Sept. 21, 2018); Doe v. Triangle Doughnuts, LLC, No. 19-cv-5275, 2020 WL 3425150, at *6 (E.D. Pa. June 23, 2020); Doe v. Dallas, 16-cv-787-JCJ, at *1 n.1 (E.D. Pa. Mar. 10, 2016); Doe v. Romberger, 16-cv-2337-JP, at *1 n.1 (E.D. Pa. June 27, 2016); Doe v. Dee Packaging Solutions, Inc., No. 20-cv-2467, at 1 n.1 (E.D. Pa. July 23, 2020); Roe v. Tabu Lounge & Sports Bar, No. 20-cv-3688, at *1 (E.D. Pa. Sept. 10, 2020), *granting* Motion, *id.* (July 29, 2020); Doe v. Colonial Intermediate Unit 20, No. 20-cv-1215 (E.D. Pa. Aug. 25, 2020); Doe v. Pa. Dep't of Corrections, No. 19-cv-1584, 2019 WL 5683437, at *3 (M.D. Pa. Nov. 1, 2019); Doe v. Blue Cross & Blue Shield of R.I., 794 F. Supp. 72, 73 (D.R.I. 1992); Meriwether v. Trs. of Shawnee State Univ., No. 1:18-cv-753, 2019 WL 2392958, at *4 (S.D. Ohio Jan. 30, 2019); *cf.* In the Matter of the Application of T.I.C.-C to Assume the Name of A.B.C.-C., 271 A.3d 350, 359 (N.J. Super. Ct. App. Div.) (allowing sealing of identifying records in a transgender person's name change application).

256. *See* Doe v. Guess, Inc., No. 5:20-cv-04545-JFL, 2020 WL 5905440, at *3 (E.D. Pa. Oct. 6, 2020) (denying pseudonymity when plaintiff's sexual orientation was broadly known).

257. Doe v. Franklin Cty., No. 2:13-cv-00503, 2013 WL 5311466, at *4 (S.D. Ohio Sept. 20, 2013) (homosexuality); Doe v. BrownGreer PLC, No. 14-cv-1980, 2014 WL 4404033, at *2 (E.D. La. Sept. 5, 2014) (homosexuality); Doe v. Reyes 1, Inc., No. 5:19-cv-320-TES, 2019 WL 12493582, at *2 (M.D. Ga. Aug. 19, 2019) (transgender status).

258. Jane Roes 1–2 v. SFBSC Mgmt., LLC, 77 F. Supp. 3d 990, 994 (N.D. Cal. 2015); Doe #1 v. Deja Vu Consulting Inc., No. 3:17-cv-00040, 2017 WL 3837730, at *4–5 (M.D. Tenn. Sept. 1, 2017); Discopolus, LLC v. City of Reno, No. 3:17-cv-0574-MMD-VPC, 2017 WL 10900550, at *2 (D. Nev. Nov. 16, 2017); *cf.* Manasco v. Best in Town, Inc., No. 2:21-cv-00381-JHE, 2022 WL 816469, at *2–3 (N.D. Ala. Mar. 17, 2022) (allowing pseudonymity for erotic dancer declarants, though expressing doubt about whether it would have been allowed for parties). Two of these courts have also noted the risk that erotic dancers, if identified, may be exposed to the risk of stalking and violence from fans. *Jane Roes 1–2*, 77 F. Supp. 3d at 995; *Doe #1*, 2017 WL 3837730, at *4.

259. 4 Exotic Dancers v. Spearmint Rhino, No.-cv-08-4038-ABC-SSx, 2009 WL 250054, at *3 (C.D. Cal. Jan. 29, 2009); De Angelis v. Nat'l Ent. Grp. LLC, No. 2:17-cv-00924, 2019 WL 1071575, at *5 (S.D. Ohio Mar. 7, 2019).

260. Stern v. Stern, 66 N.J. 339, 343 n.1 (1975) (no pseudonymity); Alexander v. Falk, No. No. 2:16-cv-02268-MMD-GWF, 2017 WL 3749573, at *6 (D. Nev. Aug. 30, 2017) (pseudonymity); *In re* Ashley Madison Customer Data Sec. Breach Litig., MDL No. 2669, 2016 WL 1366616, at *4 (E.D. Mo. Apr. 6, 2016) (pseudonymity).

261. Doe v. Doe, No. 20-cv-5329-KAM-CLP, 2020 WL 6900002, at *2 (E.D.N.Y. Nov. 24, 2020).

intervenors who were mentioning their contraceptive use (or at least use of contraceptives that some view as abortifacients) and premarital sexual activity,[262] though that might have been tied to the parties being students at a Catholic university, where contraceptive use might be unusually controversial.[263]

One court refused to allow pseudonymity in a case involving BDSM, reasoning that, though "a voluntary BDSM relationship may reasonably be characterized as 'highly personal,' it is distinguishable from other highly personal matters, e.g., hereditary health issues, in that a voluntary BDSM sexual relationship is a choice."[264] Another refused pseudonymity as to exhibitionism.[265] And courts generally do not allow pseudonymity to prevent disclosure of other, more conventional sexual or romantic relationships.[266]

Some courts have allowed pseudonymity (though others have rejected it[267]) in cases involving allegedly copyright-infringing downloading of adult pornography, "because of the 'highly embarrassing and potentially sensitive and personal nature of such accusations,' the risk of misidentification where a defendant is only identified by an IP address, and the fact that 'the public's interest is not necessarily furthered by knowledge of the defendant's specific identity.'"[268] Likewise, one case allowed pseudonymity for an actress who

262. Univ. of Notre Dame v. Sebelius, No. 13-3853 (7th Cir. Jan. 14, 2014), *granting* Motion, *id.* (Dec. 19, 2013).

263. Motion, *supra* note 259, at 16–18.

264. Doe v. Rector & Visitors of George Mason Univ., 179 F. Supp. 3d 583, 593 (E.D. Va. 2016).

265. A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 505–06 (App. Div. 1995).

266. Doe v. Berg, No. 15-cv-9787, 2016 WL 11597923, at *3 (S.D.N.Y. Feb. 10, 2016); Doe v. Bd. of Regents of Univ. of N.M., No. 20-cv-1207-JB-JHR, 2021 WL 4034136, at *2 (D.N.M. Sept. 4, 2021) (pseudonymity not justified by the lawsuit's exposing information about a graduate student's "romantic and sexual relationship" with her doctoral advisor, and about the student's divorce, which was apparently initiated before the relationship, *see* Complaint, *id.* at 5 (Nov. 18, 2020)). *But see* Del. Ins. Guar. Ass'n v. Birch, No. CIV.A. 02C-05-026RFS, 2004 WL 1731139, at *1 n.1 (Del. Super. Ct. July 30, 2004) (pseudonymity allowed as to lawsuit over wrongful disclosure of pregnancy test results).

267. Boy Racer, Inc. v. John Does 1–34, No. 11-cv-23035, 2012 WL 1535703, at *4 (S.D. Fla. May 1, 2012); AF Holdings, LLC v. Does 1–162, No. 11-cv-23036, 2012 WL 488217, at *5 (S.D. Fla. Feb. 14, 2012); Liberty Media Holdings, LLC v. Swarm Sharing Hash File, 821 F. Supp. 2d 444, 453 (D. Mass. 2011); Patrick Collins, Inc. v. Doe, No. 3, No. 1:12-cv-00844-TWP-MJD, 2013 WL 12291722, at *2 (S.D. Ind. Jan. 29, 2013); Patrick Collins, Inc. v. John Doe No. 3, No. 1:12-cv-00844-TWP, 2013 WL 364637, at *2 (S.D. Ind. Jan. 29, 2013); Patrick Collins, Inc. v. John Does 1–54, No. 11-cv1-1602-PHX-GMS, 2012 WL 911432, at *4 (D. Ariz. Mar. 19, 2012).

268. Malibu Media, LLC v. Doe, No. 15-cv-2624-ER, 2015 WL 6116620, at *5 (S.D.N.Y. Oct. 16, 2015); Strike 3 Holdings, LLC v. Doe, No. 3:19-cv-508-J-34JRK, 2019 WL 5722173, at *1 (M.D. Fla. Nov. 5, 2019); Malibu Media, LLC v. Doe, No. 15-cv-1862-RJS, 2015 WL 4271825, at *3 (S.D.N.Y. July 14, 2015); Malibu Media, LLC v. Doe, No. 14-cv-20394, 2014 WL 12605559, at *1 (S.D. Fla. Apr. 18, 2014); Malibu Media, LLC v. Doe, No. 14-cv-20397, 2014 WL 12605560, at *1 (S.D. Fla. Apr. 14, 2014); Malibu Media, LLC v. Doe, No. 14-cv-60689, 2014 WL 12605554, at *1 (S.D. Fla. Apr. 11, 2014); Malibu Media, LLC v. Doe, No. 14-cv-60680, 2014 WL 12605553, at *1 (S.D. Fla. Apr. 4, 2014); Malibu Media, LLC v. Doe, No. 13-cv-21579, 2013 WL 2950593, at *2 (S.D. Fla. June 14, 2013); Patrick Collins, Inc. v. Does, No. 3:12-cv-339-MCR-CJK, 2012 WL 12870254, at *4 (N.D. Fla. Oct. 16, 2012); Malibu Media, LLC v. John Does 1–5, No. 12-cv-2950-JPO, 2012 WL 2001968, at *2 (S.D.N.Y. June 1, 2012); *see also* Next Phase Distrib., Inc. v. Does 1–138, No. 11-cv-9706-KBF, 2012 WL 691830, at *2 (S.D.N.Y. Mar. 1, 2012).

claimed she had been misled into participating in an online ad for a jewelry store, and had not realized that one of the scenes that she filmed would be "heavily edited to create a . . . video depicting [her] . . . simulating an orgasm."[269]

What about lawsuits involving rape allegations, where the defendant agrees that the parties had sex but asserts it was consensual? These could be sexual battery lawsuits, libel lawsuits over rape allegations, or wrongful termination or expulsion claims brought by employees or students who had been accused of rape. There, too, the case would expose sexual behavior on the part of the accused—perfectly legal behavior, according to the accused. And there, too, the allegation risks great embarrassment (and worse) to the accused. Some courts have allowed the accused to be anonymous, generally in lawsuits against a university, precisely on those grounds; for instance:

> This case centers on allegations that the Plaintiff engaged in sexual misconduct. The Plaintiff will therefore be required to disclose information of the utmost intimacy about himself and the victim of the alleged misconduct. For this reason, the second factor weighs in favor of proceeding anonymously.[270]

But others have not, perhaps on the theory that "[t]he party seeking anonymity did not allege that he was a *victim* of sexual assault, which is a crucial distinction is assessing the intimacy of the information."[271]

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269. Doe v. Szul Jewelry, Inc., 2008 N.Y. Slip. Op. 31382(U), at 13 (Sup. Ct. 2008).

270. Doe v. Embry-Riddle Aeronautical Univ., No. 6:20-cv-01220-WWB-LRH (M.D. Fla. Aug. 12, 2020); *see also* Doe v. Rector & Visitors of George Mason Univ., Inc., 179 F. Supp. 3d 583, 593 (E.D. Va. 2016) ("There can be no doubt that the litigation here focuses on a matter of sensitive and highly personal nature. Plaintiff has been accused of sexual misconduct, the mere accusation of which, if disclosed, can invite harassment and ridicule." (citation omitted)); Doe v. Univ. of Ark.-Fayetteville, No. 5:18-cv-05182-PKH, at 2 (W.D. Ark. Dec. 17, 2018); Doe v. Bd. of Trs. of Univ. of Ill., No. 2:20-cv-02265-CSB-EIL, at 4 (C.D. Ill. Nov. 9, 2020); Doe v. La. State Univ., No. 20-cv-379-BAJ-SDJ, 2020 WL 6493768, at *3 (M.D. La. June 30, 2020); Doe v. Univ. of Miss., No. 18-cv-138, 2018 WL 1703013, at *2 (S.D. Miss. Apr. 6, 2018); Doe v. Rollins Coll., No. 6:18-cv-1069-Orl-37LRH, 2018 WL 11275374, at *4 (M.D. Fla. Oct. 2, 2018); Doe v. Univ. of S. Ala., No. 17-cv-0394-CG-C, 2017 WL 3974997, at *2 (S.D. Ala. Sept. 8, 2017); Doe v. Thompson, No. 20STCV31772 (Cal. Super. Ct. L.A. Cty. Oct. 28, 2021); Doe v. Univ. of South, No. 4:09-cv-62, 2011 WL 13187184, at *19 (E.D. Tenn. July 8, 2011); Doe v. Grinnell College, No. 4:17-cv-00079-RGE-SBJ, 2017 WL 11646145, at *4 (S.D. Iowa July 10, 2017); Doe v. Univ. of Ore., No. 6:17-cv-01103-AA, at 3 (D. Ore. Sept. 27, 2017); Memorandum, Doe v. Dordt Univ., 5:19-cv-04082-CJW-KEM, at 15 (N.D. Iowa Mar. 3, 2020), *granting* Motion, *id.* (Dec. 5, 2019); Doe v. Univ. of Miss. Bd. of Trs., No. 3:21-cv-201-DPJ-FKB, 2021 WL 6752261, at *2 (S.D. Miss. Apr. 14, 2021). *Cf.* Doe v. Va. Polytechnic Inst. & State Univ., No. 7:19-cv-00249, 2020 WL 1287960, at *3 (W.D. Va. Mar. 18, 2020) (applying the same reasoning to allegations of "domestic and dating violence"; "[l]ike sexual misconduct, allegations of domestic violence or abusive dating relationships involve sensitive and highly personal facts that can invite harassment and ridicule").

271. *See* Doe v. Purdue Univ., No. 4:18-cv-72-JVB-JEM, 2019 WL 1960261, at *3 (N.D. Ind. Apr. 30, 2019); *see also* Ayala v. Butler Univ., No. 1:16-cv-1266-TWP-DML, at 5–6 (S.D. Ind. Jan. 8, 2018) (expressly rejecting the argument discussed in the text); Appendix 4b (cases rejecting pseudonymity in such Title IX cases, though generally without discussing the argument that accusation of sexual misconduct is a matter of utmost intimacy for the accused).

2. Victimization

a. Sexual Assault Victimization

Many cases allow people who allege they were sexually assaulted to be pseudonymous,[272] including when they are defendants being sued for libel and related torts.[273] But again, many other decisions hold otherwise, some in highly prominent cases (for instance, against Kevin Spacey, Harvey Weinstein, and Tupac Shakur) and others in much less prominent ones.[274] A few cases conclude that the plaintiff's being part of a conservative religious community, in which being sexually assaulted is seen as shameful, might cut in favor of allowing pseudonymity; whether that's proper is discussed in a separate article.[275]

b. Sexual Assault Victimization: Pseudonymizing Alleged Victimizer to Protect Alleged Victim

Some cases allow pseudonymity for the alleged attacker as well as the alleged victim, if the two are relatives or ex-spouses or ex-lovers, because identifying one would also identify the other, at least to people who had known them.[276]

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272. *See infra* Appendix 2a.

273. *See, e.g.*, Adgers v. Doe, No. CV05-4014657, 2005 WL 3693816, at *1 (Conn. Super. Ct. Dec. 23, 2005); A.B. v. C.D., No. 2:17-cv-5840-DRH-AYS, 2018 WL 1935999, at *4 (E.D.N.Y. Apr. 24, 2018); Painter v. Doe, No. 3:15-cv-369-MOC-DCK, 2016 WL 3766466, at *2 (W.D.N.C. July 13, 2016); Heineke v. Santa Clara Univ., No. 17-cv-05285-LHK, 2017 WL 6026248, at *23 (N.D. Cal. Dec. 5, 2017); Bird v. Barr, No. 19-CV-1581, 2019 WL 2870234, at *4 (D.D.C. July 3, 2019); Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 63–64 (D.D.C. 2019); *see also* NMIC Ins. Co. v. Smith, No. 2:18-cv-533, 2018 WL 7859755, at *2 (S.D. Ohio Oct. 24, 2018) (lawsuit by insurance company claiming that it had no duty to defend a sexual assault lawsuit brought against the company's insured by defendant).

274. *See infra* Appendix 2b; Jayne S. Ressler, *Anonymous Plaintiffs and Sexual Misconduct*, 50 SETON HALL L. REV. 955, 964 (2020) (noting that the caselaw is inconsistent on this).

275. *See* Eugene Volokh, *Protecting People from Their Own Religious Communities: Jane Doe in Church and State* (in draft).

276. Doe v. Kenyon Coll., No. 2:20-cv-4972, 2020 WL 11885928, at *1 (S.D. Ohio Sept. 24, 2020); Doe v. Trs. of Dartmouth Coll., No. 18-cv-040-LM, 2018 WL 2048385, at *6 (D.N.H. May 2, 2018); Doe v. Vassar College, No. 19-cv-09601-NSR, at 3 (S.D.N.Y. Nov. 13, 2019); Doe v. Williams Coll., No. 3:20-cv-30024-KAR (D. Mass. Feb. 19, 2020), *granting* Assented to Motion to Proceed Under a Pseudonym, *id.* at 6–7 (D. Mass. Feb. 18, 2020); Doe v. Smith, 105 F. Supp. 2d 40, 44 (E.D.N.Y. 1999) (noting approvingly "plaintiff's offer to forego opposition to defendant also proceeding under a pseudonym"); *cf.* Doe v. Billington, No. 21STCV22207 (Cal. Super. Ct. Sept. 2, 2021).

c. Sexual Harassment Victimization

Allegations of sexual harassment falling short of sexual assault are often not seen as sufficient to justify pseudonymity,[277] though even there the cases are split.[278]

d. Non-Sexual Victimization

Parties' allegations of nonsexual victimization don't generally lead to pseudonymity,[279] though I have found four cases in which they have: two involving alleged nonsexual forced labor[280] and two involving alleged nonsexual mistreatment of high school students who were adults when the case was filed.[281] Nonparty witnesses who are crime victims are often pseudonymized,[282] but this article focuses on pseudonymity of parties.

3. Illness

a. Communicable Disease

Courts are divided on whether to allow pseudonymity where disclosing the party's name might reveal that the party has been infected with HIV,[283]

277. *See, e.g.*, Doe v. Cook Cty., No. 1:20-cv-5832, 2021 WL 2258313, at *3 (N.D. Ill. June 3, 2021); L.A. v. Gary Crossley Ford, Inc., No. 4:20-cv-00620-RK, at 2–3 (W.D. Mo. Oct. 2, 2020); Doe v. Am. Fed. of Gov't Emps., No. 1:20-cv-01558-JDB, 2021 WL 3550996, at *6 n.2 (D.D.C. June 19, 2020); Roe v. Bernabei & Wachtel PLLC, 85 F. Supp. 3d 89, 96–97 (D.D.C. 2015); Doe v. Moreland, No. 18-cv-800-TJK, 2019 WL 2336435, at *2 (D.D.C. Feb. 21, 2019) (claim of allegedly libelous accusations of sexual harassment); Doe v. Freydin, No. 21-cv-8371-NRB, 2021 WL 4991731, at *2 (S.D.N.Y. Oct. 27, 2021); Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 63–64 (D.D.C. 2019); Bird v. Barr, No. 19-cv-1581, 2019 WL 2870234, at *4 (D.D.C. July 3, 2019); Doe I v. Yesner, No. 3:19-cv-0136-HRH, 2019 WL 4196054, at *13 (D. Alaska Sept. 4, 2019).

278. *See, e.g.*, Heineke v. Santa Clara Univ., No. 17-cv-05285-LHK, 2017 WL 6026248, at *22–23 (N.D. Cal. Dec. 5, 2017) (allowing pseudonymity to defendant in libel lawsuit brought over sexual harassment claim); Doe v. Georgetown Synagogue-Kesher Israel Congregation, No. 1:16-cv-01845-ABJ (D.D.C. Sept. 15, 2016) (allowing pseudonymity in case involving hidden photographing of plaintiffs when they were naked).

279. *E.g.*, Sherman v. Trinity Teen Solutions, Inc., 339 F.R.D. 203, 205 (D. Wyo. 2021) (child abuse); Doe v. Zinsou, No. 19-cv-7025-ER, 2019 WL 3564582, at *4 (S.D.N.Y. Aug. 6, 2019) (nonsexual trafficking and forced labor).

280. Doe v. Phillips, No. 2:20-cv-00019-TSK (N.D. W. Va. Mar. 31, 2021), *granting* Request, *id.* (July 10, 2020; *see* Complaint, *id.* (July 9, 2020); Doe v. Baldeo, No. 1:22-cv-00917 (S.D.N.Y. Feb. 4, 2022) (referring to Complaint, *id.* (Feb. 2022)).

281. Doe v. School Dist. 214, No. 1:16-cv-07642, at 10 (N.D. Ill. Mar. 24, 2017) (racial harassment in high school); Doe v. Bd. of Ed. of City of Chicago, No. 1:22-cv-00583 (N.D. Ill. Feb. 8, 2022), *granting* Motion, *id.* (Feb. 1, 2022) (retaliatory harassment for reporting sexual misconduct by teammates in high school).

282. *See, e.g.*, Denbow v. State, No. 09-19-00318-CR, 2021 WL 4173725, at *1 n.1 (Tex. App. Sept. 15, 2021).

