

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF  
PENNSYLVANIA,

vs.

GERALD A. SANDUSKY

CP-14-CR-2421-201  
CP-14-CR-2422-201

DEBRA C. IMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

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**VICTIM #4'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
PROTECTIVE ORDER FOR THE USE OF A PSEUDONYM**

**I. BACKGROUND**

The Defendant in this case, Gerald A. Sandusky is charged with over fifty counts of sexual abuse of young boys ("Victims"), including involuntary deviate sexual intercourse with a person less than 16 years of age, indecent assault of a person less than 16 years of age, involuntary deviate sexual intercourse with a person less than 16 years of age, aggravated indecent assault of a person less than 16 years of age, indecent assault of a person less than 13 years of age, criminal attempt of indecent assault of a person less than 16 years of age, unlawful contact/communication with minor for the purpose of unlawful sexual activity, corruption of minors, and endangering the welfare of children.

The trial of this case, which has garnered worldwide media attention, is scheduled to commence on June 5, 2012. This extreme media attention coupled with the psychological impact of his victimization leads Victim #4 to move this Honorable Court to prevent the

disclosure of his name in open court and requests the assignment of a pseudonym for identification purposes for all proceedings, including during trial.

## II. LEGAL STANDARD

Courts within the Commonwealth of Pennsylvania have the inherent power to close the record or portions of the record to public inspection and such power is vested within the sound discretion of the trial judge. *See, e.g., PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 5, 614 A.2d 1106, 1108 (1992); *Commonwealth v. Fenstermaker*, 515 Pa. 501, 508, 530 A.2d 414, 417 (1987). The right of the public to observe a criminal court proceeding or records from such a proceeding is not absolute and it may be weighed against circumstances warranting closure of the record to public inspection. *PG Publishing Co., supra; Fenstermaker, supra*, at 513, 530 A.2d at 420. "At the discretion of the trial judge and in the interest of protecting public as well as private interests, the public may be excluded, temporarily or permanently, from being present at certain judicial proceedings or examining the records of such proceedings." *Commonwealth v. Sartin*, 708 A.2d 121, 123; 1998 Pa. Super. LEXIS 137 (1998), *citing, PG Publishing Co., supra; Hutchison v. Luddy*, 417 Pa. Super. 93, 611 A.2d 1280, 1290 (Pa. Super. 1992); *Katz v. Katz*, 356 Pa. Super. 461, 514 A.2d 1374, 1377 (Pa. Super. 1986).

## III. ARGUMENT

### A. Victim #4's Identity Should Not be Disclosed Pursuant to 42 Pa.C.S.A. § 5988 Because the Commonwealth Alleges Sexual Abuse of a Child

In the Commonwealth, the legislature recognizes the special privacy need for victims of child sexual or physical abuse. Specifically, 42 Pa.C.S.A. § 5988, Victims of sexual or physical abuse, provides:

(a) Release of name prohibited. --Notwithstanding any other provision of law to the contrary, in a prosecution involving a child victim of sexual or physical abuse, unless the court otherwise orders, the name of the child victim shall not be disclosed by officers or employees of the court to the public, and any records revealing the name of the child victim will not be open to public inspection.

(b) Penalty. --Any person who violates this section commits a misdemeanor of the third degree.

While the term "child victim" is not defined, "child" and "children" are defined in the act as "an individual or individuals under 16 years of age." 42 Pa.C.S.A. § 5982. Thus, a "child victim" of sexual assault would rationally mean a person subject to sexual assault when he or she is "under 16 years of age." The movant, identified in the amended bill of particulars as "Victim #4" is such a person.

In the present case, the Commonwealth has filed a bill of particulars alleging that the person identified as "Victim #4" was the subject of multiple acts of abuse committed by the defendant at a time when alleged Victim #4 was between 12 and 17, who was a "child at the time of the offenses." See Amended Bill of Particulars attached to Victim #4's Motion for Protective Order for the Use of Pseudonym as Exhibit 1, paras. (e)-(f). Thus, because Victim #4 was a "child" at the time of the offenses, given the overwhelming media publicity surrounding this case (see below), harm to Victim #4 and considering the substantial need for privacy of his identity, the application of Section 5988 to protect the public disclosure of Victim #4's identity is warranted.