283. Pseudonymity allowed: Roe v. City of Milwaukee, 37 F. Supp. 2d 1127, 1129 (E.D. Wis. 1999); W.G.A. v. Priority Pharmacy, Inc., 184 F.R.D. 616, 617 (E.D. Mo. 1999); Doe v. Landry's, Inc., 1:18-cv-11501-LAP (S.D.N.Y. 2019); Doe v. Brennan, No. 19-cv-5885, 2020 WL 1983873, at *3–4 (E.D. Pa. Apr. 27, 2020); Doe v. Russ, No. 1:20-cv-07769-AT (S.D.N.Y. Oct. 29, 2020), *granting* Motion to Proceed Under Pseudonym, *id.* (Oct. 14, 2020); S.G. v. Mears Transp. Grp., Inc., No. 6:14-cv-917-ORL-37, 2014 WL 4637139, at *1 (M.D. Fla. Aug. 12, 2014); Doe v. Tris Comprehensive Mental Health, Inc., 298 N.J. Super. 677, 682–83 (Law Div. 1996); Doe v. Griffon Mgmt. LLC, No. 14-cv-2626, 2014 WL 7040390, at *2 (E.D. La. Dec. 11, 2014); Doe v. Casey's General Stores, Inc., No. 4:03-cv-03397 (D. Neb. Nov. 13, 2003), *granting* Motion, *id.* (Nov. 13, 2003); Anonymous v. Duane Reade Inc., 10 Misc. 3d 1056(A), 2005 WL 3309737, at *1 (Sup. Ct. Oct. 7, 2005).

herpes,[284] or other communicable (and generally sexually transmitted) illnesses.[285]

b. Mental Illness or Disorder

Courts are divided on this as well.[286]

c. Nonmental, Noncommunicable Illness or Disability

And courts are divided on this, too.[287]

Pseudonymity not allowed: Mateer v. Ross, Suchoff, Egert, Hankin, Maidenbaum & Mazel, P.C., No. 96-cv-1756-LAP, 1997 WL 171011, at *6 (S.D.N.Y. Apr. 10, 1997); Doe v. Bell Atl. Bus. Sys. Servs., Inc., 162 F.R.D. 418, 420 (D. Mass. 1995); Pierre v. Cty. of Broome, No. 3:05-cv-332, 2006 WL 8453057, at *2 (N.D.N.Y. Mar. 13, 2006); Doe v. Merritt Hosp., LLC, 353 F. Supp. 3d 472, 474–75, 482 (E.D. La. 2018); Doe v. BrownGreer PLC, No. 14-cv-1980, 2014 WL 4404033, at *2 (E.D. La. Sept. 5, 2014); Doe v. New England Stair Co., No. AAN-CV18-6025867-S, 2018 WL 3062243, at *3 (Conn. Super. Ct. May 30, 2018); *see also* Doe v. Prudential Ins. Co. of Am., 744 F. Supp. 40, 41–42 (D.R.I. 1990) (not allowing pseudonymity for plaintiffs whose lawsuit was related to their son's having died of AIDS).

284. Pseudonymity allowed: Doe v. Cochran, No. FSTCV155014849S (Super. Ct. Conn. Sept. 28, 2015); Doe v. Weinzweig, 40 N.E.3d 351, 363 (Ill. App. Ct. 2015) (noting that the circuit had allowed pseudonymity but concluding that the question was not properly before the court on appeal).

Pseudonymity not allowed: Unwitting Victim v. C.S., 47 P.3d 392, 401 (Kan. 2002); Anonymous v. Lerner, 124 A.D.3d 487, 488 (N.Y. App. Div. 2015); Anonymous v. Simon, No. 13-cv-2927-RWS, 2014 WL 819122, at *8 (S.D.N.Y. Mar. 3, 2014).

285. Pseudonymity allowed: EW v. N.Y. Blood Ctr., 213 F.R.D. 108, 112 (E.D.N.Y. 2003) (hepatitis B); Doe v. O'Neill, , No. C.A. W.C. 86-354, 1987 WL 859818, at *1 (R.I. Super. Jan. 6, 1987) (chlamydia and gonorrhea). Pseudonymity not allowed: Geico Gen. Ins. Co. v. M.O., No. 21-2164-DDC-ADM, 2021 WL 4476783, at *8 (D. Kan. Sept. 30, 2021) (HPV).

286. *See infra* Appendix 3a & 3b.

287. Pseudonymity allowed: Heather K. by Anita K. v. City of Mallard, Iowa, 887 F. Supp. 1249, 1256 (N.D. Iowa 1995) ("severe respiratory and cardiac conditions"); Doe v. Nw. Mem'l Hosp., 19 N.E.3d 178, 193 (Ill. App. Ct. 2014) (plaintiffs' having provided semen or testicular tissue for assisted reproduction, which defendants' negligence allegedly destroyed, thus "shatter[ing]" "any hope plaintiffs had of having a biological child"); C.R.M. v. United States, No. 1:20-cv-00404-AJT-IDD, 2020 WL 4904243, at *1 n.1 (E.D. Va. Apr. 13, 2020) (deaths of plaintiff's three newborn children, and miscarriage of two fetuses at nineteen weeks of pregnancy, stemming from defendants' alleged malpractice in implanting embryos for assisted reproduction); Roe v. Cath. Health Initiatives Colo., No. 11-cv-02179-WYD-KMT, 2012 WL 12840, at *5 (D. Colo. Jan. 4, 2012) (plaintiff's use of prescribed opiates for back pain, *see* Complaint at 3, *id.* (Aug. 9, 2011)).

Pseudonymity not allowed: Doe v. Blue Cross & Blue Shield United of Wisconsin, 112 F.3d 869, 872 (7th Cir. 1997) (medical conditions generally); Anonymous v. Medco Health Sols., Inc., 588 F. App'x 34, 35 (2d Cir. 2014) (Parkinson's Disease); Endangered v. Louisville/Jefferson Cty. Metro Gov't Dept. of Inspections, 3:06-cv-250, 2007 WL 509695, at *1–2 (W.D. Ky. Feb. 12, 2007) (mobility-impairing disabilities); Parlante v. Am. River Coll., No. 2:20-cv-02268-KJM-JDP (PS), 2021 WL 4123807, at *1 (E.D. Cal. Sept. 9, 2021) ("[M]ore than 50% blind[ness]," Motion, *id.* at 1 (Nov. 13, 2020)); Rankin v. N.Y. Pub. Libr., No. 98-cv-4821-RPP, 1999 WL 1084224, at *1 (S.D.N.Y. Dec. 2, 1999) (fibromyalgia, spondylarthritis, chronic fatigue immune deficiency syndrome, and hypothyroidism"); Doe v. Univ. of the Incarnate Word, No. SA-19-cv-957-XR, 2019 WL 6727875, at *3 (W.D. Tex. Dec. 10, 2019) (hand injury); Doe v. CareMount Med. P.C., No. 21-cv-7453-LTS, 2021 WL 4940995, at *2 (S.D.N.Y. Sept. 27, 2021) (family history of cancer).

4. Beliefs

a. Religious Beliefs

An oft-quoted 1981 Fifth Circuit decision, *Doe v. Stegall*, allowed plaintiffs to pseudonymously challenge public school prayers, partly on the grounds that "the Does complain of public manifestations of religious belief; religion is perhaps the quintessentially private matter. . . . [T]he Does have, by filing suit, made revelations about their personal beliefs and practices that are shown to have invited an opprobrium analogous to the infamy associated with criminal behavior."[288] Some other cases have likewise allowed Establishment Clause challenges to religiously controversial policies to proceed pseudonymously, especially where there was a risk of public hostility to child plaintiffs,[289] though others have disagreed.[290] *Stegall* relied on the threat of "violent reprisals,"[291] not just social opprobrium,[292] but other courts haven't cited such threats of physical harm.

Yet courts have nearly uniformly refused to let plaintiffs be pseudonymous simply to avoid revealing their membership in minority religions, such as Judaism and Islam,[293] with only one clear exception that I have seen.[294] Indeed,

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288. Doe v. Stegall, 653 F.2d 180, 186 (5th Cir. 1981); *see also* Doe v. Barrow Cty., 219 F.R.D. 189, 193 (N.D. Ga. 2003).

289. Doe v. Porter, 370 F.3d 558, 560 (6th Cir. 2004); Doe v. Santa Fe Indep. Sch. Dist., 168 F.3d 806, 809 n.1 (5th Cir. 1999) (noting that trial judge had allowed pseudonymity), *aff'd as to other matters*, 530 U.S. 290 (2000); Doe v. Heritage Academy, No. 2:16-cv-03001-SPL, 2017 WL 6001481, at *18 (D. Ariz. June 9, 2017); Yacovelli v. Moeser, No. 1:02-cv-596, 2004 WL 1144183, at *6–7 (M.D.N.C. May 20, 2004).

290. Doe v. Beaumont Indep. Sch. Dist., 172 F.R.D. 215, 217 (E.D. Tex. 1997); Freedom from Religion Found., Inc. v. Emanuel Cty. School Sys., 109 F. Supp. 3d 1353, 1357 (S.D. Ga. 2015).

291. *See supra* Part III.A.

292. Stegall, 653 F.2d at 186.

293. Doe v. Coll. of N.J., No. 19-cv-20674-FLW-ZNQ, 2020 WL 360719, at *3 (D.N.J. Jan. 22, 2020) (rejecting argument that identifying Doe would "reveal her status 'as a practicing and traditional Jew,' risking her and her children's safety 'in light of the recent rise of Anti-Semitic violence,'" reasoning that "[t]his Court regularly hears claims by and against Jewish litigants, and Doe had failed to show any evidence that Jewish litigants are put at a greater risk of anti-Semitic discrimination or violence by virtue of using their names in federal court"), *aff'd*, No. 19-cv-20674-FLW, 2020 WL 3604094 (D.N.J. July 2, 2020), *aff'd*, 997 F.3d 489 (3d Cir. 2021); Freedom From Religion Found., Inc. v. Emanuel Cty. School Sys., 109 F. Supp. 3d 1353, 1357 (S.D. Ga. 2015) ("The fact that religion is an intensely private concern does not inevitably require that an Establishment Clause plaintiff be given Doe status . . . no court from this or any other circuit has considered a plaintiff[']s religious beliefs to be a matter of such sensitivity as to automatically entitle the plaintiff to Doe status."); Doe v. Cloninger, No. 3:15-cv-00036, 2015 WL 4389525, at *2 (W.D.N.C. July 17, 2015) (rejecting claim of pseudonymity aimed at avoiding disclosure that plaintiff is a practicing Muslim); Roe v. San Jose Unif. School Dist. Bd., No. 20-cv-02798-LHK, 2021 WL 292035, at *9 (N.D. Cal. Jan. 28, 2021) (rejecting claim of pseudonymity aimed at avoiding disclosure that plaintiff is a conservative Christian opposed to homosexuality); Doe v. Felician Univ., No. 2:18-cv-13539-ES-SCM, 2019 WL 2135959, at *4 (D.N.J. May 15, 2019) (rejecting claim of pseudonymity for Muslim student, even though the lawsuit had been noted on an anti-Islam website). The same has of course been true as to majority religions. *See, e.g.*, Doe v. City Univ. of N.Y., No. 21-cv-9544-NRB, 2021 WL 5644642, at *3 (S.D.N.Y. Dec. 1, 2021); U.S. Army ROTC ECP Cadet Doe v. Biden, No. 1:22-mc-00034-UNA, at 5–6 (D.D.C. Mar. 21, 2022).

294. The exception allowed pseudonymity for plaintiffs challenging military vaccine mandates on religious grounds. Navy Seal 1 v. Austin, No. 8:21-cv-2429-SDM-TGW (M.D. Fla. Feb. 18, 2022) (pseudonymity justified because "[p]rosecution of this action compels the plaintiffs to disclose sincere religious beliefs," though

were it otherwise, religious discrimination lawsuits brought by religious minorities could nearly always be litigated pseudonymously. It thus appears that mere disclosure of religious beliefs is not sufficient to justify pseudonymity—there must be a combination of both the plaintiff's religious beliefs and expected public hostility to the specific remedy that the plaintiff is seeking.

b. Political Beliefs

Likewise, a recent case rejected pseudonymity where plaintiff argued that his challenge to Twitter policies might draw attacks on his children from "unbalanced people in the world" who "hate President Trump supporters."[295] On the other hand, some other cases allowed challenges to vaccine mandates to proceed pseudonymously, because of concern about public hostility to such challenges.[296] And another case allowed pseudonymity based on the speaker's perceived political views: a case where university students sued over having been disciplined for engaging in actions that were supposedly "racist, anti-Semitic, homophobic, sexist, and hostile to people with disabilities";[297] query whether this may have stemmed from the more general trend of allowing challenges to university discipline to be pseudonymous, as a means of protecting the accused students' reputations.[298]

Some other cases that have allowed pseudonymity in politically controversial contexts have focused on the claims being legal rather than factual

also noting that plaintiffs would have "to disclose the deeply personal experiences that form the foundation of those beliefs," such as having had an abortion in the past). One other case mentioned the religious nature of plaintiffs' objections in allowing pseudonymity, but seemed to focus not on disclosure of religious beliefs as such but rather on the risk of public hostility to people objecting to vaccine mandates, for religious reasons or otherwise. Does v. NorthShore Univ. Healthsystem, No. 1:21-cv-05683, at 23 (N.D. Ill. Nov. 30, 2021).

295. Verogna v. Twitter, Inc., No. 20-cv-536-SM, 2020 WL 5077094, at *2 (D.N.H. Aug. 27, 2020); *see also* Does 1–6 v. Mills, No. 1:21-cv-00242, 2022 WL 1747848, at *6 (D. Me. Sept. 2, 2021) ("The Plaintiffs have not demonstrated that the public controversy associated with mandatory COVID-19 vaccinations will result in the Plaintiffs being socially stigmatized to a substantial degree if the Plaintiffs' identities are publicly revealed."), *rev'g*, 2021 WL 4005985, at *2 (D. Me. Sept. 2, 2021) (an earlier decision by the same judge that allowed pseudonymity).

296. *See* Does v. NorthShore Univ. Healthsystem, No. 1:21-cv-05683, at 23 (N.D. Ill. Nov. 30, 2021).

297. Doe #1 v. Syracuse Univ., No. 5:18-cv-0496-FJS-DEP, 2018 WL 7079489, at *6 (N.D.N.Y. Sept. 10, 2018), *report & recommendation adopted*, No. 5:18-cv-00496-BKS-ML, 2020 WL 2028285 (N.D.N.Y. Apr. 28, 2020). *But see* Doe v. Rhodes College, No. 2:21-cv-02811 (W.D. Tenn. Feb. 15, 2022) (alleged facts laid out in Complaint, *id.* (Dec. 29, 2021)) (denying pseudonymity for a university student suing over having been disciplined for racist statement).

298. *See infra* Part III.G.

challenges,[299] so that naming the parties was seen as less likely to be valuable.[300] And even in such controversial contexts, pseudonymity is not always allowed.[301]

5. Crime and Addiction

a. Drug or Alcohol Abuse or Addiction

Courts appear to generally disallow pseudonymity aimed at preventing revelation of a party's history of drug abuse or addiction[302] or alcohol abuse or addiction.[303] In the words of one case:

> [W]e do not discount Doe's very real concerns about reputational harm, both personally or professionally, or her fears of relapse in the event of such backlash. But those types of fears are similar to those of other plaintiffs who have alleged that they were discriminated against because of their histories of substance abuse, and it is clear that several similarly-situated plaintiffs have publicly identified themselves in their own litigations.[304]

At least three cases, though, have allowed pseudonymity in such a situation.[305]

b. Criminal Record or Behavior

Stegall, which allowed pseudonymity for people challenging public school prayers under the Establishment Clause, noted:

> Although they do not confess either illegal acts or purposes, the Does have, by filing suit, made revelations about their personal beliefs and practices that

299. *See, e.g.*, Publius v. Boyer-Vine, 321 F.R.D. 358 (E.D. Cal. 2017) (allowing a pseudonymous blogger who was harshly critical of government officials to challenge a speech restriction pseudonymously); Menders v. Loudoun Cty. School Bd., No. 1:21-cv-00669, 2022 WL 179597, at *4 n.2 (E.D. Va. July 28, 2021) (allowing a pseudonymous challenge to a school board's policies on teaching views associated with Critical Race Theory); Doe v. Regents of Univ. of Colo., No. 1:21-cv-02637-RM-KMT, at 9–10 (D. Colo. Jan. 5, 2022) (allowing a pseudonymous challenge to a vaccine mandate, and stressing that there was little factual dispute, as opposed to legal dispute, in the case); Does v. Hochul, No. 1:21-cv-05067-AMD-TAM, at 12, 16 (N.D.N.Y. Mar. 18, 2022) (likewise); Doe 1 v. Madison Metro. Sch. Dist., 963 N.W.2d 823, 826 (Wisc. Ct. App. 2021) (allowing a pseudonymous challenge to a school district's policy "allowing students to 'change gender identity' and select new names and pronouns for themselves 'regardless of parent/guardian permission'").

300. *See supra* Part I.D.

301. *See, e.g.*, Doe 1 v. Northshore Univ. Healthsystem, No. 21-3242 (7th Cir. Dec. 13, 2021); U.S. Army ROTC ECP Cadet Doe v. Biden, No. 1:22-mc-00034-UNA, at 6 (D.D.C. Mar. 21, 2022); Doe v. Washington Nationals Baseball Club, LLC, No. 1:22-cv-01299-TJK, at 6–7 (D.D.C. May 11, 2022).

302. D.E. v. John Doe I, 834 F.3d 723, 728–29 (6th Cir. 2016); Doe v. Indiana Black Expo, Inc., 923 F. Supp. 137, 142 (S.D. Ind. 1996); Doe v. Heitler, 26 P.3d 539, 542 (Colo. Ct. App. 2001); K.W. v. Holtzapple, 299 F.R.D. 438, 439–40, 442 (M.D. Pa. 2014).

303. Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992).

304. Doe v. Main Line Hosps., Inc., No. 2:20-cv-02637-KSM, 2020 WL 5210994, at *10 (E.D. Pa. Sept. 1, 2020).

305. Smith v. United States Off. of Pers. Mgmt., No. 2:13-cv-5235, 2014 WL 12768838, at *2 (E.D. Pa. Jan. 21, 2014) (drug and alcohol addiction); Beach v. United Behav. Health, No. 3:21-cv-08612-RS (N.D. Cal. Nov. 15, 2021), *granting* Motion to Proceed Anonymously, *id.* at 3 (Nov. 9, 2021) (likewise); M.C. v. Jefferson Cty., No. 6:22-cv-00190-DNH-ML (N.D.N.Y. Apr. 13, 2022), *granting* Motion for Leave to File Under Seal, *id.* (Apr. 6, 2022) (opioid use disorder).

> are shown to have invited an opprobrium analogous to the infamy associated with criminal behavior.[306]

This language might make it seem like litigants could generally be pseudonymous if their alleged actions would tend to "invite[] an opprobrium analogous to the infamy associated with criminal behavior," for instance, if they were accused of rape or fraud.

And indeed, several cases have allowed people challenging the publication of their criminal convictions to proceed anonymously. This has happened most prominently in some challenges to sex offender notification schemes; most of those have involved fundamentally legal challenges,[307] for which pseudonymity is generally more available.[308] But one case allowed pseudonymity even as to a factual dispute, in a lawsuit over expunged convictions.[309]

Yet even for some such legal challenges, pseudonymity was denied.[310] And when it came to cases that turned primarily on the facts rather than on broad legal challenges, many cases have concluded that discussing a plaintiff's adult criminal history does not justify pseudonymity[311] (though the result may be

306. Doe v. Stegall, 653 F.2d 180, 186 (5th Cir. 1981).

307. *See* Doe v. Alaska, 122 F.3d 1070, 1070 (9th Cir. 1997); Doe v. Harris, 640 F.3d 972, 973 n.1 (9th Cir. 2011); Doe v. City of Albuquerque, 667 F.3d 1111, 1115 n.1 (10th Cir. 2012); Does v. Whitmer, No. 2:22-cv-10209-MAG-CI (E.D. Mich. May 17, 2022); Doe v. Wilson, No. 3:21-cv-04108-MGL, at 2 (D.S.C. Apr. 18, 2022); Doe v. Strange, No. 2:15-cv-606-WKW, 2016 WL 1168487 (M.D. Ala. Mar. 24, 2016); Doe v. Swearingen, No. 18-cv-24145, 2019 WL 95548 (S.D. Fla. Jan. 3, 2019); Doe v. City of Apple Valley, No. 20-cv-499-PJS-DTS, 2020 WL 1061442, at *3 (D. Minn. Mar. 5, 2020); Doe v. Jindal, 851 F. Supp. 2d 995 (E.D. La. 2012); Doe v. Hood, No. 3:16-cv-00789-CWR-FKB, 2017 WL 2408196, at *3 (S.D. Miss. June 2, 2017); Doe v. Wasden, No. 1:20-cv-00452-BLW, at 1 (D. Idaho Dec. 23, 2020), *granting* Motion, *id.* (Sept. 23, 2020); Does 1–4 v. Snyder, No. 2:12-cv-11194-RHC-DRG, 2012 WL 1344412, at *2 (E.D. Mich. Apr. 18, 2012); Does v. City of Indianapolis, Ind., No. 1:06-cv-865-RLY-WTL, 2006 WL 2289187, at *3 (S.D. Ind. Aug. 7, 2006); Doe v. Shurtleff, No. 1:08-cv-00064-TC, at 1, 16 (D. Utah Sept. 25, 2008); Doe v. Town of Plainfield, 860 N.E.2d 1204, 1210 (Ind. Ct. App. 2007); Doe v. Thompson, 373 P.3d 750, 759 (Kan. 2016); Doe AA v. King Cty., 15 Wash. App. 2d 710, 717 (2020); *see also* E.B. v. Landry, No. 19-cv-862, 2020 WL 5775148, at *3 (M.D. La. Sept. 28, 2020) (legal challenge to Louisiana's enforcement of its scheme for expungement of criminal convictions).

308. *See supra* Part I.D; *cf.* Doe v. Settle, 24 F.4th 932, 939 n.5 (4th Cir. 2022); United States v. Stoterau, 524 F.3d 988, 1013 (9th Cir. 2008) (noting that "a litigant's identity may not be as important in purely legal or facial challenges").

309. Doe v. Ronan, No. 1:09-cv-243, 2009 WL 10679478, at *1 (S.D. Ohio June 4, 2009) ("A criminal record . . . carries a very negative connotation in society which can be embarrassing and humiliating if that information becomes public."); *cf.* Doe v. Univ. of Miss. Bd. of Trs., No. 3:21-cv-201-DPJ-FKB, 2021 WL 6752261, at *2 (S.D. Miss. Apr. 14, 2021) (allowing plaintiff to sue pseudonymously in case challenging a Title IX finding of sexual assault, on the grounds that "Roe's sexual misconduct claims against him, if believed, may be construed by some to constitute criminal conduct or to warrant 'an opprobrium analogous to the infamy associated with criminal behavior'" (citing *Stegall*, 653 F.2d at 186)).

310. Mueller v. Raemisch, 740 F.3d 1128, 1135–36 (7th Cir. 2014); A.N. v. Landry, 338 F.R.D. 347, 355–56 (M.D. La. 2021) (concluding that sex offender history "weighs somewhat in favor of anonymity," but "cannot stand alone to modify 'the almost universal practice of disclosure'"); Pelland v. State, 919 A.2d 373, 377–78 (R.I. 2007) (holding that denial of pseudonymity wasn't an abuse of discretion).

311. Plaintiff v. Wayne State Univ., No. 2:20-cv-11718-GAD-DRG (E.D. Mich. Jan. 25, 2021) (actual allegations of criminal behavior not enough to justify pseudonymity); *cf.* A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 503 (App. Div. 1995) ("Plaintiff's arguments that he would risk self-incrimination, that he and his family might be isolated from society and that his employment would be in jeopardy are not only somewhat speculative,

different for juvenile criminal history[312]). This has included cases involving disclosure of sex offender history.[313] And, of course, criminal prosecutions and habeas cases routinely discuss the named parties' criminal behavior.

F. REPUTATIONAL HARM / RISK OF ECONOMIC RETALIATION

So far, we have talked mostly about potential harm to privacy, through disclosure of matters that courts might plausibly label "sensitive and highly personal" information. Let us now move on to matters that would rarely be seen as highly "private," but that can nonetheless cause harm to reputation, and the economic and professional harm that can stem from reputational harm.[314] Here, the dominant rule is no pseudonymity, except (rightly or wrongly) in one important class of cases: lawsuits brought under Title IX alleging that students were wrongly found guilty of sexual assault or harassment. I will begin by laying out a few categories of situations where the risk of reputational harm is especially serious, and then summarize the state of court decisions on the subject.

1. Risks of Reputational Harm

a. Defendants Accused (Perhaps Wrongly) of Serious Misconduct

Many defendants could be ruined simply by being publicly accused of certain offenses—such as rape, sexual harassment, embezzlement, fraud, malpractice,[315] and the like—or could be materially harmed even by being sued for more minor matters, such as in landlords' unlawful detainer actions against tenants.[316] Even if they are innocent, they might agree to settle as a means of avoiding the lawsuit even being filed, thus being pressured to give in to a form

but any such ramifications are due to his actions and his election to institute litigation over a perceived wrong."); Doe v. Georgia-Pac., LLC, No. 12-cv-5607-PSG-JCFx, 2012 WL 13223668, at *2 (C.D. Cal. Sept. 26, 2012) (reference to criminal record not enough); Doe v. U.S. Healthworks Inc., No. 2:15-cv-05689, 2016 WL 11745513, at *5 (C.D. Cal. Feb. 4, 2016) (likewise, as to recently expunged criminal record); Day v. Sebelius, 227 F.R.D. 668, 679 (D. Kan. 2005) (likewise, as to acknowledgement of "illegal immigration status"); Doe v. Trs. of Ind. Univ., No. 1:21-cv-02903-JRS-MJD, at *8 (S.D. Ind. Jan. 3, 2022) (likewise, as to alleged violation of COVID shutdown orders); Doe I v. Merten, 219 F.R.D. 387, 392 (E.D. Va. 2004) (likewise, as to "unlawful or problematic immigration status"); Doe v. Trs. of Dartmouth Coll., No. 18-cv-690-JD, 2018 WL 5801532, at *5 (D.N.H. Nov. 2, 2018) (likewise, as to allegations of criminal conduct raised in a harassment restraining order proceeding).

312. T.S.H. v. Nw. Mo. State Univ., No. 19-cv-06059-SJ-ODS, 2019 WL 5057586, at *2 (W.D. Mo. Oct. 8, 2019).

313. *Doe v. Settle*, 24 F.4th at 939 n.5; United States v. Stoterau, 524 F.3d 988, 1013 (9th Cir. 2008); Doe G v. Dep't of Corr., 410 P.3d 1156, 1164 (Wash. 2018); Femedeer v. Haun, 227 F.3d 1244, 1246 (10th Cir. 2000); United States v. Pilcher, 950 F.3d 39, 40 (2d Cir. 2020); Doe v. Lee, No. 3:22-cv-00181, at 6 (M.D. Tenn. Apr. 22, 2022).

314. Naturally, there is overlap here: for instance, disclosure of drug or alcohol abuse or addiction or of criminal history may be seen by some as an invasion of privacy, but can also harm reputation.

315. Doe v. Milwaukee Cty., No. 18-cv-503, 2018 WL 3458985, at *1 (E.D. Wisc. July 18, 2018).

316. *See* Hundtofte v. Encarnación, 330 P.3d 168, 171 (Wash. 2014).

of legally permissible blackmail: in effect, "pay me money or I'll file a lawsuit accusing you of misconduct."

b. Employees and Others Fearful of Getting Reputations for Litigiousness

Plaintiffs suing ex-employers may worry that suing will make them look litigious and thus prevent job offers from prospective future employers.[317] Antidiscrimination laws generally forbid employers from retaliating against people who had brought discrimination claims or engaged in whistleblowing, and "a subsequent employer may be held liable for retaliation against a current employee for engaging in protected activity at a past employer."[318] But, first, such retaliation is only illegal when done because of certain kinds of claims, and not many other employment claims (such as breach of contract). And, second, such retaliation tends to be very hard to prove, since an employer has so many possible reasons to reject a prospective employee.[319] As a result, many

317. *See, e.g.*, Doe v. Fedcap Rehab. Servs., Inc., No. 17-cv-8220 -JPO, 2018 WL 2021588, at *8 (S.D.N.Y. Apr. 27, 2018) ("Plaintiff wants what most employment-discrimination plaintiffs would like: to sue their former employer without future employers knowing about it."); Ressler, *supra* note 5, at 242. *But see* Strahilevitz, *supra* note 64, at 1244 (suggesting, though not specifically within the employment context, that "litigiousness signaling effects are not a strong basis for granting pseudonymity to parties. Though a party might prefer that his litigiousness be kept secret, that party's potential transaction partners will have good reasons for wanting to evaluate the litigiousness of a party before entering into a relationship with him"). Courts' practice of providing "[i]ncentive awards" "in class action cases," including employment cases, reflects in part the "reputational risk" that comes from putting your name to a lawsuit. *See, e.g.*, Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958 (9th Cir. 2009); Schneider v. Chipotle Mexican Grill, Inc., 336 F.R.D. 588, 602 (N.D. Cal. 2020); Palmer v. Pier 1 Imports, No. 8:16-cv-01120-JLS-DFMx, 2018 WL 8367495, at *6 (C.D. Cal. July 23, 2018).

318. Fredriksen v. Consol Energy, Inc., No. 2:18-cv-00379-MJH, 2019 WL 2108099, at *5 (W.D. Pa. May 14, 2019); *see also* United States v. Air Indus. Corp., No. 8:12-cv-02188-JVS-RNB, 2016 WL 11515131, at *2 (C.D. Cal. Oct. 24, 2016) (citing 31 U.S.C. § 3730(h) as the proper protection against retaliation for False Claims Act whistleblowers, and rejecting pseudonymity on those grounds); 29 U.S.C. § 215(a)(3) (banning retaliation for having filed Fair Labor Standards Act claim).

319. *Vega v. HSBC Securities (USA) Inc.*, No. 16-cv-9424, 2019 WL 2357581, at *2 (S.D.N.Y. June 4, 2019), asserted that, "No basis exists to presume that prospective employers would violate the law and, even if they do, the law provides remedies to the plaintiff for such violations," but that strikes me as unsound. There seems to be little reason to just assume compliance with the law, or enforcement of the law, when a good deal of noncompliance and underenforcement should be reasonably expected.

Thus, for instance, one court allowed Fair Labor Standards Act plaintiffs to proceed pseudonymously—at least while the court was determining a purely legal question as to which the plaintiffs' identity was irrelevant—notwithstanding the defendants' arguments that the FLSA's antiretaliation provision "provides adequate protection to the plaintiffs." Gomez v. Buckeye Sugars, 60 F.R.D. 106, 107 (N.D. Ohio 1973). "The method proposed by the plaintiffs [*i.e.*, pseudonymity] affords them a higher degree of security than does the statutory provision without being subject to the vagaries that promises." *Id.* Likewise, when it comes to reporting of labor claims to government enforcers, courts have recognized that "the most effective protection from retaliation is the anonymity of the informer. The pressures which an employer may bring to bear on an employee are difficult to detect and even harder to correct. The economic relationship of employer-employee makes possible a wide range of discriminatory actions from the most flagrant to those so subtle that they may be scarcely noticed. . . . Here the shield of anonymity is preferable to the sword of punishment." Wirtz v. Cont'l Fin. & Loan Co. of W. End, 326 F.2d 561, 564 (5th Cir. 1964). It may well be that the public shouldn't be denied access to information about court filings despite the risk of such illegal employer decisions not to hire litigious employees who had sued for discrimination (or of legal employer decisions, for instance if the past litigation was only over alleged breaches of contract). But I don't think we should just assume there is no such risk.

employers likely think that they won't be sued if they refuse to hire litigious employees and that, if they hire and later dismiss a litigious employee, the risk of a future lawsuit by the employee is greater than the risk of a lawsuit for retaliatory refusal to hire.

The same, of course, is possible in other situations. Tenants, for instance, may worry that suing a landlord will lead other landlords to decline to rent to them.[320]

c. Plaintiffs Fearful of Public Hostility Stemming from the Nature of Their Claim

Some plaintiffs might think their claims will appear legally or morally unjustified to the public—even if the claims are legally valid—and could result in public ridicule or shaming.[321]

d. Parties Fearful of Revealing Conditions that Might Lead to Future Discrimination

Plaintiffs filing lawsuits that reveal their disabilities, mental illnesses, and the like might worry that publicizing this information would lead to discrimination by future employers, clients, patients, and the like. In this respect, requests for pseudonymity in such cases might be a matter not just of protecting privacy[322] but also of protecting reputation and preventing retaliation.

e. Libel Plaintiffs Fearful of Amplifying the Allegedly False Statements

Plaintiffs suing for libel may understandably worry that suing will just further amplify the libels.[323] People Googling for the plaintiff's name would see the lawsuit, and may easily find the complaint and other filings, which will necessarily repeat the libel in the course of alleging that it is indeed a libel. Likewise, newspaper articles or blog posts may be written about the lawsuit, especially if the plaintiff or defendant is famous.

Perhaps the libel lawsuits will ultimately vindicate such plaintiffs and give them judgments that they can point to as evidence that the allegations over which

320. *See, e.g.*, *Hundtofte*, 330 P.3d at 174; Yonathan A. Arbel & Roy Shapira, *Theory of the Nudnik: The Future of Consumer Activism and What We Can Do to Stop It*, 73 VAND. L. REV. 929, 968 (2020); Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, 2017 CLEARINGHOUSE REV. 1, (2017).

321. *See* Ressler, *supra* note 15.

322. *See supra* Parts III.E.8–III.E.11.

323. This is the famous "Streisand effect." *See* Roe v. Does 1–11, No. 20-cv-3788-MKB-SJB, 2020 WL 6152174 (E.D.N.Y. Oct. 14, 2020); Plaintiff's Motion to Seal True Name of Defendant, Doe v. Billington, No. 21STCV22207 (Cal. Super. Ct. Aug. 12, 2021); Doe v. Doe 1, No. 1:16-cv-07359 (N.D. Ill. Aug. 24, 2016); Doe v. Bogan, No. 1:21-mc-00073, 2021 WL 3855686, at *21 (D.D.C. June 8, 2021); Doe v. Wash. Post Co., No. 1:19-cv-00477-UNA, 2019 WL 2336597, at *1 (D.D.C. Feb. 26, 2019); Patton v. Entercom Kansas City, LLC, No. 13-cv-2186-KHV, 2013 WL 3524157, at *3 (D. Kan. July 11, 2013).

they sued were false.[324] But even when libel plaintiffs have strong cases, this might not happen. The lawsuit may be dismissed without a decision about the truth of the allegations (for instance, if a court concludes that the statements were privileged, or were said without "actual malice," without reaching whether they were true). Litigation costs might pressure plaintiffs into accepting a settlement. The defendant might not appear, which will give plaintiffs a default judgment that third parties might not credit as an authoritative decision on the facts. And in any event, there likely would not be a final verdict for years.[325] Many plaintiffs would therefore reasonably much prefer to litigate pseudonymously, at least until they get a favorable final judgment (or until the other side stipulates to a retraction).

f. Other Plaintiffs Fearful of Amplifying Allegedly False Allegations

The same concern would apply for other lawsuits that are not framed as libel claims but are still based on claims of false allegations or the consequences of false allegations: lawsuits over wrongful expulsion from universities, wrongful firings, wrongful employer discipline of a doctor[326] or lawyer[327] or professor,[328] and the like. "[A] plaintiff alleging he was discriminated against by his employer when his employment was terminated typically will have to disclose the employer's reason for terminating the plaintiff's employment—a reason that the plaintiff disputes is the real reason and which is often embarrassing or even damaging to his or her reputation."[329]

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324. *See, e.g.*, Doe v. Megless, 654 F.3d 404, 410 (3d Cir. 2011) (reasoning that "to the extent that the [allegedly libelous flyers over which plaintiff was suing] publicly accused him of being a pedophile, litigating publicly will afford Doe the opportunity to clear his name in the community"); Doe v. Valencia Coll., No. 6:15-cv-1800-ORL-40DAB, 2015 WL 13739325, at *3 (M.D. Fla. Nov. 2, 2015); Doe v. Cornell Univ., No. 5:15-cv-0322-TJM-DEP, at 6 (N.D.N.Y. Mar. 25, 2015).

325. To be sure, when the original libel had already been broadly spread, the plaintiffs might feel they have nothing to lose by suing. But often the libels (or especially oral slanders) have reached only a limited audience, especially if they aren't in Google-searchable media, or at least don't appear high up in Google search results. A plaintiff's lawsuit may cause the alleged defamation to be seen by a much broader audience.

326. Doe v. Dep't of Army, No. 1:21-mc-00114-UNA, at 3 (D.D.C. Sept. 14, 2021) (denying pseudonymity); Doe v. Lieberman, No. 1:20-cv-02148, 2020 WL 13260569, at *5 (D.D.C. Aug. 5, 2020) (denying pseudonymity); Plaintiff Dr. v. Hosp. Serv. Dist. #3, No. 18-cv-7945, 2019 WL 351492, at *3 (E.D. La. Jan. 29, 2019) (denying pseudonymity; for factual details, see *Morice v. Hosp. Serv. Dist. #3*, 430 F. Supp. 3d 182, 191 (E.D. La. 2019)).

327. Doe v. Garland, No. 21-mc-00044, 2021 WL 3622425, at *2 (D.D.C. Apr. 28, 2021) (denying pseudonymity).

328. Doe v. Ky. Cmty. & Tech. Coll. Sys., No. 20-cv-00006, 2020 WL 495513, at *2 (E.D. Ky. Jan. 30, 2020) (denying pseudonymity), *reconsideration denied*, No. 20-cv-00006, 2020 WL 998809 (E.D. Ky. Mar. 2, 2020).

329. Doe v. Milwaukee Cty., No. 18-cv-503, 2018 WL 3458985, at *1 (E.D. Wisc. July 18, 2018) (denying pseudonymity).

2. Courts Generally Do Not Allow Pseudonymity Simply to Protect Reputation and Professional Prospects

Despite these serious risks, courts mostly refuse to allow pseudonymity aimed at avoiding "the annoyance and criticism that may attend any litigation," including "inability to secure future employment," "scrutiny from current or prospective employers," "economic harm," "economic or professional concerns," "reputational harm," "blacklisting," or "embarrassment and humiliation."[330] And this is true both for plaintiffs and defendants,[331] and in a wide range of cases, such as defamation cases.[332]

As I suggested above, this judicial skepticism of reputation-based arguments for pseudonymity may stem from the ubiquity of reputational risk in civil cases (and even more so in criminal cases). Courts often say that they "allow parties to use pseudonyms in the 'unusual case' when nondisclosure of the party's identity 'is necessary . . . to protect a person from harassment, injury, ridicule or personal embarrassment.'"[333] But there is nothing "unusual" about embarrassment or risk of harassment, reputational injury, or ridicule stemming from people believing the allegations in a case, or being wary about a person because of those allegations.[334] If risk of reputational damage sufficed to justify pseudonymity, our civil system would become, for better or worse, one in which pseudonymity is the norm.[335]

Some courts reject reputational damage claims on the grounds that they are too speculative, thus in theory leaving open the door that proof of reputational

330. *See infra* Appendix 6.

331. T.S.R. v. J.C., 671 A.2d 1068, 1074 (N.J. Super. App. Div. 1996); Doe v. Doe, 668 N.E.2d 1160, 1167 (Ill. Ct. App. 1996).

332. *See, e.g.*, P.D. & Assocs. v. Richardson, 64 Misc. 3d 763, 767 (N.Y. Sup. Ct. 2019); Doe v. Bogan, No. 1:21-mc-00073, 2021 WL 3855686, at *21 (D.D.C. June 8, 2021); Doe v. Wash. Post Co., No. 1:19-cv-00477-UNA, 2019 WL 2336597, at *1 (D.D.C. Feb. 26, 2019); Doe v. Underwood, No. 21STCV46709 (Cal. Super. Ct. L.A. Cty. May 9, 2022).

333. Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1067–68 (9th Cir. 2000).

334. *Does I thru XXIII* itself allowed pseudonymity only because, "[w]hile threats of termination and blacklisting are perhaps typical methods by which employers retaliate against employees who assert their legal rights, the consequences of this ordinary retaliation to plaintiffs are extraordinary," *id.* at 1071; loss of employment could have led to deportation back to China, and "debts arising from their contracts with the recruiting agencies" that could lead to "arrest and incarceration" in China. *Id.*

335. Ressler, *supra* note 15, at 828, arguing that plaintiffs should be allowed to sue anonymously whenever they face "the likelihood of susceptibility to public shaming" based on the subject matter of the lawsuit (as predicted by the judge at the outset of the case); but this would markedly change the caselaw, and would require difficult predictions about just which sort of cases are likely to draw such public attention. That article's key example, for instance, is a lawsuit by a woman suing her nephew over an accidental injury (with the expected recovery presumably coming from the nephew's parents' homeowner's insurance company), *id.* at 780–82; while that case drew national attention, because some people disapproved of people suing their young relatives over such accidents—and presumably didn't focus on the likelihood that the judgment will be paid by the homeowner's insurance policy, and not by family members—it seems hard to predict at the start of a case whether the plaintiff's legal theory is likely to yield such public attention. *Cf. id.* at 831 (acknowledging this difficulty, though concluding that it's not insuperable).

damage might suffice to justify pseudonymity.[336] But of course, concrete evidence on such matters is unlikely to be available. If Paula has been accused by Don of some serious misconduct (such as sexual assault, embezzlement, or malpractice), there is every reason to speculate that the lawsuit, if publicized or even if simply noted in Google-searchable court dockets, will further air Don's allegations and thus damage Paula's professional prospects; and that will be especially so if the lawsuit leads to a written court decision.

Of course, it's possible that the lawsuit will draw no publicity, that it will not lead to a written decision, and that no-one will search for Paula's name and find the court records that reveal the allegations—but there is no way of predicting this up front. Indeed, even if Paula does lose professional opportunities because of the accusations, this will often be impossible to know for sure. For instance, most employers who decline to hire an applicant do not specifically explain why they said no.[337] And courts can't just proceed non-pseudonymously until there is evidence that the case has indeed caused harm: by then, Paula's name would be available in many filed documents and in many copies of those documents on various online services; that cat could not be put back in the bag.[338]

Yet here too, courts are in some measure divided, though lopsidedly against pseudonymity. In one recent sexual assault lawsuit, for instance, the judge let the defendant proceed pseudonymously, reasoning, "[T]he court finds that the chance that [plaintiff] would suffer reputational harm is significant. The defendant is a partner of a well-known law firm in New York and an adjunct law

336. *See, e.g.*, Am. Online, Inc. v. Anon. Pub. Traded Co., 542 S.E.2d 377, 385 (Va. 2001); Abdel-Razeq v. Alvarez & Marsal, Inc., No. 14-cv-5601-HBP, 2015 WL 7017431, at *7 (S.D.N.Y. Nov. 12, 2015).

337. This is related to the reason that presumed damages are available in libel cases: "'[P]roof of actual damage will be impossible in a great many cases where, from the character of the defamatory words and the circumstances of publication, it is all but certain that serious harm has resulted in fact.'" Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 760 (1985) (quoting WILLIAM PROSSER, LAW OF TORTS § 112, at 765 (4th ed. 1971)).