**B. Victim #4's Present Age Does Not and Should Not Strip Him of Protection Afforded by 42 Pa.C.S.A. § 5988**

The fact that Victim #4 is now past the age of majority would not in any way change the social stigma, embarrassment and humiliation that would come with public disclosure of his identity in connection with childhood sexual assaults committed upon him.

Because child sex abuse inflicts lifelong harm, victims are routinely psychologically disabled by the abuse and need to be protected from public embarrassment and shame even into adulthood. Laura P. Chen, BS, et al., Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders, 85 (7) Mayo Clin. Proc. 618 (July 2010) (concluding that history of sexual abuse is associated with increased risk of lifetime diagnosis of multiple psychiatric disorders). Many victims will not pursue their claims or report child sexual abuse to authorities if they fear public embarrassment resulting from disclosure of their identities. Numerous studies establish the fact that it typically takes years and often decades for survivors of abuse to disclose their abuse to anyone, let alone the justice system. Thus, they face serious psychological disorders and need protection even as adults. See State v. Schnabel, 952 A.2d 452, 462 (N.J. 2008) (observing that Child Sexual Abuse Accommodation Syndrome involves five behavior patterns that may be exhibited by a sexually abused child: secrecy, helplessness, entrapment and accommodation, delayed reporting, and recantation); Mic Hunter, Abused Boys, 59 (Ballantine Books, 1991) ("Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past."); Ramona Alaggia MSW, PhD, RSW, An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health, 19 J. Can. Acad. Child Adolesc. Psychiatry 32, 32 (2010) ("By some estimates between 60-80% of CSA victims withhold disclosure[.]"); Laura P. Chen, BS, et al.,

Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders, 85 (7) Mayo Clin. Proc. 618, 627 (July 2010) ( "[S]exual abuse survivors face a challenging spectrum of physical and mental health concerns, with associated higher health care use and greater medical expenditures. ...[S]exual abuse is associated with multiple psychiatric disorders, including lifetime diagnosis of anxiety disorders, depression, eating disorders, PTSD, sleep disorders, and attempted suicide. Improved recognition of the link between a history of sexual abuse and mental health disorders may increase the identification of abuse survivors and lead to better treatment and outcomes."); Guy R. Holmes, See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?, 17(1) Clinical Psychol. Rev. 69, 69-88 (1997) (noting the difficulty victims face making connection between serious problems typical of survivors in adulthood and the sexual abuse suffered as children); David Lisak, The Psychological Impact of Sexual Abuse: Content Analysis of Interviews with Male Survivors, 7(4) J. of Traumatic Stress 525, 525-526, 544 (1994) (noting that unlike victim of a toxic tort, there is no medical necessity that sexual abuse will lead to a scientifically dispositive injury. Child sex abuse victims simply do not apprehend that the abuse, which they may not even experience as abuse, could lead to devastating effects in adulthood); Mary L. Paine & David J. Hansen, Factors Influencing Children to Self-Disclose Sexual Abuse, 22 Clinical Psychol. Rev. 271, 271-75 (2002) (discussing shame and embarrassment about abuse, making victim feel to blame for abuse); Richard L. Sjoberg & Frank Lindblad, M.D., Ph.D., Limited Disclosure of Sexual Abuse in Children Whose Experiences Were Documented by Video Tape, 159 Am. J. Psychiatry 312, 312-13 (2002) ("[T]here [i]s a significant tendency of . . . abused children to deny or belittle their experiences."). In light of these studies, the default

position for the courts should be to permit victims of child sex abuse at any age to employ pseudonyms.

Further, had the legislature wished to protect the identity of sexual assault victims only during their childhood, presumably the legislature would have limited the scope of the language of Section 5988 to extend only to child victims during their minority. However, the legislature failed to do so and instead provided for the nondisclosure of all child sexual assault victims' identities.