338. Occasionally, courts allow such retroactive pseudonymization. *See, e.g.*, Doe No. 1 v. United States, 143 Fed. Cl. 238, 241 (2019); Roe v. Doe, No. 18-cv-666-CKK, 2019 WL 1778053, at *3 (D.D.C. Apr. 23, 2019); Doe v. Bryson, No. 1:12-cv-10240 (D. Mass. Sept. 10, 2021); Doe v. Collectco, Inc., No. 2:06-cv-00244-JCM-DJA, 2021 WL 3199210, at *2 (D. Nev. July 27, 2021); Doe v. Winn & Sims, No. 06-cv-00599-H-AJB, 2021 WL 2662311, at *1 (S.D. Cal. June 28, 2021); Doe v. Bank One Corp., No. 1:06-cv-02932, at *2 (N.D. Ill. Jan. 31, 2022); Doe v. San Diego Superior Ct., No. 3:99-cv-02260-BTM-AJB, at 2 (S.D. Cal. Dec. 17, 2021); Doe v. Mun. Ct., No. 3:98-cv-00272-JM-POR (S.D. Cal. Dec. 9, 2021) (notice of document discrepancy noting plaintiff's real name); *id.* (S.D. Cal. Feb. 19, 1998) (earlier order that now lists plaintiff as Doe, presumably because of some sealed order granting the motion for pseudonymity). (The last set of cases, starting with *Doe v. Collectco*, apparently involved one frequent litigant and frequent pseudonymizer.) But many don't allow such retroactive pseudonymization, precisely because it appears futile. *See, e.g.*, Kansky v. Coca-Cola Bottling Co. of New England, 492 F.3d 54, 56 n.1 (1st Cir. 2007); Doe v. Del Rio, 241 F.R.D. 154, 162 n.15 (S.D.N.Y. 2006); Doe v. F.B.I., 218 F.R.D. 256, 260 (D. Colo. 2003); Doe v. Bell Atl. Bus. Sys. Servs., 162 F.R.D. 418, 422 (D. Mass. 1995); Doe v. Univ. of R.I., 28 Fed. R. Serv. 3d 366 (D.R.I. 1993); *cf.* Gambale v. Deutsche Bank AG, 377 F.3d 133, 144 & n.11 (2d Cir. 2004) (concluding—as to retroactive sealing more broadly, rather than just about retroactive pseudonymity—that, once "the genie is out of the bottle" and "the cat is out of the bag," "the ball game is over" (cleaned up)). And even if courts allow retroactive pseudonymization, it's unlikely to be fully successful, because many records will remain available on third-party websites.

school instructor."[339] It is, of course, indeed likely that an allegation of sexual assault would be ruinous to a partner at a well-known law firm who also teaches at a law school. And it would be damaging right away, even before any verdict in the case, and even if eventually the defendant is vindicated. But wouldn't it be devastating to a janitor as well?[340]

Likewise, in a lawsuit over an allegedly false credit report—basically, a narrow statutory quasi-libel claim—the court allowed plaintiff to proceed pseudonymously, because "[p]ublicly identifying Plaintiff risks impeding her future employment prospects by making the improperly disclosed information public knowledge."[341] One court did the same in a libel lawsuit.[342] Some cases that discuss a party's disability have likewise led to pseudonymization on the theory that identifying the plaintiffs could lead to "severe" "economic and career consequences."[343] Some courts have also allowed pseudonymity for whistleblowers, out of a concern that being known as a whistleblower might create "a reasonably credible threat of some professional harm."[344] One court

339. Doe v. Doe, No. 20-cv-5329-KAM-CLP, 2020 WL 6900002, at *3 (E.D.N.Y. Nov. 24, 2020). *But see* Stern v. Stern, 66 N.J. 340, 349 (1975) (rejecting pseudonymity in a divorce case, where the husband was found guilty of adultery: "we do not approve . . . [of] throw[ing] the protective cloak of anonymity over a successful and well-known member of the bar, as would appear to have been the case here"); Doe v. FBI, 218 F.R.D. 256, 259 (D. Colo. 2003) ("if the Court were to give greater weight to the reputational interests of a judge [who is the plaintiff in this case] than those of an 'ordinary' plaintiff, such a decision would create the appearance of favoritism within the judiciary").

340. A few other trial court cases indeed allow alleged sexual abusers to proceed pseudonymously. *See, e.g.*, Roe v. Borup, 500 F. Supp. 127, 130 (E.D. Wis. 1980). *But see* Doe v. Brown, No. FBT-CV-095024074-S, 2009 WL 5322462, at *7 (Conn. Super. Ct. Dec. 11, 2009) (rejecting pseudonymity for a sexual assault defendant); Balerna v. Bosco, No. HHD-CV-176082264S, 2017 WL 6884041, at *2 (Conn. Super. Ct. Dec. 6, 2017) (rejecting pseudonymity when the parties merely "wish to protect themselves from embarrassment and/or economic harm in their respective professional and social communities as a result of having to proceed using their true names").

341. Doe v. Innovative Enters., Inc., No. 4:20-cv-00107-RCY-LRL, at 4 (E.D. Va. Aug. 25, 2020). *But see* Doe v. Law Offs. of Robert A. Schuerger Co., No. 17-cv-13105-BRM-DEA, 2018 WL 4258155, at *2 (D.N.J. Sept. 6, 2018) (refusing to allow pseudonymity in a similar case); Doe v. Evident ID Inc., No. 2:22-cv-00214, at 3–4 (S.D. W. Va. May 19, 2022) (likewise).

342. Alexander v. Falk, No. 2:16-cv-02268-MMD-GWF, 2017 WL 3749573, at *5 (D. Nev. Aug. 30, 2017) ("Assuming that there may be some validity to Plaintiffs' allegations that they have been defamed, requiring them to sue in their true names would potentially spread the damaging effects of the defamation to the arena of their private lives where it has not yet reached."); *see also* Doe v. Regents of the Univ. of Cal, No. D073328, 2018 WL 6252013, at *1 n.2 (Cal. Ct. App. Nov. 29, 2018) (mentioning, apparently favorably, that "Doe filed suit under a pseudonym to protect his privacy and reputational interests"; Doe was a professor who had been accused of "severe harassment based on sex and sexual orientation," and who was suing claiming that the university's investigation violated his rights).

343. Doe v. Elson S Floyd Coll. of Med. at Wash. State Univ., No. 2:20-cv-00145-SMJ, 2021 WL 4197366, at *2 (E.D. Wash. Mar. 24, 2021); *see also* Doe v. Bryson, No. 1:12-cv-10240 (D. Mass. Sept. 10, 2021) (retroactively pseudonymizing case), *granting* Letter/Request, *id.* (D. Mass. July 14, 2021) (sealed), which seems likely to have echoed Letter/Request, *id.* (D. Mass. June 4, 2021) (seeking pseudonymization "so that [plaintiff's] privacy and reputation online around the medical disability" that formed the basis of the lawsuit "is not readily searchable," and "to prevent the Plaintiff from further employment discrimination which has gravely impacting her securing employment").

344. SEB Inv. Mgmt. AB v. Symantec Corp., No. 18-cv-02902-WHA, 2021 WL 3487124, at *2 (N.D. Cal. Aug. 9, 2021); *In re* Sealed Case, 931 F.3d 92, 97–98 (D.C. Cir. 2019); Whistleblower 14106-10W v. Comm'r, 137 T.C. 183, 204 (2011); Doe v. United States, No. 19-720T, 2019 WL 3406800, at *3 (Ct. Fed. Cl. July 29,

has allowed pseudonymity to a doctor challenging her employer's reporting "charge[s] of professional misconduct" to "the National Practitioner Data Bank."[345] And one court has allowed a defendant who is being accused of trade secret infringement to litigate pseudonymously.[346]

3. The Special Case of University Student Lawsuits

And there is one large array of cases where pseudonymity requests have usually been granted (though not always): lawsuits against universities by students who claim they had been wrongly punished based on false accusations and botched investigations, usually related to alleged sexual assault.[347] There, the students' concerns are chiefly reputational: "being accused of sexual assault is a serious allegation with which one would naturally not want to be identified publicly."[348]

Yet these university student cases don't generally explain why they are departing from the norm applicable in other reputational risk cases (except insofar as some of the university cases suggest that young adults should get special protection beyond what older adults get[349]). Some people are getting this invaluable protection, and others are not, with little justification for the different treatment but just because they drew a judge who is more open to pseudonymity or because the judge found their plight to be especially sympathetic.[350]

IV. PSEUDONYMITY LIMITED TO COURT OPINIONS (AND PERHAPS DOCKET SHEETS)

So far, we have been talking about true pseudonymity of court records. But courts writing opinions can simply choose not to mention the names of the parties. This has become the practice in some courts in social security benefits cases,[351] and is done ad hoc in other cases where courts want to shield parties in some measure.[352]

2019). *But see* Whistleblower 14377-16W v. Comm'r of Internal Revenue, 122 T.C.M. (CCH) 200, at *28 (T.C. 2021) (concluding that the allowance of pseudonymity in *Whistleblower 14106-10W* stemmed from that decision having "rested on a legal issue whose resolution we viewed as not dependent to any appreciable extent on [the whistleblower's] identity'" (citing 137 T.C. 183, 205 (2011)).

345. Doe v. Lieberman, No. 1:20-cv-02148, 2020 WL 13260569, at *5 (D.D.C. Aug. 5, 2020).

346. Ipsos MMA, Inc. v. Doe, No. 1:21-cv-08929-PAE (S.D.N.Y. Feb. 23, 2021), *reaffirmed after case was settled*, *id.*, 2022 WL 451510, at *2 (S.D.N.Y. Jan. 25, 2022).

347. *See* Appendices 4a & 4b.

348. Doe v. Univ. of South, No. 4:09-cv-62, 2011 WL 13187184, at *19 (E.D. Tenn. July 8, 2011).

349. *See supra* Part III.D.2.

350. To be sure, internal university Title IX investigations are themselves confidential. But lawsuits are usually litigated in public even when they stem from disputes arising out of internal investigations—for instance, employer investigations of alleged misconduct by employees are routinely confidential, yet if the employee sues, claiming that the investigation was pretext to cover discrimination, that lawsuit would be litigated without pseudonymity.

351. *See infra* note 356.

352. *See, e.g.*, J.S.B. v. S.R.V., 630 S.W.3d 693, 695 n.1 (Ky. 2021); S.U. v. Central Atl. Legal Grp., PLLC, No. 20-1006, 2022 WL 293551, at *1 n.1 (W. Va. Feb. 1, 2022); United States v. Indian Boy X, 565 F.2d 585,

The names remain available elsewhere in the record. Many appellate opinions in which the parties' names are pseudonymized indicate the trial court case number, for instance, and looking up the trial court records will reveal the parties' names.[353] Indeed, sometimes the full name appears even in the appellate docket—just not in the opinion.[354] Likewise, here is how one district court put it, in rejecting a request to retroactively pseudonymize a case:

> The fact that the parties now believe that they have suffered economic harm [or embarrassment] as a result of the allegations at issue in this case is not a basis to assign a pseudonym retroactively to every publicly available document in this case. . . . The plaintiff chose to file this complaint, and the defendants chose to file counterclaims without requesting anonymity. "Lawsuits are public events" and "[t]he risk that a [party] may suffer some embarrassment is not enough" to justify anonymity.
>
> Nevertheless, because this is a joint request and this case has been settled without any finding of fault on either side, there is no especially pressing public interest in being able to access the litigants' identities through a search of the caption. A limited sealing order is therefore justified. An order that masks the names in the caption will reduce the publicity afforded to the parties while still allowing access to the unredacted documents in the court file.[355]

This naturally provides much less privacy to the litigants, especially now that many court dockets, and not just opinions, are available online. At the same time, it likely provides some such protection against the casual Googler. And because the full name remains in the record, where it can be found with just a slight effort, the public retains its right of access (plus the other party can still use the name if necessary). Courts therefore treat this sort of within-the-opinion pseudonymity as within their discretion, available regardless of whether full pseudonymity might be. For example:

> The district court did not abuse its discretion in denying D.E.'s motion for a protective order, because he did not articulate concerns that outweigh the presumption of openness in judicial proceedings. . . . As for potential negative scrutiny from future employers, D.E., as the district court explained, "forfeited his ability to keep secret his actions at the international border . . . when he sued United States Customs and Border Patrol agents" [for their allegedly unconstitutional search that revealed "marijuana and drug parapherna-

595 (9th Cir. 1977); United States v. Doe, 655 F.2d 920, 922 n. 1 (9th Cir. 1980); Smith v. Edwards, 175 F.3d 99, 99 n.1 (2d Cir. 1999).

353. *See, e.g.*, J.A.B. v. J.E.D.B., 250 A.3d 254, 258 (Ct. Spec. App. Md. 2021); State v. Roy D.L., 262 A.3d 712, 712 n.* (Conn. 2021), *aff'g* No. HHD-CR15-0253526-T (Conn. Super. Ct. June 27, 2018); B.J. v. S.B., No. B299525, 2021 WL 164503 (Cal. Ct. App. Jan. 19, 2021), *as modified* (Feb. 9, 2021), *aff'g,* No. 19STRO01033 (Cal. Super. Ct. L.A. Cty. July 22, 2019).

354. *See, e.g.*, D.E. v. John Doe I, 834 F.3d 723 (6th Cir. 2016).

355. Stankiewicz v. Universal Com. Corp., No. 16-cv-2050-JGK, 2017 WL 3671040, at *1 (S.D.N.Y. Aug. 9, 2017) (citation omitted).

> lia"] . . . . However, in the exercise of our discretion, in this published opinion we refer to D.E. by his initials.[356]

To be sure, it is possible that technological changes will eliminate even this mildly protective effect. Say, for instance, that some site that hosts court opinions and other documents (such as CourtListener, PacerMonitor, or Google Scholar) takes steps to find the places where the party's full name is present and to link the pseudonymized opinion with the full name. But for now, many a litigant would find pseudonymization in the opinion valuable, even if the name is available in some file (including some online file accessible by the public).

Nonetheless, even with such intermediate measures, one may wonder: Should there be some clearer guidelines than just the judges' discretion to decide who gets this often-valuable privacy protection and who does not?

V. STATUTORY RULES

The analysis above suggests that some of these matters should be resolved through clear rules defined by statute (or by courts acting in their rulemaking capacity), which reflect specific judgment calls about when pseudonymity is proper.[357] And indeed the legal system often operates this way, for example, with:

- Rules providing that appeals from juvenile cases involve pseudonyms (the underlying cases themselves are sealed outright).[358]
- Rule 5.2(a)(3), which requires all minors (parties or otherwise) to be identified by their initials.[359]
- Rules in some states mandating pseudonymity for sex crime victims[360] or revenge porn victims.[361]
- Laws in some states mandating pseudonymity for family law cases.[362]
- Some federal courts' practice of routinely pseudonymizing social security benefits appeals.[363]

356. *D.E.*, 834 F.3d at 728–29.

357. *See* Balla, *supra* note 21, at 709–35 (suggesting that courts create such express rules).

358. *See, e.g.*, IOWA CODE ANN. Rule 21.25; WASH. R. APP. P. 3.4.

359. *See also, e.g.*, KAN. S. CT. R. 7.043(b)(1)–(2) (requiring that any minor or "a person whose identity could reveal the name of a minor" be pseudonymized in appellate filings and decisions); N.C. R. APP. P. 3.1 (requiring pseudonymization of minors in many cases).

360. *See, e.g.*, KAN. S. CT. R. 7.043(b)(3).

361. *See, e.g.,* CAL. CIV. CODE § 1708.85; *see also* CAL. CIV. CODE § 3427.3 (2017) (allowing pseudonymity for clients of health care facilities, such as abortion clinics, that have been targeted for interference with access).

362. *See, e.g.*, DEL. R. S. CT. Rule 7(d).

363. Hon. Wm. Terrell Hodges, Chair, Comm. on Court Admin. & Case Mgmt. of the Jud. Conf. of the U.S., *Privacy Concern Regarding Social Security and Immigration Opinions*, May 1, 2018, https://perma.cc/P6US-AEFE; *see, e.g.*, James P.B. v. Edwards, No. 21-cv-4810-JMV, 2021 WL 2981044, at *4 (D.N.J. July 15, 2021) (one of 15 D.N.J. cases adopting this view); N.D. ILL. INTERNAL OP. PROC. 22, https://perma.cc/6FSW-DFB5; Coaty v. Comm'r, No. 1:13-cv-01348 (D. Or. Jan. 5, 2021) (noting District of Oregon practice).

- Many administrative agencies' practice of pseudonymizing their decisions.[364]

I am inclined to think that there ought to be more such rules, which add clarity, predictability, and consistency to the process—though of course any such rules should be carefully crafted in light of the concerns about the costs of pseudonymity laid out in Part I. But that is a story for another day.[365]

CONCLUSION

I hope that the framework that I have laid out above, and the citations that support it, are helpful to lawyers. Whether your client can sue (or be sued) pseudonymously is often critically important to both the case and the client's future career. Conversely, whether your client can defeat the other side's pseudonymity motion is often important to how the rest of the case will be litigated, and to the likely settlement value.

I also hope that the framework will be helpful to judges, who must consider such matters without the benefit of any Supreme Court precedents, clearly defined Federal Rules, or in many situations even any dispositive circuit precedents. Though there is a general presumption against pseudonymity, and multi-factor balancing tests in many circuits that discuss when the presumption can be rebutted, the factors are often so vague or ambiguous that, by themselves, they provide relatively little guidance.

But while I hope the analysis will also be helpful to scholars studying civil procedure, privacy, or free speech, I very much doubt that it will be particularly satisfying, precisely because the cases are so badly split, and the most fundamental questions are therefore not consistently answered. Litigants and the public, I think, deserve better than the uncertainty and inconsistency we now see. I hope that, armed with some of the framework that I describe, courts, rulemaking committees, and legislatures eventually chart a clearer path.

364. EEOC, *Commission Federal Sector Appellate Decisions to Use Randomly Generated Names*, Oct. 5, 2015, https://perma.cc/ZJL7-MAW9. *See also* U.S. TAX CT. R. 227, 345 (providing for pseudonymization of intervenor names in actions aimed at restricting disclosure related to tax litigation, and in whistleblower filings).

365. *See* Eugene Volokh, *Crafting Statutory Pseudonymity Rules* (work in progress).

APPENDICES

These appendices—generally focused on issues where there are more sources than can conveniently fit in a footnote—are included chiefly for the benefit of lawyers, judges, and pro se litigants who may need citations related to specific topics in specific courts. These are not comprehensive lists, but I have tried to make them more detailed than is common in a typical academic article.

In most of the Appendices, I sort the cases by circuit and, within that, by state or district. I also note in parentheses the full names of the defendants, if they are famous, in case the prominence of one of the parties may have influenced the judges' perception of the likely public interest in the case.

I focus solely on cases that have adjudicated motions for pseudonymity, rather than just ones in which papers were filed pseudonymously with no discussion of whether there was a legal basis for such pseudonymity: "'Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.'"[366] When the court granted or denied a motion for pseudonymity but didn't explain in detail the court's rationale, I also cite to the party filings that the court appears to have endorsed.

I also focus on adult claimants, given that children are generally pseudonymized in any event.[367]

In some of these cases, the cited order does not explain the circumstances of the case, but simply states that it grants or denies a motion; when that is so, I also cite to the motion being considered.

Nearly all the district court decisions listed below that don't include a Westlaw citation are available for free on CourtListener.com, as well as for pay on PACER and Bloomberg Law.

APPENDIX 1: PSEUDONYMITY ALLOWED FOR PARENTS TO SHIELD CHILDREN

For the very few cases that do not allow pseudonymity in such situations, see note 230.

1ST CIRCUIT

Doe v. Cavanaugh, No. 1:19-cv-11384-WGY (D. Mass. July 10, 2019).

2D CIRCUIT

Homesite Ins. Co. v. Cruz, No. 3:20-cv-00905-VLB (D. Conn. July 8, 2020), *granting* Motion, *id.* (July 1, 2020) (lawsuit related to sexual assault of minor).

366. *See supra* note 192.

367. *See supra* Part III.D.1.

Doe v. Brown, No. FBTCV095024074S, 2009 WL 5322462, at *1 (Conn. Super. Ct. Dec. 11, 2009) (also citing other such cases from Connecticut trial courts).

Doe v. Fairfield, No. CV065004042S, 2006 WL 3200433, at *3 (Conn. Super. Ct. Oct. 24, 2006).

C.K. v. Bassett, No. 2:22-cv-01791 (E.D.N.Y. Mar 31, 2022), *granting* Motion, *id.* (Mar. 31, 2022) (lawsuit related to minors' mental illness).

P.M. v. Evans-Brant Cent. Sch. Dist., No. 08-cv-00168A, 2008 WL 4379490, at *3 (W.D.N.Y. Sept. 22, 2008).

C.B. v. Pittsford Cent. Sch. Dist., No. 08-cv-6462 CJS, 2009 WL 2991564, at *4 (W.D.N.Y. Sept. 15, 2009).

Anonymous v. Anonymous, 158 A.D.2d 296 (N.Y. App. Div. 1990).

3D CIRCUIT

Doe v. Banos, 713 F. Supp. 2d 404, 407 n.1 (D.N.J.), *aff'd as to other matters*, 416 F. App'x 185 (3d Cir. 2010).

D.M. v. Cty. of Berks, 929 F. Supp. 2d 390 (E.D. Pa. 2013).

4TH CIRCUIT

A.R. v. Wake Cty. Bd. of Ed., No. 5:22-cv-45-D (E.D.N.C. Feb. 9, 2022).

Danvers v. Loudoun Cty. School Bd., No. 1:21-cv-01028-RDA-JFA, at 4 (E.D. Va. Sept. 13, 2021), *granting* Motion, *id.* (Sept. 8, 2021) (lawsuit related to sexual assault of minor).

5TH CIRCUIT

Doe v. Eason, No. CIV.A. 3:98-cv-2454, 1999 WL 33942103 (N.D. Tex. Aug. 4, 1999) (parent suing on her own behalf, but for claims that flowed from her child having been sexually assaulted).

C.M. v. United States, No. SA-21-cv-00234-JKP, 2021 WL 1822305, at *2 (W.D. Tex. Mar. 31, 2021).

6TH CIRCUIT

Doe v. Mechanicsburg Sch. Bd. of Educ., 518 F. Supp. 3d 1024, 1027 (S.D. Ohio 2021).

Bd. of Educ. of Highland Loc. Sch. Dist. v. United States Dep't of Educ., No. 2:16-cv-524, 2016 WL 4269080, at *5 (S.D. Ohio Aug. 15, 2016).

7TH CIRCUIT

Doe v. Elmbrook Sch. Dist., 658 F.3d 710, 722 (7th Cir. 2011).

Marquez v. BHC Streamwood Hospital, Inc., 1:20-cv-04267 (N.D. Ill. Sept. 21, 2020).

Doe A v. Plainfield Comm. Cons. Sch. Dist. 202, No. 1:21-cv-04460 (N.D. Ill. Aug. 25, 2021), *granting* Motion, *id.* (Aug. 23, 2021).

R.N. by & through R.T. v. Franklin Cmty. Sch. Corp., No. 1:19-cv-01922-MJD-TWP, 2019 WL 4305748, at *4 (S.D. Ind. Sept. 11, 2019).

8TH CIRCUIT

M.T. v. Olathe Pub. Sch. USD 233, No. 17-cv-2710-JAR-GEB, 2018 WL 806210, at *3 (D. Kan. Feb. 9, 2018).

L.M. as Next Friend of A.M. v. City of Gardner, No. 19-cv-2425-DDC, 2019 WL 4168805 (D. Kan. Sept. 3, 2019).

S.E.S. v. Galena Unified Sch. Dist. No. 499, No. 18-cv-2042-DDC-GEB, 2018 WL 3389878 (D. Kan. July 12, 2018).

Doe B.A. v. USD 102, No. 18-2476-CM, 2019 WL 201741, at *2 (D. Kan. Jan. 15, 2019).

9TH CIRCUIT

Doe v. Clark Cty. Sch. Dist., No. 215-cv-00793-APG-GWF, 2016 WL 4432683, at *15 (D. Nev. Aug. 18, 2016).

10TH CIRCUIT

Douglas Cty. Sch. Dist. RE-1 v. Douglas Cty. Dep't of Pub. Health, No. 21-cv-02818-JLK, 2021 WL 5106284, at *1 (D. Colo. Oct. 21, 2021).

11TH CIRCUIT

D.L. *ex rel.* Phan L. v. Bateman, No. 3:12-cv-208-J-32JBT, 2012 WL 1565419, at *2 (M.D. Fla. May 2, 2012).

J.W. v. School Bd. of Suwanee Cty., No. 3:21-cv-01259-BJD-JBT, at 2 (M.D. Fla. Dec. 22, 2021) (lawsuit related to minor's disability).

Doe v. School Bd. of Orange Cty., No. 6:22-cv-00411-PGB-LHP, at 2–3 (M.D. Fla. Mar. 3, 2022).

D.C. CIRCUIT

J.W. v. District of Columbia, 318 F.R.D. 196 (D.D.C. 2016) (lawsuit related to minor's disability).

M.J. v. District of Columbia, No. 1:18-cv-01901, at 6 (D.D.C. Aug. 14, 2018) (lawsuit related to minor's mental health disability).

Doe v. Dep't of Justice, No. 1:22-mc-00032-UNA, at 1, 5 (D.D.C. Mar. 7, 2022) (lawsuit related to "physical and verbal assault" on minor).

APPENDIX 2A: ALLEGED SEXUAL ASSAULT VICTIMS: PSEUDONYMITY ALLOWED

All cases involve adults (since minors are generally treated under a separate rule); they also involve sexual assault and not other forms of sexual misconduct, unless otherwise specified.

1ST CIRCUIT

Doe v. Cerqueira, No. 1:21-cv-00370-NT, at 3–4 (D. Me. Mar. 3, 2022).

Globe Newspaper Co., Inc. v. Clerk of Suffolk Cty. Super. Ct., 14 Mass. L. Rptr. 315 (2002).

2D CIRCUIT

Doe v. Diocese Corp., No. CV930704552S, 1994 WL 174693 (Conn. Super. Ct. Apr. 21, 1994).

Doe v. Cent. Conn. State Univ., No 3:19-cv-00418 (D. Conn. May 10, 2019).

Khan v. Yale Univ., No. 3:19-cv-01966 (D. Conn. Jan. 10, 2020) (defendant in defamation case stemming from sexual assault complaint).

Doe v. Doe, No. CV146015861S, 2014 WL 4056717 (Conn. Super. Ct. Ansonia-Milford Dist. July 9, 2014) (plaintiff was a minor at the time of the alleged assault, but not when the lawsuit was filed).

Adgers v. Doe, No. CV05-4014657, 2005 WL 3693816 (Conn. Super. Ct. Hartford Dist. Dec. 22, 2005) (defendant in defamation case stemming from sexual assault complaint).

Doe v. Smith, 105 F. Supp. 2d 40, 44 (E.D.N.Y. 1999).

Doe v. Hofstra Univ., No. 2:17-cv-00179 (E.D.N.Y. Apr. 6, 2017), *granting* Motion, *id.* (Jan. 13, 2017) (allegations of retaliation for refusing unwanted sexual advances, rather than sexual assault).

Lawson v. Rubin, No. 17-cv-6404-BMC-SMG, 2019 WL 5291205 (E.D.N.Y. Oct. 17, 2019) (defendant in defamation case stemming from sexual assault complaint).

A.B. v. C.D., No. 17-cv-5840-DRH-AYS, 2018 WL 1935999 (E.D.N.Y. Apr. 24, 2018).

Doe v. Columbia Univ., No. 1:14-cv-03573-JMF (S.D.N.Y. June 9, 2014), *granting* Motion, *id.* (June 9, 2014)).

Doe v. Sarah Lawrence College, No. 7:19-cv-10028-PMH (S.D.N.Y. Oct. 31, 2019).

Doe v. Vassar College, No. 19-cv-09601-NSR, 2019 WL 5963482, at *2 (S.D.N.Y. Nov. 13, 2019).

Doe v. Smith, No. 19-cv-1121-GLS-DJS, 2019 WL 6337305, at *3 (N.D.N.Y. Nov. 27, 2019).

Doe v. Gooding, No. 20-cv-06569 (PAC), 2021 WL 5991819, at *2 (S.D.N.Y. July 29, 2021) (Cuba Gooding, Jr.).

Doe v. McAdam Fin. Group LLC, No. 22-cv-00113 (S.D.N.Y. Jan. 13, 2022), *granting* Motion, *id.* (Jan. 7, 2022).

3D CIRCUIT

Doe v. Rutgers Univ., No. 2:21-cv-20763-ES-MAH, at 2–3 (D.N.J. Jan. 25, 2022).

Doe v. Rutgers Univ., No. 2:18-cv-12952-KM-CLW, 2019 WL 1967021, at *3 (D.N.J. Apr. 30, 2019).

Doe v. Trishul Consultancy, LLC, No. 18-cv-16468-FLW-ZNQ, 2019 WL 4750078, at *4 (D.N.J. Sept. 30, 2019).

Doe v. Lund's Fisheries, Inc., No. 20-cv-11306-NLH-JS, 2020 WL 6749972, at *3 (D.N.J. Nov. 17, 2020).

Doe v. Horizon House, No. BER-L-008445-21 (N.J. Super. Ct. Jan. 10, 2022).

Doe v. Evans, 202 F.R.D. 173, 176 (E.D. Pa. 2001).

Doe v. Moravian College, No. 5:20-cv-00377-JMG, at 1–2 n.1 (E.D. Pa. Jan. 11, 2021).

Doe v. Westminster College, No. 2:22-cv-00075-CCW, at 1–2 (W.D. Pa. Feb. 14, 2022).

A. McD. v. Rosen, 423 Pa. Super. 304, 306 n.1 (1993) (sexual misconduct by psychiatrist towards patient).

4TH CIRCUIT

Doe v. Morgan State Univ., No. 1:19-cv-03125-GLR (D. Md. Jan. 21, 2020), *granting* Motion, *id.* (Oct. 29, 2019).

Painter v. Doe, No. 3:15-cv-369-MOC-DCK, 2016 WL 3766466 (W.D.N.C. July 13, 2016) (defendant in defamation case stemming from sexual assault complaint).

Doe v. Fowler, No. 3:17-cv-00730-FDW-DSC, 2018 WL 3428150 (W.D.N.C. July 16, 2018) (child pornography).

Doe v. Old Dominion Univ., No. 2:17-cv-00015-HCM-DEM, at 1 (E.D. Va. Feb. 14, 2017).

Doe v. Sidar, No. 1:22-cv-00545-CMH-TCB, at 1 (E.D. Va. May 13, 2022), *granting* Motion, *id.* (May 12, 2022).

Doe v. Yates, No. 3:22-cv-00002-NKM (W.D. Va. Jan. 14, 2022).

5TH CIRCUIT

Doe v. Meister, No. 4:21-cv-04226 (S.D. Tex. Feb. 3, 2022), *granting* Motion, *id.* (Dec. 30, 2021) (sex trafficking).

Doe v. El Paso Cty. Hosp. Dist., No. 13-cv-00406-DCG, 2015 WL 1507840, at *6 (W.D. Tex. Apr. 1, 2015) ("coerced nudity and the repeated probing of Plaintiff's genitals," though not sexual assault).

6TH CIRCUIT

Doe v. Dabbagh, No. 15-cv-10724, 2015 WL 13806540, at *2 (E.D. Mich. May 28, 2015).

Doe v. Streeter, No. 4:20-cv-11609-MFL-APP (E.D. Mich. Nov. 12, 2020) (child pornography).

NMIC Ins. Co. v. Smith, No. 2:18-cv-533, 2018 WL 7859755, at *2 (S.D. Ohio Oct. 24, 2018).

Doe v. Kenyon College, No. 20-cv-4972-MHW-CMV, at 3 (S.D. Ohio Sept. 24, 2020).

Doe v. Mitchell, No. 2:20-cv-00459, 2020 WL 6882601, at *7 (S.D. Ohio Nov. 24, 2020), *report & recommendation adopted*, 2021 WL 2313436 (S.D. Ohio June 7, 2021).

Doe v. Streck, 522 F. Supp. 3d 332, 334 (S.D. Ohio 2021).

Doe v. Athens County, No. 2:22-cv-00855-EAS-CMV, at 2 (S.D. Ohio Mar. 15, 2022).

Doe v. FedEx Ground Package Sys., Inc., No. 3:21-cv-00395, 2021 WL 5041286, at *3, *9 (M.D. Tenn. Oct. 29, 2021) (accepting pseudonymity for plaintiff who alleged rape but rejecting it for plaintiff who alleged sexual groping).

7TH CIRCUIT

Doe v. Blue Cross & Blue Shield United of Wisc., 112 F.3d 869, 872 (7th Cir. 1997) (dictum).

Doe v. Sproul, No. 3:20-cv-00610-MAB, 2022 WL 579488, at *2 (S.D. Ill. Feb. 24, 2022).

Doe v. Tinsley, 2021 IL App (1st) 210228-U, at *5 (Ill. App. Ct. Dec. 21, 2021).

Doe v. Purdue Univ., No. 4:18-cv-72-JVB-JEM, 2019 WL 1960261, at *4 (N.D. Ind. Apr. 30, 2019).

Doe v. Purdue Univ., No. 4:19-cv-56-TLS-JPK, 2019 WL 3887165, at *4 (N.D. Ind. Aug. 19, 2019).

Doe v. Marvel, No. 1:10-cv-1316-JMS-DML, 2010 WL 5099346, at *3 (S.D. Ind. Dec. 8, 2010).

Doe No. 62 v. Indiana Univ. Bloomington, No. 1:16-cv-1480-JMS-DKL, 2016 WL 11553229, at *2 (S.D. Ind. Aug. 26, 2016).

8TH CIRCUIT

Nationwide Affinity Ins. Co. of Am. v. Brown, No. 2:20-cv-02355-EFM-TJJ, at 2 (D. Kan. Aug. 28, 2020).

Doe v. Innovate Fin., Inc, No. 11-cv-1754-JRT-TNL, 2022 WL 673582, at *3 (D. Minn. Mar. 7, 2022).

Roe v. St. Louis Univ., No. 4:08-cv-1474-JCH, 2009 WL 910738, at *5 (E.D. Mo. Apr. 2, 2009).

D.B. v. King, No. 4:09-cv-1869-CEJ, 2009 WL 4020073, at *1 (E.D. Mo. Nov. 18, 2009).

D.P. for Doe v. Montgomery Cty., No. 2:19-cv-00038-DDN, 2019 WL 2437024, at *1 (E.D. Mo. June 11, 2019).

Doe v. Haynes, No. 4:18-cv-1930-HEA, 2019 WL 2450813, at *3 (E.D. Mo. June 12, 2019).

Doe v. Eckerson, 5:20-cv-06135-GAF (W.D. Mo. Oct. 8, 2020).

9TH CIRCUIT

Doe I v. Yesner, No. 3:19-cv-0136-HRH, 2019 WL 4196054, at *12 (D. Alaska Sept. 4, 2019) (sexual assault only, not sexual harassment).

Doe v. Krogh, No. 21-cv-08086-PCT-DWL, 2021 WL 1967165, at *1 (D. Ariz. May 17, 2021).

Doe K.G. v. Pasadena Hospital Ass'n, Ltd., No. 2:18-cv-08710-ODW-MAAx, 2019 WL 1612828, at *1 (C.D. Cal. Apr. 15, 2019).

Fleites v. MindGeek S.A.R.L., No. 21-cv-04920-CJCA-DSX, 2021 WL 2766886, at *1 (C.D. Cal. June 28, 2021) (alleged victims of "federal sex trafficking, child pornography, and sexual exploitation"; the victims were minors at the time of the incidents but adults at the time of the lawsuit).

Doe v. Penzato, No. 10-cv-5154-MEJ, 2011 WL 1833007, at *3 (N.D. Cal. May 13, 2011) (sex trafficking).

Heineke v. Santa Clara Univ., No. 17-cv-05285-LHK, 2017 WL 6026248, at *23 (N.D. Cal. Dec. 5, 2017) (defendant in defamation case stemming from sexual assault complaint).

B.M. v. Wyndham Hotels & Resorts, Inc., No. 20-cv-00656-BLF, 2020 WL 4368214, at *10 (N.D. Cal. July 30, 2020) (sex trafficking).

Doe v. NCAA, No. 3:22-cv-01559-LB (N.D. Cal. Mar. 21, 2022) (sexual harassment), *granting* Motion, *id.* (Mar. 17, 2022).

Doe v. Unitedhealthcare Ins. Co., No. 3:20-cv-06574-EMC (N.D. Cal. Sept. 24, 2020), *granting* Motion, *id.* (Sept. 18, 2020) (case involving "confidential psychiatric treatment notes, which include accounts of childhood sexual abuse").

Doe v. Steele, No. 3:20-cv-01818-MMA-MSB, at 5 (S.D. Cal. Nov. 16, 2020) (sex trafficking).

10TH CIRCUIT

Ramsay v. Frontier, Inc., No. 1:19-cv-03544-RMR-NRN, at 2–3 (D. Colo. Feb. 20, 2020).

S.M. v. Bloomfield School District, No. 16-cv-823-SCY-WPL, at 8–9 (D.N.M. Dec. 1, 2016).

Doe v. Sisters of Saint Francis of Colorado Springs, No. 20-cv-0907-WJ-LF, at 6 (D.N.M. Feb. 19, 2021).

Doe v. Lewis Roca Rothgerber Christie LLP, No. 1:20-cv-01365-KWR-LF, 2021 WL 1026702, at *2 (D.N.M. Mar. 17, 2021).

Roe v. Okla. *ex rel.* Univ. of Central Okla., No. 5:22-cv-00237-SLP, at 2–3 (W.D. Okla. May 2, 2022).

11TH CIRCUIT

S.B. v. Fla. Agric. & Mech. Univ. Bd. of Trustees, No. 4:16-cv-613-MW-CAS, 2018 WL 11239720, at *4 (N.D. Fla. Feb. 5, 2018) (at least when "Defendant 'is not accused of culpability for committing a sex crime itself'"), *appeal dismissed on procedural grounds*, 823 F. App'x 862 (11th Cir. 2020).

Doe v. Truong, No. 1:22-cv-00825-SEG, at 1 (N.D. Ga. May 3, 2022) (child pornography).

D.C. CIRCUIT

Doe v. De Amigos, LLC, No. 11-cv-1755, 2012 WL 13047579, at *2–3 (D.D.C. Apr. 30, 2012).

Doe v. Cabrera, 307 F.R.D. 1, 3–4, 6 (D.D.C. 2014) (Miguel Cabrera).

E.V. v. Robinson, No. 1:16-cv-01419, 2016 WL 11584907, at *2 (D.D.C. July 8, 2016).

Doe v. Georgetown Synagogue-Kesher Israel Congregation, No. 1:16-cv-01845-ABJ (D.D.C. Sept. 15, 2016), *granting* Motion, *id.* (Sept. 15, 2016) (hidden photographing of plaintiffs when they were naked).

Doe v. Howard Univ., No. 1:17-cv-00870-TSC, at 1 (D.D.C. May 12, 2017).

Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 64 (D.D.C. 2019).

Doe v. Howard Univ., No. 1:20-cv-01769-CJN, at 5–7 (D.D.C. July 16, 2020).

Doe v. OPO Hotel Mgmt., No. 2020 CA 003630 B (D.C. Super. Ct. Oct. 7, 2020).

APPENDIX 2B: ALLEGED SEXUAL ASSAULT VICTIMS: PSEUDONYMITY NOT ALLOWED

1ST CIRCUIT

Doe v. Bell Atlantic Business Systems, Inc., 162 F.R.D. 418, 421 (D. Mass. 1995).

MacInnis v. Cigna Grp. Ins. Co. of Am., 379 F. Supp.2d 89 (D. Mass. 2005).

Doe v. Univ. of R.I., No. 93-cv-0560B, 1993 WL 667341 (D.R.I. Dec. 28, 1993).

2D CIRCUIT

K.D. v. City of Norwalk, No. 3:06-cv-00406-WWE, 2006 WL 1662905, at *2 (D. Conn. June 14, 2006).

Doe v. Rackliffe, 173 Conn. App. 389, 400 (2017).

Doe v. St. John, No. CV055000443S, 2006 WL 1149224, at *2 (Conn. Super. Ct. Apr. 13, 2006).

Balerna v. Bosco, No. HHDCV176082264S, 2017 WL 6884041, at *2 (Conn. Super. Ct. Dec. 6, 2017) (rejecting pseudonymity in non-Title-IX case arising out of alleged sexual assault at college).

Doe v. Shakur, 164 F.R.D. 359 (S.D.N.Y. 1996) (Tupac Shakur).

Roe v. Does 1–11, No. 20-cv-3788-MKB-SJB, 2020 WL 6152174, at *4 (E.D.N.Y. Oct. 14, 2020) (asserting that there is a "general trend to disfavor anonymity in sexual assault-related civil cases").

Doe v. Gong Xi Fa Cai, Inc., No. 19-cv-2678, 2019 WL 3034793, at *1 (S.D.N.Y. July 10, 2019).

Doe v. Skyline Automobiles Inc., 375 F. Supp. 3d 401, 405 (S.D.N.Y. 2019).

Doe v. Gong Xi Fa Cai, Inc., No. 19-cv-2678-RA, 2019 WL 3034793, at *2 (S.D.N.Y. July 10, 2019) (sexual harassment).

Doe v. Townes, No. 19-cv-8034, 2020 WL 2395159, at *3 (S.D.N.Y. May 12, 2020).

Doe v. Freydin, No. 21-cv-8371-NRB, 2021 WL 4991731, at *4 (S.D.N.Y. Oct. 27, 2021).

Doe v. Weinstein, 484 F. Supp. 3d 90, 94 (S.D.N.Y. 2020) (Harvey Weinstein).

Rapp v. Fowler, No. 20-cv-9586-LAK, 2021 WL 1738349 (S.D.N.Y. May 3, 2021) (Kevin Spacey).

GCVAWCG-Doe v. Roman Catholic Archdiocese of N.Y., 69 Misc. 3d 648, 654–55 (2020).

Doe v. Leonelli, No. 1:22-cv-03732-CM, 2022 WL 2003635, at *3 (S.D.N.Y. June 6, 2022).

3D CIRCUIT

Doe v. County of Lehigh, No. 5:20-cv-03089, 2020 WL 7319544 (E.D. Pa. Dec. 11, 2020).

Doe v. Ct. of Common Pleas of Butler Cty., No. 17-cv-1304, 2017 WL 5069333, at *2 (W.D. Pa. Nov. 3, 2017) (sexual harassment, though language also covers sexual assault).

F.B. v. East Stroudsburg Univ., No. 3:09-cv-525, 2009 WL 2003363, at *3 (M.D. Pa. July 7, 2009).

B.L. v. Zong, No. 3:15-cv-1327, 2017 WL 1036474, at *4 (M.D. Pa. Mar. 17, 2017) (though also relying in part on plaintiff's having earlier publicly identified himself).

Brownlee v. Monroe Cty. Corr. Facility, No. 1:18-cv-1318, 2019 WL 2160402, at *3 (M.D. Pa. May 17, 2019).

4TH CIRCUIT

Doe v. N. Carolina Cent. Univ., No. 1:98-cv-01095, 1999 WL 1939248, at *3 (M.D.N.C. Apr. 15, 1999).

Doe v. Briscoe, 61 Va. Cir. 96, 2003 WL 22748373, at *3 (2003).

5TH CIRCUIT

Doe *ex rel.* Doe v. Harris, No. 14-cv-00802, 2014 WL 4207599, at *2 (W.D. La. Aug. 25, 2014).

Rose v. Beaumont Independent School Dist., 240 F.R.D. 264 (E.D. Tex. 2007).

6TH CIRCUIT

Doe v. Webster Cty., No. 4:21-CV-00093-JHM, 2022 WL 124678, at *4 (W.D. Ky. Jan. 12, 2022).

Doe v. Wolowitz, No. 01-cv-73907, 2002 WL 1310614, at *2 (E.D. Mich. May 28, 2002).

Doe v. Bedford City School Dist. Bd. of Ed., No. 1:22-cv-00059 (N.D. Ohio June 17, 2022).

Doe v. Bruner, No. CA2011-07-013, 2012 WL 626202, at *3 (Ohio Ct. App. Feb. 27, 2012) (applying federal law by analogy).

Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *4 (M.D. Tenn. June 28, 2021).

Doe v. FedEx Ground Package Sys., Inc., No. 3:21-cv-00395, 2021 WL 5041286, at *3, *9 (M.D. Tenn. Oct. 29, 2021) (rejecting pseudonymity for plaintiff who alleged sexual groping but accepting it for plaintiff who alleged rape).

7TH CIRCUIT

Doe v. Cook County, No. 1:20-cv-05832, 2021 WL 2258313, at *4 (N.D. Ill. June 3, 2021).

Doe v. Hamilton County Coal, LLC, No. 3:20-cv-73-NJR, 2020 WL 2042899, at *1–2 (S.D. Ill. Apr. 28, 2020) ("unwanted and non-consensual touching, kissing, receipt of pornographic text messages, and exposure to other employees' genitals and anuses").

8TH CIRCUIT

Luckett v. Beaudet, 21 F. Supp. 2d 1029 (D. Minn. 1998).

9TH CIRCUIT

Doe v. JBF RAK LLC, No. 2:14-cv-00979–RFB–GWF, 2014 WL 5286512, at *5 (D. Nev. Oct. 15, 2014).