### **C. The Specific Circumstances of This Case Justify Imposition of a Protective Order Requiring the Use of a Pseudonym**

The right to a public trial is not without limitation and its exercise must be considered in relationship to other important interests. *Commonwealth v. Johnson*, 455 A.2d 654, 661 (Pa. Super 1982). Courts of this Commonwealth have found it appropriate to close the courtroom doors to protect victim witnesses from serious embarrassment, trauma, or intimidation.

*Commonwealth v. Wright*, 388 A.2d 1084, 1086 (Pa. Super 1978) ("Among the circumstances which justify the court in closing the courtroom to spectators [is the] embarrassment and discomfiture to victims of crimes which require the explication of lurid details."),

*Commonwealth v. Stevens*, 253 A.2d 509, 514 (Pa. Super 1975) ("[T]he closing of the courtroom to spectators is a frequent and accepted practice when the lurid details of such a crime [rape] must be related by a young lady."), *Commonwealth v. Davis*, 635 A.2d 1062, 1068 (Pa. Super 1993) ("The psychological effects of distractions on witnesses have been considered a serious enough threat to the fair administration of justice to justify excluding spectators from the courtroom during the testimony of particular witnesses.").

The circumstances surrounding the case at bar, in particular the extreme media attention and its psychological impact on the well being of the alleged victim witnesses, justifies the Court closing the case to the general public, at least during these witnesses' testimony. However, the present motion merely seeks narrowly tailored relief for protection of the name and identity of Victim #4 during trial and throughout these proceedings.

The magnitude of this case and the corresponding media attention cannot be overstated. The case has been one of the most popular stories in publications across the country. A lead reporter following the case won a Pulitzer Prize for her coverage. Press from around the world surround Bellefonte, Pennsylvania every time there is a court proceeding. Interest in these proceedings is so high that local officials have been forced to conduct a "lottery" to determine who will be awarded seating in the courtroom. This Court has even acknowledged the "unprecedented publicity generated by the case." *See* Order of Court 4/9/12 attached to Victim #4's Motion for Protective Order for the Use of Pseudonym as Exhibit 2.

The immediate impact of disclosing the identities of the victims in open court is obvious. It is well documented that victims of sexual assault suffer from extreme shame, humiliation and embarrassment. *See* studies cited in section B of this Memorandum of Law. The magnitude of this case will serve only to amplify those feelings.

An affidavit from Victim #4's psychologist setting forth the impact of name disclosure speaks volumes. Victim #4's treating psychologist has stated:

- It is my opinion that the public disclosure of the identity of a victim of child sexual abuse interferes with the recovery process and is substantially likely to lead to further harm to the victim.

- The use of my patient's name in an open court proceedings, particularly one with significant media attention, will have a traumatic impact on my patient and lead to further feelings of shame and humiliation and trigger symptoms associated with Post Traumatic Stress Disorder.
- It is my opinion that the identification of Victim #4 in open court at the scheduled trial will obstruct his recovery process and create further emotional damage.

See Affidavit attached to Victim #4's Motion for Protective Order for the Use of Pseudonym Exhibit 3, paras. 5-7.

The long term repercussions associated with the disclosure of the alleged victims' identities are even more daunting. It is an unfortunate reality that some victims in high profile cases view the disclosure of their identity as the equivalent of being branded with a scarlet letter. Victims of crime want their names to be remembered for their positive contributions to society throughout their lives, not the tragedy for which they suffered. Although Victim #4 remains one-hundred percent committed to testifying against the Defendant in this case, at what expense will it come to his short term and long term well being?

The Defendant in this case has been afforded latitude to dig deeply into the lives of the alleged victims. He has publically requested school records, psychological records, unemployment records, worker's compensation claim records, juvenile records, phone records, social services records, and potentially other private and invasive records for which the alleged victims are not even aware. On the courthouse steps and on national television the defense has publically accused the alleged victims of participating in a far-fetched conspiracy. Outside of the public eye, the Defendant's private investigator has followed and questioned the friends and family members of the alleged victims leading them to feel as if they are the ones who are on trial. Regardless of motive, there is no doubt that these defense efforts have created an intimidating atmosphere in which the alleged victims are asked to testify. This intimidating



environment should be considered in conjunction with the magnitude of the case and the psychological harm caused to the alleged victims when considering a protective order.