Doe v. Rose, No. 15-cv-07503-MWF-JCX, 2016 WL 9150620 (C.D. Cal. Sept. 22, 2016) (pseudonymity allowed before trial, but rejected "for purposes of the trial itself").

10TH CIRCUIT

Doe 1 v. Unified Sch. Dist. 331, No. 11-cv-1351-KHV, 2013 WL 1624823, at *2 (D. Kan. Apr. 15, 2013) ("suggestive sexual comments and sexual touching").

Doe H. v. Haskell Indian Nations University, 266 F. Supp. 3d 1277, 1289 (D. Kan. 2017).

C.S. v. EmberHope, Inc., No. 19-cv-2612-KHV, 2019 WL 6727102 (D. Kan. Dec. 11, 2019).

H.A. v. Blue Valley Unified Sch. Dist. 229, No. 20-cv-2559-JAR, 2020 WL 6559425, at *2 (D. Kan. Nov. 9, 2020).

Doe v. Weber State Univ., No. 1:20-cv-00054-TC-DAO, 2021 WL 5042849, at *4 (D. Utah Oct. 29, 2021).

11TH CIRCUIT

Plaintiff B v. Francis, 631 F.3d 1310, 1316 (11th Cir. 2011) ("courts have often denied the protection of anonymity in cases where plaintiffs allege sexual assault, even when revealing the plaintiff's identity may cause her to 'suffer some personal embarrassment'").

Doe v. Sheely, 781 F. App'x 972, 973–74 (11th Cir. 2019).

Doe v. Ocean Reef Cmty. Ass'n, No. 19-cv-10138-FAM, 2019 WL 5102450, at *2 (S.D. Fla. Oct. 11, 2019).

APPENDIX 3A: MENTAL ILLNESS OR CONDITION: PSEUDONYMITY ALLOWED

1ST CIRCUIT

Doe v. Standard Ins. Co., No. 1:15-cv-00105-GZS, 2015 WL 5778566, at *2 (D. Me. Oct. 2, 2015) ("serious mental health condition").

Anonymous v. Legal Servs. Corp. of Puerto Rico, 932 F. Supp. 49, 50 (D.P.R. 1996) ("treatable mental disorder").

2D CIRCUIT

T.W. v. N.Y. State Bd. of L. Examiners, No. 16-cv-3029-RJD-RLM, 2017 WL 4296731, at *5 (E.D.N.Y. Sept. 26, 2017) ("depression, anxiety, panic attacks, and cognitive impairments") (though stressing that the lawsuit was

against the government, which in the court's view justified more latitude for pseudonymity).

3D CIRCUIT

Doe v. Hartford Life & Accident Insurance Co., 237 F.R.D. 545, 550 (D.N.J. 2006) ("severe bipolar disorder").

Doe v. Provident Life & Accident Insurance Co., 176 F.R.D. 464, 468–69 (E.D. Pa. 1997) ("general anxiety disorder, dysthymic disorder, adult attention deficit disorder, personality disorder, immature, inadequate, passive aggressiveness, and occupational stress with previous job situation").

R.W. v. Hampe, 426 Pa. Super. 305, 314–15 (1993) (unspecified "personal details of [plaintiff's] life and [psychiatric] therapy," including "embarrassing information, particularly of a sexual nature").

5TH CIRCUIT

Doe v. Tonti Mgmt. Co., No. 2:20-cv-02466-LMA-MBN (E.D. La. Sept. 11, 2020), *granting* Motion, *id.* (Sept. 9, 2020) ("major depressive disorder, anxiety, and PTSD caused by a sexual assault").

7TH CIRCUIT

Doe v. School Dist. 214, No. 1:16-cv-07642, at 10 (N.D. Ill. Mar. 24, 2017) ("petit mal seizures, developmental disabilities and a learning disability").

Doe v. Trustees of Indiana Univ., No. 1:12-cv-1593-JMS-DKL, 2013 WL 3353944 (S.D. Ind. July 3, 2013) (risk of mental injury from disclosure of unspecified mental disorders).

9TH CIRCUIT

Doe v. State Bar of Cal., No. 3:20-cv-06442-LB (N.D. Cal. Sept. 21, 2020), *granting* Motion, *id.* (Sept. 14, 2020) (ADHD, generalized anxiety disorder, trichotillomania [compulsive pulling out of hair]).

Doe v. Unitedhealthcare Insurance Company, No. 3:20-cv-06574-EMC (N.D. Cal. Sept. 24, 2020), *granting* Motion, *id.* (Sept. 18, 2020) ("confidential psychiatric treatment notes, which include accounts of childhood sexual abuse").

Doe v. Spahn, No. 1:21-cv-03409-TNM (N.D. Cal. Oct. 20, 2021), *granting* Motion, *id.* (Oct. 12, 2021); *see* Motion to Dismiss, *id.*, at 12 (Oct. 26, 2021) ("major depressive disorder and generalized anxiety disorder").

Beach v. United Behavioral Health, No. 3:21-cv-08612-RS (N.D. Cal. Nov. 15, 2021), *granting* Motion to Proceed Anonymously, *id.*, at 3 (Nov. 9, 2021) (depression and anxiety).

Doe v. Lincoln Life Assurance Co. of Boston, No. 3:22-cv-00694-JSC (N.D. Cal. Feb. 8, 2022), *granting* Motion, *id.* (Feb. 2, 2022) ("serious

psychiatric health problems that resulted from bearing witness to the suicide of a coworker in her workplace").

11TH CIRCUIT

Doe v. Garland, No. 2:21-cv-00071-LGW-BWC, at 5 (S.D. Ga. July 30, 2021) ("PTSD, Major Depressive Disorder and suicidal ideation or Suicidal Behavior Disorder").

D.C. CIRCUIT

Doe v. Sessions, No. 18-cv-0004-RC, 2018 WL 4637014, at *4 (D.D.C. Sept. 27, 2018) ("Asperger's Syndrome, Acute Stress Disorder, Panic Disorder, [PTSD], and anxiety").

APPENDIX 3B: MENTAL ILLNESS OR CONDITION: PSEUDONYMITY NOT ALLOWED

1ST CIRCUIT

MacInnis v. Cigna Grp. Ins. Co. of Am., 379 F. Supp. 2d 89, 90 (D. Mass. 2005) ("depressive/anxiety disorder").

2D CIRCUIT

Doe v. Wal-Mart Stores, Inc., No. 3:96-cv-1789-AHN, 1997 WL 114700, at *1 (D. Conn. Feb. 25, 1997) ("manic depression").

Wescott v. Middlesex Hosp., No. MMXCV186020250, 2018 WL 2292916, at *3 (Conn. Super. Ct. May 1, 2018) (bipolar disorder and schizoaffective disorder).

Rives v. SUNY Downstate Coll. of Med., No. 20-cv-00621-RPK-SMG, 2020 WL 4481641 (E.D.N.Y. Aug. 4, 2020) ("ADHD and intermittent depression"), *reconsideration denied*, *id.*, 2020 WL 7356616 (E.D.N.Y. Dec. 14, 2020).

P.D. by H.D. v. Neifeld, No. 21-cv-6787-CBA-SJB, 2022 WL 818895, at *1–2 (E.D.N.Y. Mar. 1, 2022) (autism).

Mottola v. Denegre, No. 12-cv-3465-LAP, 2012 WL 12883775, at *2 (S.D.N.Y. June 8, 2012) ("psychiatric history").

Vega v. HSBC Securities (USA) Inc., No. 16-cv-9424, 2019 WL 2357581 (S.D.N.Y. June 4, 2019) ("major depressive disorder and attention deficit disorder").

4TH CIRCUIT

Roe v. CVS Caremark Corp., No. 4:13-cv-3481-RBH, 2014 WL 12608588, at *1, *4 (D.S.C. Sept. 11, 2014) ("mental and emotional disabilities").

Doe v. Lees-McRae College, No. 1:20-cv-00105-MR, 2021 WL 2673050, at *6 (W.D.N.C. June 29, 2021) ("ADHD and anxiety disorder").

5TH CIRCUIT

Doe *ex rel.* Doe v. Harris, No. 14-cv-00802, 2014 WL 4207599, at *2 (W.D. La. Aug. 25, 2014) (disorder that "rendered [plaintiff] perpetually childlike and vulnerable").

Doe v. Univ. of the Incarnate Word, No. 19-cv-00957-XR, 2019 WL 6727875, at *3 (W.D. Tex. Dec. 10, 2019) (ADHD).

6TH CIRCUIT

G.E.G. v. Shinseki, No. 1:10-cv-1124, 2012 WL 381589, at *2 n.1 (W.D. Mich. Feb. 6, 2012) ("Attention Deficit Disorder/unspecified learning disorder" and "anxiety disorder").

Doe v. Carson, No. 1:18-cv-1231, 2019 WL 1978428 (W.D. Mich. May 3, 2019) ("mental illness"), *aff'd*, No. 19-1566, 2020 WL 2611189, at *3 (6th Cir. May 6, 2020) (finding no abuse of discretion).

Doe v. Univ. of Akron, No. 5:15-cv-2309, 2016 WL 4520512, at *4 (N.D. Ohio Feb. 3, 2016) ("ADHD, anxiety, depression").

7TH CIRCUIT

Doe v. Blue Cross & Blue Shield United of Wisconsin, 112 F.3d 869, 872 (7th Cir. 1997) ("obsessive-compulsive disorder").

Doe v. Indiana Black Expo, Inc., 923 F. Supp. 137, 140 (S.D. Ind. 1996) (past psychiatric hospitalization).

Doe v. Indiv. Members of Indiana State Bd. of Law Examiners, No. 1:09-cv-00842 (S.D. Ind. Aug. 8, 2009) (anxiety disorder and PTSD).

Doe v. Trustees of Indiana Univ., No. 1:12-cv-1593-JMS-DKL, 2013 WL 3353944, at *2–3 (S.D. Ind. July 3, 2013) (redacted mental disorders, including "suicidal ideation," would be insufficient by themselves to justify pseudonymity, but pseudonymity was nonetheless allowed because of a doctor's affidavit stating that identifying the plaintiff would likely cause mental harm).

8TH CIRCUIT

AB v. HRB Pro. Res. LLC, No. 4:19-cv-00817-HFS, 2020 WL 12675330, at *1–*2 (W.D. Mo. Dec. 31, 2020) ("mental health disorder").

Doe v. Riverside Partners, LLC, No. 4:22-cv-00117-CDP, at 6 (E.D. Mo. Apr. 22, 2022) (eating disorder).

9TH CIRCUIT

Doe v. Unum Life Ins. Co. of Am., 164 F. Supp. 3d 1140 (N.D. Cal. 2016) ("general anxiety disorder").

Doe v. Standard Ins. Co., No. 3:22-cv-00519, at 1 (N.D. Cal. June 6, 2022) ("'highly confidential medical information' including 'psychiatric health problems,'" apparently including "major depressive disorder and anxiety," Complaint, *id*. at 3).

A.G. v. Unum Life Ins. Co. of Am., No. 3:17-cv-01414-HZ, 2018 WL 903463, at *4 (D. Or. Feb. 14, 2018) ("Ehrels-Danlos syndrome," an "incurable" neurological disorder, *see* Gary v. Unum Life Ins. Co. of Am., No. 3:17-cv-01414-HZ, 2021 WL 5625547 (D. Or. Nov. 29, 2021)).

Doe v. Zuchowski, No. 2:21-cv-01519-APG-EJY, 2021 WL 4066667, at *2 (D. Nev. Sept. 7, 2021) ("stress-induced Tinnitus (non-stop ringing in the ears) for ten (10) months now as well as a total collapse of his mental health induced by the condition").

10TH CIRCUIT

Peru v. T-Mobile USA, Inc., No. 10-cv-01506-MSK-BNB, 2010 WL 2724085, at *2 (D. Colo. July 7, 2010) ("bipolar disorder" and PTSD, *see* Complaint, *id.* at 8 (June 25, 2010)).

Doe v. Berkshire Life Ins. Co. of Am., No. 20-cv-01033-PAB-NRN, 2020 WL 3429152, at *1, *3 (D. Colo. June 23, 2020) (PTSD).

Doe v. Regents of Univ. of N.M., No. 98-cv-725-SC-DJS, 1999 WL 35809691, at *2 (D.N.M. Mar. 10, 1999) ("[c]linical depression").

11TH CIRCUIT

Alexandra H. v. Oxford Health Ins., Inc., No. 11-cv-23948, 2012 WL 13194938, at *1–3 (S.D. Fla. Feb. 10, 2012) (rejecting pseudonymity when plaintiff was suffering from "anorexia nervosa, obsessive compulsive disorder, severe depression and suicidal ideation," though noting that she "presents a more compelling case for allowing anonymity with her untimely Reply memorandum," albeit a case that the court rejects on procedural grounds: "[t]o grant her Motion . . . would be to reward Plaintiff for unfair briefing practices where [Defendant] is not permitted to respond to new factual and legal assertions").

APPENDIX 4A: ALLEGEDLY IMPROPER UNIVERSITY INVESTIGATIONS: PSEUDONYMITY ALLOWED

The cases all involved Title IX investigations alleging sexual misconduct, unless otherwise noted.

1ST CIRCUIT

Doe v. Univ. of Me. Sys., No. 1:19-cv-00415-NT, 2020 WL 981702, at *6 (D. Me. Feb. 20, 2020).

Doe v. Univ. of Mass.-Amherst, No. 3:14-cv-30143 (D. Mass. Mar. 30, 2015), *granting* Motion, *id.* (Aug. 11, 2014).

Doe v. Ahmerst College, No. 3:15-cv-30097-MGM (D. Mass. June 30, 2015) ("allowed, without opposition" but without any further analysis).

Doe v. W. New England Univ., No. 3:15-cv-30192-MAP (D. Mass. Feb. 2, 2016) ("allowed, without opposition" but without any further analysis).

Doe v. Williams College, No. 3:20-cv-30024-KAR (D. Mass. Feb. 19, 2020), *granting* Motion, *id.* (Feb. 18, 2020).

Doe v. Doe, 90 Mass. App. Ct. 1120, at *1 (2016) (upholding trial court's sealing of a college student's abuse prevention order case against another student, in which the trial judge had "determined that the standard for issuance of an abuse prevention order had not been met").

Doe v. Trustees of Dartmouth Coll., No. 18-cv-040-LM, 2018 WL 2048385, at *5–6 (D.N.H. May 2, 2018).

Doe v. Trustees of Dartmouth Coll., No. 1:22-cv-00018 (D.N.H. Jan. 21, 2022).

Doe v. Franklin Pierce Univ., No. 1:22-cv-00188 (D.N.H. May 27, 2022) ("provisionally granted subject to de novo review after the defendant has appeared and any interested person has had an opportunity to object").

2D CIRCUIT

Doe v. Quinnipiac Univ., No. 3:17-cv-00364-JBA (D. Conn. Mar. 31, 2017), *granting* Motion, *id.* (Mar. 2, 2017).

Doe v. Univ. of Conn., No. 3:20-cv-00092-MPS (D. Conn. Feb. 11, 2020), *granting* Motion, *id.* (Jan. 20, 2020).

Doe v. Yale Univ., No. 3:19-cv-01663-CSH (D. Conn. Sept. 3, 2020), *granting* Motion, *id.* (Oct. 22, 2019) (accusations of honor code violation related to alleged failure to note assistance on graded project).

Doe v. Colgate Univ., No. 5:15-cv-1069-LEK-DEP, 2016 WL 1448829, at *3 (N.D.N.Y. Apr. 12, 2016).

Doe v. Syracuse Univ., No. 5:17-cv-00787 (N.D.N.Y. Oct. 31, 2017).

Doe v. Colgate Univ., No. 5:17-cv-01298 (N.D.N.Y. Feb. 26, 2018).

Doe v. Syracuse Univ., No. 5:18-cv-00377-DNH-ML (N.D.N.Y. June 4, 2018).

Doe #1 v. Syracuse Univ., No. 5:18-cv-0496-FJS-DEP, 2018 WL 7079489, at *6 (N.D.N.Y. Sept. 10, 2018), *report & recommendation adopted*, No. 5:18-cv-00496-BKS-ML, 2020 WL 2028285 (N.D.N.Y. Apr. 28, 2020) (accusations that fraternity members engaged in actions that were "racist, anti-semitic, homophobic, sexist, and hostile to people with disabilities").

Doe v. Syracuse Univ., No. 5:19-cv-00190 (N.D.N.Y. May 13, 2019).

Doe v. Syracuse Univ., No. 5:19-cv-01467-TJM-ATB (N.D.N.Y. July 15, 2020).

Doe v. Rensselaer Polytechnic Inst., No. 1:20-cv-1185 (N.D.N.Y. Sept. 28, 2020).

Doe v. Trustee of Hamilton Coll., No. 6:22-cv-00214 (N.D.N.Y. June 6, 2022).

Doe v. Columbia Univ., 101 F. Supp. 3d 356, 360 n.1 (S.D.N.Y. 2015).

Doe v. Vassar College, No. 19-cv-09601-NSR, at 3 (S.D.N.Y. Nov. 13, 2019).

Doe v. New York Univ., 537 F. Supp. 3d 483, 496–97 (S.D.N.Y. 2021) (accusation of violations of COVID lockdown rules).

Doe v. Hobart & William Smith Colleges, No. 6:20-cv-06338 EAW, 2021 WL 1062707, at *4 (W.D.N.Y. Mar. 19, 2021).

Doe v. Brown Univ., No. 1:16-cv-00017 (D.R.I. Mar. 23, 2016), *granting* Motion, *id.* (Feb. 8, 2016).

Doe v. Brown Univ., No. 1:17-cv-00191 (D.R.I. Dec. 11, 2017), *granting* Motion, *id.* (Nov. 30, 2017).

Doe v. Brown Univ., 327 F. Supp. 3d 397, 403 n.1 (D.R.I. 2018).

Doe v. Johnson & Wales Univ., No. 1:18-cv-0010 (D.R.I. Mar. 12, 2018).

Doe v. Middlebury College, No. 1:15-cv-00192 (D. Vt. Dec. 18, 2015), *granting* Motion, *id.* (Aug. 28, 2015).

Doe v. Vermont Law School, No. 2:22-cv-00085-cr (D. Vt. June 13, 2022), *granting* Motion, *id.* (Apr. 19, 2022) (allowing pseudonymity when plaintiff sued based on allegedly discriminatory grading, plagiarism accusations, and and disciplinary measures).

3D CIRCUIT

Doe v. Moravian College, No. 5:20-cv-00377-JMG, at 2 n.2 (E.D. Pa. Jan. 11, 2021).

Doe v. Penn. State Univ., No. 4:17-cv-01315-MWB, at 1 (M.D. Pa. Aug. 3, 2017).

Doe v. Penn. State Univ., No. 4:18-cv-00164-MWB, at 1 (M.D. Pa. Jan. 26, 2018).

Doe v. Penn. State Univ., No. 4:18-cv-02350-MWB, at 1 (M.D. Pa. Jan. 8, 2019).

4TH CIRCUIT

Doe v. Univ. of S.C., No. 3:18-cv-00161-TLW-PJG, 2018 WL 1215045, at *1 n.1 (D.S.C. Feb. 12, 2018), *report & recommendation adopted*, *id*., 2018 WL 1182508 (D.S.C. Mar. 6, 2018).

Doe v. Rector & Visitors of George Mason Univ., 179 F. Supp. 3d 583, 593 (E.D. Va. 2016).

Doe v. Hampton Univ., No. 1:22-cv-00133-LMB-IDD, at 1 (E.D. Va. Feb. 10, 2022).

Doe v. Alger, 317 F.R.D. 37, 42 (W.D. Va. 2016).

Doe v. Wash. & Lee Univ., No. 6:14-cv-00052 (W.D. Va. Dec. 16, 2014), *granting* Motion, *id.* (Dec. 16, 2014).

Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-170, 2018 WL 5929647, at *3 (W.D. Va. Nov. 13, 2018).

Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-320, 2018 WL 5929645, at *3 (W.D. Va. Nov. 13, 2018).

Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-492 (W.D. Va. Apr. 12, 2019).

Doe v. Va. Polytechnic Inst. & State Univ., No. 7:18-cv-523 (W.D. Va. Apr. 15, 2019).

Doe v. Rector & Visitors of Univ. of Va., No. 3:19-cv-00038 (W.D. Va. July 12, 2019).

Doe v. Wash. & Lee Univ., No. 6:19-cv-00023-NKM-RSB (W.D. Va. July 25, 2019).

Doe v. Va. Polytechnic Inst. & State Univ., No. 7:19-cv-00249, 2020 WL 1287960, at *3 (W.D. Va. Mar. 18, 2020) (allowing pseudonymity when plaintiff sued over discipline for allegations of "domestic and dating violence"; "[l]ike sexual misconduct, allegations of domestic violence or abusive dating relationships involve sensitive and highly personal facts that can invite harassment and ridicule").

Doe v. Liberty Univ., Inc., No. 6:22-cv-21, at 1 (W.D. Va. May 3, 2022).

5TH CIRCUIT

Doe v. La. State Univ., No. 3:20-00379-BAJ-SDJ, at 3 (M.D. La. June 30, 2020).

Doe v. Univ. of Miss., No. 18-cv-138, 2018 WL 1703013, at *2 (S.D. Miss. Apr. 6, 2018).

Doe v. Univ. of Miss. Bd. of Trustees, No. 3:21-cv-201-DPJ-FKB, 2021 WL 6752261, at *2 (S.D. Miss. Apr. 14, 2021).

Doe v. Texas Christian Univ., No. 4:22-cv-00297-O, at 1 (N.D. Tex. May 2, 2022).

Doe v. Texas A&M Univ.-Kingsville, No. 2:21-cv-257, at 1 (S.D. Tex. Nov. 4, 2021), *granting* Motion, *id.* (Nov. 2, 2021).

6TH CIRCUIT

Doe v. Coll. of Wooster, 243 F. Supp. 3d 875, 896 n.6 (N.D. Ohio 2017) (dismissing university but allowing plaintiff to proceed pseudonymously against his individual accuser).

Noakes v. Case W. Rsrv. Univ., No. 1:21-cv-1776 (N.D. Ohio Oct. 5, 2021), *granting* Motion, *id.* (Sept. 15, 2021).

Doe v. Ohio State Univ., No. 2:15-cv-02830 (S.D. Ohio Oct. 6, 2015).

Doe v. Miami Univ., No. 1:15-cv-605 (S.D. Ohio June 22, 2016).

Roe v. Univ. of Cincinnati, No. 1:18-cv-312 (S.D. Ohio June 21, 2018).

Roe v. Dir., Miami Univ., Off. of Cmty. Standards, No. 1:19-cv-136, 2019 WL 1439585, at *1 n.1 (S.D. Ohio Apr. 1, 2019).

Doe v. Kenyon College, No. 2:20-cv-4972, 2020 WL 11885928 (S.D. Ohio Sept. 24, 2020).

Doe v. Univ. of South, No. 4:09-cv-62, 2011 WL 13187184, at *19 (E.D. Tenn. July 8, 2011).

Doe v. Belmont Univ., No. 3:17-cv-01245 (M.D. Tenn. Oct. 27, 2017).

7TH CIRCUIT

Doe v. Bd. of Trustees of Univ. of Ill., No. 2:20-cv-02265-CSB-EIL, at 4 (C.D. Ill. Nov. 9, 2020).

Doe v. Columbia College Chicago, No. 1:17-cv-00748 (N.D. Ill. Jan. 31, 2017).

Doe v. Univ. of Chicago, No. 16-cv-08298, 2017 WL 4163960, at *1 n.1 (N.D. Ill. Sept. 20, 2017).

Doe v. Loyola Univ. Chicago, No. 1:20-cv-07293 (N.D. Ill. Dec. 30, 2020) (allowing pseudonymity in "the case's initial stages," such as before the decision on the motion to dismiss, though noting that "as the case moves forward, the balance of factors may tilt back in favor of the presumption of public disclosure").

Doe v. Purdue Univ., 321 F.R.D. 339, 342 (N.D. Ind. 2017).

Doe v. Purdue Univ., No. 4:18-cv-89-JEM, at 6 (N.D. Ind. Apr. 18, 2019) (Title IX lawsuit brought by two women whom the university had disciplined because it had found that they had falsely accused another student of assault).

Doe v. Ind. Univ., No. 1:19-cv-02204-JMS-DML (S.D. Ind. Oct. 2, 2019).

Doe v. Trustees of Ind. Univ., No. 1:21-cv-00973-JRS-MPB (S.D. Ind. Apr. 27, 2021), *granting* Motion, *id.* (Apr. 20, 2021).

Doe v. Bd. of Trustees of Ind. Univ., No. 1:22-cv-00524-RLY-MG (S.D. Ind. Apr. 28, 2022).

8TH CIRCUIT

Doe v. Univ. of Ark.-Fayetteville, No. 5:18-cv-05182-PKH, at 2 (W.D. Ark. Dec. 17, 2018).

Doe v. Dordt Univ., 5:19-cv-04082-CJW-KEM (N.D. Iowa Mar. 3, 2020).

Doe v. Grinnell Coll., No. 4:17-cv-00079-RGE-SBJ (S.D. Iowa July 10, 2017).

Moe v. Grinnell Coll., No. 4:20-cv-00058-RGE-SBJ, at 2–3 (S.D. Iowa Apr. 24, 2020) (but reserving question "[w]hether plaintiff may be permitted to utilize a pseudonym during trial").

Doe v. Univ. of St. Thomas, No. 16-cv-1127, 2016 WL 9307609, at *2 (D. Minn. May 25, 2016).

Doe v. Wash. Univ., No. 4:19-cv-300-JMB, 2019 WL 11307648, at *2 (E.D. Mo. Apr. 2, 2019).

Doe v. Univ. of Nebraska, No. 4:18-cv-3142 (D. Neb. Nov. 20, 2018), *granting* Motion, *id.* (Nov. 19, 2018).

9TH CIRCUIT

Unknown Party v. Ariz. Bd. of Regents, No. 18-cv-01623-PHX-DWL, 2019 WL 4394549, at *1 (D. Ariz. Sept. 13, 2019).

Heineke v. Santa Clara Univ., No. 17-cv-05285-LHK, 2017 WL 6026248, at *22–23 (N.D. Cal. Dec. 5, 2017) (pseudonymity for defendant who had accused plaintiff of sexual harassment, and who was being sued for defamation).

Doe v. Thompson, No. 20STCV31772 (Cal. Super. Ct. L.A. Cty. Oct. 28, 2021).

Doe v. Univ. of Mont., No. 12-cv-00077-M-DLC, 2012 WL 2416481, at *5 (D. Mont. June 26, 2012).

Doe v. Univ. of Ore., No. 6:17-cv-01103-AA, at 3 (D. Ore. Sept. 27, 2017).

Doe v. Elson S Floyd Coll. of Med. at Wash. State Univ., No. 2:20-cv-00145-SMJ, 2021 WL 4197366, at *2 (E.D. Wash. Mar. 24, 2021) (accusations of domestic violence by medical school student).

10TH CIRCUIT

Doe v. Univ. of Denver, No. 1:16-cv-00152-PAB-STV, at 3 (D. Colo. Apr. 21, 2016).

Doe v. Univ. of Colo., No. 16-cv-01789-KLM, at 4 (D. Colo. Oct. 4, 2016).

Doe v. Univ. of Denver, No. 1:17-cv-01962 (D. Colo. Aug. 22, 2017).

Doe v. Regis Univ., No. 1:21-cv-00580-DDD-NYW, 2021 WL 5329934, at *3 (D. Colo. Nov. 16, 2021).

11TH CIRCUIT

Doe v. Univ. of S. Ala., No. 17-cv-0394-CG-C, 2017 WL 3974997, at *2 (S.D. Ala. Sept. 8, 2017).

Doe v. Rollins Coll., No. 6:18-cv-1069-Orl-37-LRH, 2018 WL 11275374, at *4 (M.D. Fla. Oct. 2, 2018).

Doe v. Embry-Riddle Aeronautical Univ., Inc., No. 6:20-cv-1220-WWB-LRH (M.D. Fla. Aug. 12, 2020).

D.C. CIRCUIT

Doe v. American Univ., No. 1:19-cv-03097, at 5–6 (D.D.C. Oct. 10, 2019) (though noting special risk stemming from Doe's being a citizen of a Middle Eastern country, "where 'sexual activity outside of marriage goes against

religious and cultural values' and 'sexual relations outside of marriage are illegal'").

APPENDIX 4B: ALLEGEDLY IMPROPER UNIVERSITY INVESTIGATIONS: PSEUDONYMITY NOT ALLOWED

1ST CIRCUIT

Doe v. Brandeis Univ., No. 1:19-cv-11049-LTS, at 2 (D. Mass. Sept. 18, 2019), *aff'd sub nom.* Dismukes v. Brandeis Univ., No. 21-1409 (1st Cir. Apr. 19, 2022) (holding that the district court order was not an abuse of discretion).

Doe v. W. New England Univ., No. 3:19-cv-30124-TSH, 2019 WL 10890195, at *1 (D. Mass. Dec. 16, 2019).

Doe v. MIT, No. 1:21-cv-12060 (D. Mass. Dec. 21, 2021), *appeal pending*, No. 22-1056 (1st Cir.).

2D CIRCUIT

Balerna v. Bosco, No. HHDCV176082264S, 2017 WL 6884041, at *2 (Conn. Super. Ct. Dec. 6, 2017) (rejecting pseudonymity in non-Title-IX case arising out of alleged sexual assault at college).

Doe v. Cornell Univ., No. 5:15-cv-0322-TJM-DEP, at 6 (N.D.N.Y. Mar. 25, 2015).

Doe v. Colgate Univ., No. 5:15-cv-1069-LEK-DEP, 2015 WL 5177736, at *2 (N.D.N.Y. Sept. 4, 2015).

3D CIRCUIT

Doe v. Rider Univ., No. 16-cv-4882-BRM, 2018 WL 3756950, at *4 (D.N.J. Aug. 7, 2018).

Doe v. Princeton Univ., No. 19-cv-7853, 2019 WL 5587327, at *4 (D.N.J. Oct. 30, 2019) (concluding that "the fear of social stigmatization associated with being accused of a sexual assault as related to educational and employment prospects does not rise to the requisite level favoring anonymity," though allowing pseudonymity because this particular plaintiff alleged that he was a victim of sexual assault as well as having been accused of sexual assault).

Doe v. Princeton Univ., No. 20-cv-4352-BRM, 2020 WL 3962268, at *3 (D.N.J. July 13, 2020) (same).

Doe v. Temple Univ., Docket No. 14-cv-04729, 2014 WL 4375613, at *2 (E.D. Pa. Sept. 3, 2014).

K.W. v. Holtzapple, 299 F.R.D. 438, 442 (M.D. Pa. 2014).

6TH CIRCUIT

Doe v. Univ. of Louisville, No. 3:17-cv-00638-RGJ, 2018 WL 3313019 (W.D. Ky. July 5, 2018).

Student PID A54456680 v. Mich. State Univ., No. 1:20-cv-984, 2020 WL 12689852 (W.D. Mich. Oct. 15, 2020).

7TH CIRCUIT

Ayala v. Butler Univ., No. 1:16-cv-1266-TWP-DML, at 8 (S.D. Ind. Jan. 8, 2018).

11TH CIRCUIT

Doe v. Valencia Coll., No. 6:15-cv-1800-Orl-40DAB, 2015 WL 13739325, at *3 (M.D. Fla. Nov. 2, 2015).

Doe v. Rollins Coll., No. 6:16-cv-2232-ORL-37-KRS, 2017 WL 11610361 (M.D. Fla. Mar. 22, 2017).

Doe v. Samford Univ., No. 2:21-cv-00871-ACA, 2021 WL 3403517 (N.D. Ala. July 30, 2021), *appeal dismissed as moot*, 29 F.4th 675, 693 (11th Cir. 2022) ("Our affirmance of the dismissal of the Title IX claim renders moot the appeal from the denial of the motion to proceed under a pseudonym.").

APPENDIX 5: COURTS CITING GENERAL UNFAIRNESS TO OPPOSING PARTIES IN REFUSING PSEUDONYMITY

These decisions speak about unfairness to opposing parties generally; cases that offer specific reasons why pseudonymity is unfair to the opposing party are cited *supra* Parts I.E.2–I.E.4.

1ST CIRCUIT

Doe v. Bell Atlantic Bus. Sys. Servs., Inc., 162 F.R.D. 418, 420 (D. Mass. 1995).

2D CIRCUIT

Doe v. Wal-Mart Stores, Inc., No. 3:96-cv-1789-AHN, 1997 WL 114700, at *1 (D. Conn. Feb. 25, 1997).

K.D. v. City of Norwalk, No. 3:06-cv-406-WWE, 2006 WL 1662905, at *2 (D. Conn. June 14, 2006).

Doe v. McLellan, No. 20-cv-5997-GRB-AYS, 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020).

Pierre v. Cty. of Broome, No. 3:05-cv-332, 2006 WL 8453057, at *2 (N.D.N.Y. Mar. 13, 2006).

Doe v. Colgate Univ., No. 5:15-cv-1069-LEK-DEP, 2015 WL 5177736, at *2 (N.D.N.Y. Sept. 4, 2015).

Doe v. NYSARC Tr. Serv., Inc., No. 1:20-cv-00801-BKS-CFH, 2020 WL 5757478, at *7 (N.D.N.Y. Sept. 28, 2020), *report & recommendation adopted*, *id.*, 2020 WL 7040982 (N.D.N.Y. Dec. 1, 2020).

Doe v. Cornell Univ. No. 3:19-cv-1189-MAD-ML, 2021 WL 6128738, at *7 (N.D.N.Y. Jan. 28, 2021), *aff'd*, 2021 WL 6128807 (N.D.N.Y. Sept. 22, 2021).

Doe v. Shakur, 164 F.R.D. 359, 361 (S.D.N.Y. 1996).

Mateer v. Ross, Suchoff, Egert, Hankin, Maidenbaum & Mazel, P.C., No. 96-cv-1756-LAP, 1997 WL 171011, at *6 (S.D.N.Y. Apr. 10, 1997).

Anonymous v. Simon, No. 13-cv-2927-RWS, 2014 WL 819122, at *2 (S.D.N.Y. Mar. 3, 2014).

Doe v. Delta Airlines, Inc., 310 F.R.D. 222 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016).

Doe v. Skyline Automobiles Inc., 375 F. Supp. 3d 401 (S.D.N.Y. 2019).

Doe v. Gong Xi Fa Cai, Inc., No. 19-cv-2678-RA, 2019 WL 3034793, at *2 (S.D.N.Y. July 10, 2019).

Doe v. Townes, No. 19-cv-8034-ALCO-TW, 2020 WL 2395159, at *6 (S.D.N.Y. May 12, 2020).

Rapp v. Fowler, No. 20-cv-9586-LAK, 2021 WL 1738349 (S.D.N.Y. May 3, 2021) (Kevin Spacey).

Doe v. Freydin, No. 21-cv-8371-NRB, 2021 WL 4991731, at *3 (S.D.N.Y. Oct. 27, 2021).

Doe v. Leonelli, No. 1:22-cv-03732-CM, 2022 WL 2003635, at *5 (S.D.N.Y. June 6, 2022).

3D CIRCUIT

B.L. v. Zong, No. 3:15-cv-1327, 2017 WL 1036474, at *4 (M.D. Pa. Mar. 17, 2017).

Doe v. Ct. of Common Pleas of Butler Cty., No. 17-cv-1304, 2017 WL 5069333, at *3 (W.D. Pa. Nov. 3, 2017).

R.W. v. Hampe, 426 Pa. Super. 305, 316–17 (1993).

4TH CIRCUIT

Candidate No. 452207 v. CFA Inst., 42 F. Supp. 3d 804, 810 (E.D. Va. 2012).

Doe v. Briscoe, 61 Va. Cir. 96, 3 (2003).

5TH CIRCUIT

Southern Methodist University Ass'n v. Wynne & Jaffe, 599 F.2d 707, 712–13 (5th Cir. 1979).

Doe v. BrownGreer PLC, No. 14-cv-1980, 2014 WL 4404033, at *3 (E.D. La. Sept. 5, 2014).

Doe v. Merritt Hospitality, LLC, 353 F. Supp. 3d 472, 474–75, 482 (E.D. La. 2018).

Plaintiff Dr. v. Hosp. Serv. Dist. #3, No. 18-cv-7945, 2019 WL 351492, at *3 (E.D. La. Jan. 29, 2019).

Doe *ex rel.* Doe v. Harris, No. 14-cv-00802, 2014 WL 4207599, at *2 (W.D. La. Aug. 25, 2014).

Doe v. Hallock, 119 F.R.D. 640, 644 (S.D. Miss. 1987).

Rose v. Beaumont Indep. Sch. Dist., 240 F.R.D. 264, 266–67 (E.D. Tex. 2007).

Doe v. Compact Info. Sys., Inc., No. 3:13-cv-5013-M, 2015 WL 11022761, at *7 (N.D. Tex. Jan. 26, 2015).

Doe v. Univ. of the Incarnate Word, No. SA-19-cv-957-XR, 2019 WL 6727875, at *4 (W.D. Tex. Dec. 10, 2019).

6TH CIRCUIT

Doe v. Webster Cty., No. 4:21-cv-00093-JHM, 2022 WL 124678, at *2 (W.D. Ky. Jan. 12, 2022).

Doe v. Wolowitz, No. 01-73907, 2002 WL 1310614, at *2 (E.D. Mich. May 28, 2002).

Doe v. Bruner, No. CA2011-07-013, 2012 WL 626202, at *3 (Ohio Ct. App. Feb. 27, 2012).

Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *5 (M.D. Tenn. June 28, 2021).

7TH CIRCUIT

In re Boeing 737 MAX Pilots Litig., No. 1:19-cv-5008, 2020 WL 247404, at *2 (N.D. Ill. Jan. 16, 2020).

Doe v. Trustees of Ind. Univ., No. 1:21-cv-02903-JRS-MJD (S.D. Ind. Jan. 3, 2022).

Doe v. Smith, 429 F.3d 706, 710 (7th Cir. 2005).

8TH CIRCUIT

Doe v. Hartz, 52 F. Supp. 2d 1027, 1048 (N.D. Iowa 1999).

9TH CIRCUIT

Doe v. JBF RAK LLC, No. 2:14-cv-00979-RFB-GWF, 2014 WL 5286512, at *9 (D. Nev. Oct. 15, 2014).

10TH CIRCUIT

Coe v. U.S. Dist. Ct. for Dist. of Colo., 676 F.2d 411, 417 (10th Cir. 1982) (quoting favorably Southern Methodist University Ass'n v. Wynne & Jaffe, 599 F.2d 707, 712–13 (5th Cir. 1979)).

Doe v. Heitler, 26 P.3d 539 (Colo. Ct. App. 2001).

Sherman v. Trinity Teen Solutions, Inc., 339 F.R.D. 203, 206 (D. Wyo. 2021).

11TH CIRCUIT

Doe v. Frank, 951 F.2d 320, 323–24 (11th Cir. 1992).

Doe v. Family Dollar Stores, Inc., No. 1:07-cv-1262-TWT-CCH, 2007 U.S. Dist. LEXIS 105268, at *9 (N.D. Ga. Oct. 17, 2007).

D.C. CIRCUIT

United States v. Microsoft Corp., 56 F.3d 1448, 1463–64 (D.C. Cir. 1995).

In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig., No. 17-5217, 2019 WL 2552955, at *28 (D.C. Cir. June 21, 2019) (Williams, J., concurring in part and dissenting in part).

Bird v. Barr, No. 19-cv-1581, 2019 WL 2870234, at *2 (D.D.C. July 3, 2019).

Doe v. Benoit, No. 19-cv-1253-DLF, 2020 WL 11885577, at *4 (D.D.C. July 27, 2020).

Doe v. Baird, No. 1:20-cv-11579-DJC, at 7–8 (D.D.C. July 27, 2020).

APPENDIX 6: COURTS REFUSING PSEUDONYMITY ON THE GROUNDS THAT THIS CASE IS JUST LIKE MOST OTHER CASES

These cases are sorted by subject matter.

A. CRIMINAL RECORD/CONDUCT/ALLEGATIONS

United States v. Stoterau, 524 F.3d 988, 1013 (9th Cir. 2008) ("If the nature of Stoterau's offense alone [child pornography and child sexual abuse] could qualify him for the use of a pseudonym, there would be no principled basis for denying pseudonymity to any defendant convicted of a similar sex offense. Such a significant broadening of the circumstances in which we have permitted pseudonymity is . . . contrary to our requirement that pseudonymity be limited to the 'unusual case.'").

Doe v. U.S. Healthworks Inc., No. 15-cv-05689-SJO-AFMx, 2016 WL 11745513, at *5 (C.D. Cal. Feb. 4, 2016) ("[I]f the Court were to permit Plaintiff to proceed under a pseudonym in this case, such a ruling would logically extend to any opportunistic litigant with a criminal background seeking to initiate suit against any number of potential employers regardless of their culpability.").

A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 503–04 (App. Div. 1995) ("While we recognize that disclosure of intimate personal information or the potential that a litigant might be forced to admit engaging in or the desire to engage in prohibited conduct are considerations with respect to obtaining protective orders, many tort claims and personal injury claims involve personal and intimate information.").

T.S.R. v. J.C., 671 A.2d 1068, 1074 (N.J. Super. App. Div. 1996) ("If, as J.C. suggests, these mere accusations are tantamount to an irreparable injury sufficient to outweigh the public's interests in open proceedings, then he is really asking us to effectively grant all defendants accused of sexual abuse in civil

cases the right to defend anonymously, a result which hardly comports with a philosophy granting anonymity only in rare circumstances.").

Doe v. Doe, 668 N.E.2d 1160, 1167 (Ill. Ct. App. 1996) ("As in *T.S.R. v. J.C.,* it is difficult to see how defendant [who is being sued for alleged child molestation] has set himself apart from any individual who may be named as a defendant in a civil suit for damages. It seems to this court that any doctor sued for medical malpractice, any lawyer sued for legal malpractice, or any individual sued for sexual molestation can assert that the plaintiff's allegations will cause harm to his reputation, embarrassment and stress among his family members, and damage to his business as a result of the litigation. Any such doctor or lawyer can also assert that the plaintiff's act of naming him as a defendant is a bad-faith tactic to induce settlement and reap economic gain at the defendant's expense through baseless allegations.").

A.K. v. Ill. Dep't of Child. & Fam. Servs., 2017 IL App (1st) 163255-U ("[T]he privacy concerns that plaintiffs raise exist in many cases in which a party is accused—perhaps wrongly—of some misconduct.").

Chalmers v. Martin, No. 21-cv-02468-NRN (D. Colo. Dec. 28, 2021) ("The supposed harm from being the target of a lawsuit alleging sexual abuse is not enough to justify shrouding this case with a veil of secrecy. . . . 'In nearly all civil and criminal litigation filed in the United States Courts, one party asserts that the allegations leveled against it by another party are patently false, and the result of the litigation may quickly prove that. However, if the purported falsity of the complaint's allegations were sufficient to seal an entire case, then the law would recognize a presumption to seal instead of a presumption of openness.'") (applying this reasoning to pseudonymity and not just total sealing).

B. ALLEGATIONS OF MALPRACTICE

Doe v. Milwaukee Cty., No. 18-cv-503, 2018 WL 3458985, at *1 (E.D. Wisc. July 18, 2018) ("No doubt lots of parties would prefer to keep their disputes private. For example, a plaintiff alleging he was discriminated against by his employer when his employment was terminated typically will have to disclose the employer's reason for terminating the plaintiff's employment—a reason that the plaintiff disputes is the real reason and which is often embarrassing or even damaging to his or her reputation. But there is no suggestion that such a plaintiff may proceed under a pseudonym to protect his or her reputation.").

Doe v. Doe, 668 N.E.2d 1160, 1167 (Ill. Ct. App. 1996) ("[I]t is difficult to see how defendant has set himself apart from any individual who may be named as a defendant in a civil suit for damages. It seems to this court that any doctor sued for medical malpractice, any lawyer sued for legal malpractice, or any individual sued for sexual molestation can assert that the plaintiff's allegations will cause harm to his reputation, embarrassment and stress among his family members, and damage to his business as a result of the litigation. Any

such doctor or lawyer can also assert that the plaintiff's act of naming him as a defendant is a bad-faith tactic to induce settlement and reap economic gain at the defendant's expense through baseless allegations.").