At this point the only protection the alleged victims have from the unrelenting attention and inevitable psychological devastation corresponding to their role in this case is the anonymity of their names. Stripping them of their only protection would be tantamount to "throwing them to the wolves." This became evident when a major media outlet ran an article on Victim #1 in which certain identifying information was disclosed. It has been reported that after this story was run Victim #1 and his family were bombarded by unrelenting attention and scrutiny including someone breaking into a family vehicle. If this was the response to the release of mere information that *could* lead to the identity of an alleged victim, one can only imagine the reaction to the disclosure of an *actual* name.

Although fundamental constitutional rights suggest that Mr. Sandusky is innocent until proven guilty, this does not mean that the alleged victims should be treated as liars until they are proven truthful. The Pennsylvania Crime Victims Act requires that "victims of crime be treated with dignity, respect, courtesy and sensitivity. The rights extended to victims of crime in [the Crime Victims Act] are to be honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants." 18 Pa. C.S. §11.102. Accordingly, if private records as broad as elementary school report cards are required to be disclosed, and the private lives of the alleged victims are allowed to be an open book to the Defendant, the Court should take parallel precautions to protect the vulnerability of the alleged victims.

**D. Neither the Commonwealth Nor The Defendant Will Be Prejudiced by the Use of a Pseudonym**

On November 22, 2011, this court, by written Order of Judge Kathy A. Morrow, has previously entered a temporary order with regard to another alleged victim/witness which ordered the same relief sought herein by this movant, Victim #4. *See* Order of Court 11/22/11, attached to Victim #4's Motion for Protective Order for the Use of Pseudonym as Exhibit 4. Neither the Commonwealth nor the Defendant objected to the Court's entry of this Order. Subsequent to this order, all pre-trial proceedings in this matter have proceeded without the public disclosure of any of the alleged victims' names or identities, without incident and without any prejudice to any party.

There exists no compelling reason which justifies the disclosure of Victim #4's identity which would trump the compelling need for privacy of Victim #4.

The Defendant's right to confront his accusers will not be violated by protection of the alleged victim's names. The alleged victims will stand before the judge and jury, in front of the Defendant, raise their right hands, swear to tell the truth, give testimony, and be subjected to cross examination in open court. The Defendant's ability to present his defense will in no way be compromised. The Defendant has known the identity of the alleged victims/complaining witnesses; thus, there can be no fear of unfair surprise. Furthermore, the use of a neutral pseudonym (John Doe #4) in substitution of Victim #4's name will in no way bias the jury toward a finding of guilt or innocence. Accordingly, the Defendant's case will not be prejudiced in any substantive way by granting the relief sought.

The alleged victims in the case do not live in a bubble and they are aware of the magnitude of this case and its unparalleled attention. When the case's notoriety is considered in conjunction with the feelings of shame, humiliation and embarrassment associated with sexual

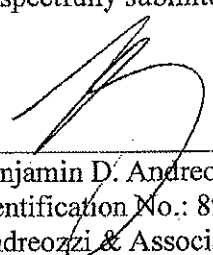
assault, and witness intimidation, this scenario cries out for the Court's protection. The Court can address these concerns by narrowly tailoring an order preventing open disclosure of the alleged victims' names in the courtroom.

#### IV. CONCLUSION

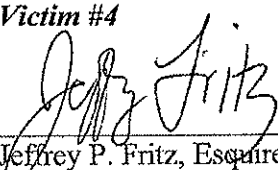
The protections afforded to child sexual abuse victims under 42 Pa.C.S.A. § 5988 are applicable to Victim #4. Furthermore, when the extreme media attention and the nature of the allegations are weighed against virtually no prejudicial impact to the Defendant, the specific circumstances of this case clearly justify the imposition of a protective order. This protective order can be narrowly tailored to protect the disclosure of the alleged victims' names while still allowing the public to attend the trial.

Respectfully submitted,

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