C. MEDICAL, DISABILITY, AND SUBSTANCE ABUSE INFORMATION

Doe v. Suppressed, No. 21-cv-50326, at 2 (N.D. Ill. Sept. 3, 2021) ("[C]laims brought under the ADA (which by their nature include personal and medical information) are brought publicly through the federal courts every day.").

Doe v. Apstra, Inc., No. 18-cv-04190-WHA, 2018 WL 4028679 (N.D. Cal. Aug. 23, 2018) ("[T]he professional harm plaintiff fears is similar to that faced by many plaintiffs who allege disability discrimination.").

Doe v. Main Line Hosps., Inc., No. 20-cv-2637, 2020 WL 5210994, at *5 (E.D. Pa. Sept. 1, 2020) ("[W]e do not discount Doe's very real concerns about reputational harm, both personally or professionally [from revelation of her past drug addiction], or her fears of relapse in the event of such backlash. But those types of fears are similar to those of other plaintiffs who have alleged that they were discriminated against because of their histories of substance abuse, and it is clear that several similarly-situated plaintiffs have publicly identified themselves in their own litigation.").

Rankin v. New York Pub. Libr., No. 98-cv-4821-RPP, 1999 WL 1084224, at *1 (S.D.N.Y. Dec. 2, 1999) ("On Plaintiff's reasoning [regarding the need for confidentiality of medical information], a claim for Doe status would apply to all cases brought under the ADA.").

Doe v. Prudential Ins. Co. of Am., 744 F. Supp. 40, 41–42 (D.R.I. 1990) ("Many litigants prefer that the lawsuits in which they are involved not be publicized especially when they involve matters that may be viewed as personal or private. They may also experience varying degrees of embarrassment from the prospect that such matters may become public information. However, to prevent disclosure of their identities in all such cases would create an exception that virtually swallows the rule.") (the confidential information here was about plaintiffs' son, who had died of AIDS).

D. EMPLOYMENT DISCRIMINATION

S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979) ("Plaintiffs argue that disclosure of A–D's identities will leave them vulnerable to retaliation from their current employers, prospective future employers and an organized bar that does 'not like lawyers who sue lawyers.' In our view, A–D face no greater threat of retaliation than the typical plaintiff alleging Title VII violations, including the other women who, under their real names and not anonymously, have filed sex discrimination suits against large law firms.") (quoted in, among other cases, Doe v. N. State

Aviation, LLC, No. 1:17-cv-346, 2017 WL 1900290, at *1 (M.D.N.C. May 9, 2017), and Qualls v. Rumsfeld, 228 F.R.D. 8, 12 (D.D.C. 2005)).

Doe v. Zinke, No. 17-cr-2017-SRN-FLN, 2018 WL 1189341, at *2 (D. Minn. Feb. 14, 2018) ("Plaintiff's claim[s] against Defendant are typical in employment discrimination cases."), *report & recommendation adopted*, *id.*, 2018 WL 1189329 (D. Minn. Mar. 7, 2018).

Doe v. Fedcap Rehab. Servs., Inc., No. 17-cv-8220-JPO, 2018 WL 2021588, at *3 (S.D.N.Y. Apr. 27, 2018) ("At bottom, Plaintiff wants what most employment-discrimination plaintiffs would like: to sue their former employer without future employers knowing about it. But while that desire is understandable, our system of dispute resolution does not allow it.").

Michael v. Bloomberg L.P., No. 14-cv-2657-TPG, 2015 WL 585592, at *3 (S.D.N.Y. Feb. 11, 2015) ("To depart in this case from the general requirement of disclosure would be to hold that nearly any plaintiff bringing a lawsuit against an employer would have a basis to proceed pseudonymously. The court declines to reach such a holding.").

Doe v. Bush, No. SA04-cv-1186-FB, 2005 WL 2708754, at *4 (W.D. Tex. Aug. 17, 2005) ("When a plaintiff does not claim any greater threat of retaliation than any typical plaintiff, there is no compelling need to grant leave to proceed anonymously."), *report & recommendation adopted sub nom.* Sims v. Bush, No. 04-cv-1186-FB, 2005 WL 3337501 (W.D. Tex. Sept. 6, 2005).

Doe v. Univ. of Pittsburgh, No. 1:17-cv-213, 2018 WL 1312219 (W.D. Mich. Mar. 14, 2018) ("In the Court's view, concerns about annoyance, embarrassment, economic harm and scrutiny from current or prospective employers do not involve information 'of the utmost intimacy'; rather, they constitute the type of concerns harbored by other similarly situated employees who file retaliation lawsuits under their real names."); *see also* Doe v. Ky. Cmty. & Tech. Coll. Sys., No. 20-cv-6-DLB, 2020 WL 998809, at *3 (E.D. Ky. Mar. 2, 2020).

E. OTHER DISCRIMINATION/RETALIATION

Doe v. Univ. of the Incarnate Word, No. 19-cv-957-XR, 2019 WL 6727875, at *4 (W.D. Tex. Dec. 10, 2019) ("[W]hen a plaintiff does not claim any greater threat of retaliation than any typical plaintiff, there is no compelling need to grant leave to proceed anonymously.") (educational discrimination).

Smith v. Patel, No. 09-cv-04947-DDP-CWx, 2009 WL 3046022, at *2 (C.D. Cal. Sept. 18, 2009) ("Plaintiff offers no specific information suggesting that disclosure of his identity would expose him to a risk of physical or mental harm, relying instead on vague generalizations about risks that all civil rights plaintiffs bear . . . (explaining that civil rights plaintiffs are 'sometimes thought of as troublemakers' . . .). It cannot be, however, that every plaintiff alleging . . . discrimination has the right to litigate . . . pseudonymously. A rule so broad would be inconsistent with both the plain language of Rule 10(a), and the

federal courts' general policy favoring disclosure.") (public accommodations discrimination).

Hundtofte v. Encarnación, 330 P.3d 168, 174–75 (Wash. 2014) ("[W]e generally place the burden on the party who moves to seal court records and why a court may order a sealing only in the most unusual of circumstances. These are not the most unusual of circumstances. The parties settled their dispute, as do many other parties in unlawful detainer actions." (citations omitted)) (unlawful detainer, with risk of retaliation by future landlords).

Doe v. United States, No. 1:20-cv-01052-NONE-SAB, at 5 (E.D. Cal. Dec. 16, 2020) ("This Court regularly sees similar allegations and Plaintiff has failed to show that his case is unusual.") (alleged assault, coupled with risk of retaliation, by prison officials).

In re Boeing 737 MAX Pilots Litig., No. 1:19-cv-5008, 2020 WL 247404, at *3 (N.D. Ill. Jan. 16, 2020) ("If the fear of retaliation were enough, public disclosure would be the exception rather than the rule.") (lawsuit by pilots against aircraft manufacturer, claiming risk of retaliation by manufacturer).

Reimann v. Hanley, No. 16-cv-50175, 2016 WL 5792679, at *5 (N.D. Ill. Oct. 4, 2016) ("[C]ases in which plaintiffs allege that they have been placed at risk of harm due to being branded a 'snitch' are routinely litigated by inmates under their own name. [Citations omitted.] Plaintiff presents no special circumstances that would justify a departure from the general rule that parties litigate under their own names.").

F. Sexual Harassment/Assault

Doe v. Moreland, No. 18-cv-800-TJK, 2019 WL 2336435 (D.D.C. Feb. 21, 2019) ("[I]f the Court were to credit the purported risks cited by Plaintiff—like the matters he alleges are of a 'sensitive and personal nature'—doing so would open the door to parties proceeding pseudonymously in an incalculable number of lawsuits in which one party asserts sexual harassment claims against another.").

Doe v. Townes, No. 19-cv-8034-ALC-OTW, 2020 WL 2395159, at *4 (S.D.N.Y. May 12, 2020) ("Allowing Plaintiff to proceed anonymously for these reasons would be to hold that nearly any plaintiff alleging sexual harassment and assault could proceed anonymously. Despite sympathizing with Plaintiff, the Court declines to reach such a blanket holding.").

F.B. v. East Stroudsburg Univ., No. 3:09-cv-525, 2009 WL 2003363, at *3 (M.D. Pa. July 7, 2009) ("Finding that these allegations are a valid reason to permit a plaintiff to proceed with a pseudonym would open up the court to requests for anonymity each time a plaintiff makes allegations of sexual harassment.") (quoted in Doe v. Ct. of Common Pleas of Butler Cty., No. 17-cv-1304, 2017 WL 5069333, at *2 (W.D. Pa. Nov. 3, 2017)).

Doe v. Ocean Reef Cmty. Ass'n, No. 19-cv-10138, 2019 WL 5102450 (S.D. Fla. Oct. 11, 2019) ("The facts alleged here place this case in the same

category of the unfortunately numerous cases of sexual harassment that have been filed, litigated, and tried before a jury without the need of anonymity.").

G. CONCERNS ABOUT CHILDREN LEARNING ABOUT CASE

Luckett v. Beaudet, 21 F. Supp. 2d 1029, 1030 (D. Minn. 1998) (in a sexual coercion and discrimination claim) ("Plaintiff expresses concern for her children. . . . [P]laintiff's concerns are no different from those which could be asserted in virtually any lawsuit.").

H. CONCERNS ABOUT CONFIDENTIALITY OF SETTLEMENTS

Tarutis v. Spectrum Brands, Inc., No. 13-cv-761-JLR, 2014 WL 5808749 (W.D. Wash. Nov. 7, 2014) ("The concern they raise—the difficulty in maintaining confidentiality in settlements once litigation has begun—is present in nearly every case filed with the court.").

I. CONCERNS ABOUT REPUTATIONAL HARM

Doe v. FBI, 218 F.R.D. 256 (D. Colo. 2003) ("If [the plaintiff's interest in reputation justified pseudonymity], then any defamation plaintiff could successfully move to seal a case and proceed by pseudonym, in order to avoid 'spreading' or 'republishing' the defamatory statement to the public. However, this is not the customary practice.").

Doe v. Bogan, No. 1:21-mc-00073, 2021 WL 3855686, at *3 (D.D.C. June 8, 2021) ("The allegations in defamation cases will very frequently involve statements that, if taken to be true, could embarrass plaintiffs or cause them reputation harm. This does not come close to justifying anonymity, however, and plaintiffs regularly litigate defamation claims on the public docket even when the allegedly defamatory statement could, if taken as true, cause them some reputation harm.").

Doe v. United States, No. 19-1888C, 2020 WL 1079269, at *2 (Fed. Cl. Mar. 5, 2020) ("Plaintiffs expressed generalized fear of retaliation and reputational harm appears to be consistent with the sort of concern that might exist whenever a plaintiff elects to bring this type of [employment law] case.").

J. CONCERNS ABOUT FRUSTRATING TRADEMARK ENFORCEMENT

XYZ Corp. v. Partnerships & Unincorporated Associations Identified on Schedule A, No. 21-cv-06471, 2022 WL 180151, at *2 (N.D. Ill. Jan. 20, 2022) ("Plaintiff[] . . . does not distinguish this Schedule A case from any of the hundreds of other similar cases filed in this District . . . . It is difficult to perceive any circumstances so exceptional in this case as to differentiate it from the hundreds of other pending Schedule A cases. To permit pseudonymity/anonymity here, while many other Schedule A plaintiffs proceed under their actual names, would threaten to allow the exception of 'exceptional circumstances' to swallow the general rule barring pseudonymity.").

APPENDIX 7: RISK OF REPUTATIONAL OR ECONOMIC HARM NOT ENOUGH FOR PSEUDONYMITY

The parentheticals indicate just what kind of harm the court said is insufficient to justify pseudonymity, though ultimately they all amount to reputational and economic harm.

1ST CIRCUIT

Doe v. Bell Atlantic Business Sys., Inc., 162 F.R.D. 418, 420 (D. Mass. 1995) ("[e]conomic harm").

Doe v. W. New England Univ., 3:19-cv-30124-TSH, 2019 WL 10890195, at *1 (D. Mass. Dec. 16, 2019) ("economic harm").

2D CIRCUIT

Doe v. Delta Airlines Inc., 672 F. App'x 48, 52 (2d Cir. 2016) ("economic or professional concerns").

Doe v. Conn. Bar Examining Comm., 263 Conn. 39, 70 (2003) ("economic and social harm").

Mercer v. Blanchette, 133 Conn. App. 84, 94–95 (2012) ("economic harm").

Vargas v. Doe, 96 Conn. App. 399, 408–09 (2006) ("economic harm").

Doe v. Diocese Corp., 647 A.2d 1067, 1073 (Conn. Super. Ct. 1994) ("economic harm," harm to "reputation").

Balerna v. Bosco, No. HHDCV176082264S, 2017 WL 6884041, at *2 (Conn. Super. Ct. Dec. 6, 2017) ("economic harm").

Nyarko v. M&A Projects Restoration Inc., No. 18-cv-05194-FBST, 2021 WL 4755602, at *6 (E.D.N.Y. Sept. 13, 2021) (blacklisting), *report & recommendation adopted*, No. 1:18-cv-05194-FB-ST, 2021 WL 4472618 (E.D.N.Y. Sept. 30, 2021).

Doe v. Edmunson, No. 5:01-cv-01781-FJS-GS, at 2–3 (N.D.N.Y. Dec. 19, 2001) ("economic harm").

Free Mkt. Comp. v. Commodity Exch., Inc., 98 F.R.D. 311, 313 (S.D.N.Y. 1983) ("economic harm").

Doe v. United Services Life Insurance Co., 123 F.R.D. 437, 439 n.1 (S.D.N.Y. 1988) ("economic or professional concerns").

Abdel-Razeq v. Alvarez & Marsal, Inc., No. 14-cv-5601, 2015 WL 7017431, at *4 (S.D.N.Y. Nov. 12, 2015) (risk of "blacklisting").

Agerbrink v. Model Serv. LLC, 14-cv-7841-JPO-JCF, 2016 WL 406385, at *9–10 (S.D.N.Y. Feb. 2, 2016) (risk of "blacklisting").

Rosenberg v. City of New York, No. 20-cv-3911-LLS, 2020 WL 4195021, at *2 (S.D.N.Y. July 20, 2020) (embarrassment and humiliation).

P.D. & Assocs. v. Richardson, 64 Misc. 3d 763, 767 (N.Y. Sup. Ct. 2019) ("economic harm," "professional embarrassment," "injury to reputation").

Doe v. Burkland, 808 A.2d 1090, 1095 (R.I. 2002) ("risk of embarrassment or allegations of economic harm").

3D CIRCUIT

Doe v. Megless, 654 F.3d 404, 408 (3d Cir. 2011) ("economic harm").

Doe v. Rider Univ., No. 16-cv-4882-BRM, 2018 WL 3756950, at *4 (D.N.J. Aug. 7, 2018) (risk to "future employment").

Doe v. Princeton Univ., No. 20-cv-4352-BRM, 2020 WL 3962268, at *3 (D.N.J. July 13, 2020) (risk to "future employment").

A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 504 (App. Div. 1995) ("economic harm").

T.S.R. v. J.C., 671 A.2d 1068, 1074 (N.J. Super. App. Div. 1996) ("embarrass[ment] or stigma[]" and "damage" to "reputation[]") (defendant).

Doe v. Main Line Hospitals, Inc., No. 2:20-cv-02637-KSM, at 10 (E.D. Pa. Sept. 1, 2020) ("reputational harm").

Doe v. Johns-Manville Corp., 15 Pa. D. & C.3d 135, 145 (Pa. Com. Pl. 1980) ("ostracism").

4TH CIRCUIT

Doe v. Pub. Citizen, 749 F.3d 246, 274 (4th Cir. 2014) ("a company's reputational or economic interests").

Doe v. N. State Aviation, LLC, No. 1:17-cv-346, 2017 WL 1900290, at *2 (M.D.N.C. May 9, 2017) (risk to "future employment").

Candidate No. 452207 v. CFA Inst., 42 F. Supp. 3d 804, 808 (E.D. Va. 2012) ("embarrassment, criticism, and reputational harm").

Doe v. Liberty Univ., No. 6:19-cv-00007, 2019 WL 2518148, at *3 (W.D. Va. June 18, 2019) ("harm to her professional reputation").

5TH CIRCUIT

S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe, 599 F.2d 707 (5th Cir. 1979) (risk of employer retaliation) ("economic harm").

6TH CIRCUIT

D.E. v. Doe, 834 F.3d 723, 728 (6th Cir. 2016) ("potential negative scrutiny from future employers").

Doe v. Ky. Cmty. & Tech. Coll. Sys., No. 20-cv-00006-DLB, 2020 WL 998809, at *3 (E.D. Ky. Mar. 2, 2020) ("scrutiny from current or prospective employers").

Doe v. Univ. of Pittsburgh, No. 1:17-cv-213, 2018 WL 1312219 (W.D. Mich. Mar. 14, 2018) ("scrutiny from current or prospective employers").

7TH CIRCUIT

In re Boeing 737 MAX Pilots Litig., No. 1:19-cv-5008, 2020 WL 247404, at *2 (N.D. Ill. Jan. 16, 2020) ("economic harm").

Doe v. Doe, 668 N.E.2d 1160, 1167 (Ill. Ct. App. 1996) ("harm to reputation" and "embarrassment") (defendant).

Doe v. Trustees of Indiana Univ., No. 1:21-cv-02903-JRS-MJD, at 9 (S.D. Ind. Jan. 3, 2022) (harm to reputation).

Doe v. Milwaukee Cty., No. 18-cv-503, 2018 WL 3458985, at *1 (E.D. Wisc. July 18, 2018) (harm to reputation).

8TH CIRCUIT

Patton v. Entercom Kansas City, LLC, No. 13-cv-2186-KHV, 2013 WL 3524157, at *3 (D. Kan. July 11, 2013) ("damage to . . . personal and professional reputations").

9TH CIRCUIT

Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1068 (9th Cir. 2000) (annoyance and criticism).

Roe v. Skillz, Inc., 858 F. App'x 240, 241 (9th Cir. 2021) ("economic or professional concerns").

Doe v. Georgia-Pac., LLC, No. 12-cv-5607-PSG-JCFx, 2012 WL 13223668, at *2 (C.D. Cal. Sept. 26, 2012) (risk to "future employment").

Doe v. State Bar of Cal., 415 F. Supp. 308, 309 n.1 (N.D. Cal. 1976) (harm to reputation), *aff'd as to other matters*, 582 F.2d 25 (9th Cir. 1978).

Tarutis v. Spectrum Brands, Inc., No. 13-cv-761-JLR, 2014 WL 5808749, at *3 (W.D. Wash. Nov. 7, 2014) (harm to reputation).

10TH CIRCUIT

Coe v. U.S. Dist. Ct. for Dist. of Colo., 676 F.2d 411, 417, 418 (10th Cir. 1982) ("economic harm," quoted favorably from Southern Methodist University Ass'n v. Wynne & Jaffe, 599 F.2d 707, 712–13 (5th Cir. 1979), and "professional privacy rights," which in context referred to professional reputation).

Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs, 886 F.2d 1240, 1245 (10th Cir. 1989) ("economic or professional concerns").

Raiser v. Brigham Young University, 127 F. App'x 409, 411 (10th Cir. 2005) (harm to reputation).

United States *ex rel.* Little v. Triumph Gear Sys., Inc., 870 F.3d 1242, 1249 n.10 (10th Cir. 2017) ("economic or professional concerns").

Doe v. FBI, 218 F.R.D. 256, 259 (D. Colo. 2003) (harm to "reputation").

Does 1 through 11 v. Bd. of Regents of Univ. of Colo,, No. 21-cv-02637-RM-KMT, 2022 WL 43897, at *2 (D. Colo. Jan. 5, 2022) ("risk of embarrassment damage to plaintiff's professional reputation").

Brez v. Fougera Pharms., Inc., No. 16-cv-2576-DDC-GEB, 2018 WL 2248544, at *1 (D. Kan. Apr. 20, 2018) ("economic harm").

Doe v. Kansas State Univ., No. 2:20-cv-02258-HLT-TJJ, 2021 WL 84170, at *3 (D. Kan. Jan. 11, 2021) (harm to reputation).

11TH CIRCUIT

Doe I v. City of Alabaster, Alabama, No. 2:11-cv-3448-VEH, 2012 WL 13088882 (N.D. Ala. Apr. 26, 2012) ("economic harm").

Harapeti v. CBS Television Stations, Inc., No. 20-cv-20961, 2021 WL 1341524, at *3 (S.D. Fla. Apr. 9, 2021) ("economic harm").

D.C. CIRCUIT

In re Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019) (annoyance and criticism).

Qualls v. Rumsfeld, 228 F.R.D. 8, 12 (D.D.C. 2005) ("economic harm").

Doe v. Von Eschenbach, No. 06-cv-2131-RMC, at 6 (D.D.C. June 27, 2007) ("economic harm").

Roe v. Doe, 319 F. Supp. 3d 422, 428 (D.D.C. 2018) ("economic harm").

Doe 1 v. Benoit, No. 19-mc-59-BAH, 2018 WL 11364383, at *3 (D.D.C. Nov. 20, 2018) (harm to "employment" prospects).

Doe v. Roe, Inc., No. 1:21-mc-00043, 2021 WL 3622423, at *3 (D.D.C. Apr. 28, 2021) (harm to "generalized reputational interest").

Doe v. Bogan, No. CV 1:21-mc-00073, 2021 WL 3855686, at *3 (D.D.C. June 8, 2021) ("reputation harm").

Plaintiff v. Verizon Commc'ns, Inc., No. 22-cv-00018, 2022 WL 168324, at *3 (D.D.C. Jan. 19, 2022) (annoyance and criticism).

Doe v. U.S. Dep't of Homeland Sec., No. 1:22-mc-00028-UNA, at 6 (D.D.C. Mar. 14, 2022) ("damaging his reputation with his clients and the legal community," "economic harm").

FEDERAL CIRCUIT

Doe v. United States, No. 19-1888C, 2020 WL 1079269, at *2 (Fed. Cl. Mar. 5, 2020) ("reputational harm").