The Law of Pseudonymous Litigation

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The Law of Pseudonymous Litigation

EUGENE VOLOKH†

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


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. BARTISCH, & BRENDON P. LEVESQUE, SUPERIOR COURT CIVIL RULES ANNOTATED, CONNECTICUT PRACTICE SERIES § 11-20(a)(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?\textsuperscript{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.\textsuperscript{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\textsuperscript{1}—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.\textsuperscript{8} Say someone sues you for alleged embezzlement, fraud, or sexual assault, or even

\begin{enumerate}
\item “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 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”).
\item 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., No. 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).
\item 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 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. Milan, 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.
\end{enumerate}
malpractice or breach of contract. You’d surely prefer that your friends, neighbors, and prospective clients and business partners not know about it. 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.

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

- Sexual assault plaintiffs may not want to be publicly identified.
- Libel plaintiffs may not want to further publicize the allegedly libelous allegations over which they are suing.
- 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).
- People suing over politically controversial behavior (for example, an employee fired for allegedly racist or unpatriotic statements) or suing using legal theories that some might condemn or mock 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.

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. And it’s true of civil cases—our legal system generally calls for public proceedings and publicly filed

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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).
13. See infra Part III.F.1.e.
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 below 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);

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.
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

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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.

misconduct—even though there, as in the libel case, Arnold wants pseudonymity to protect his reputation.\textsuperscript{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. \textit{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.\textsuperscript{29}

b. \textit{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.\textsuperscript{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. \textit{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 \textit{Doe v. Smith} will tend to yield a larger settlement than \textit{Jones v. Smith} or \textit{Doe v. Roe}, which in turn will tend to yield a

\textsuperscript{28} See infra Part III.F.3; Appendices 5 and 6.

\textsuperscript{29} See infra Part I.C.5; Appendix 6.

\textsuperscript{30} See Appendix 7.
larger settlement than Jones v. Roe.\textsuperscript{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 \textit{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{34} But then pseudonymity would also interfere more with public right of access and may further undermine the interests of the opposing parties.\textsuperscript{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):

- \textit{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.

- \textit{Differences in litigants}: Or perhaps courts sometimes just decide based on sympathies (perhaps subconscious) for certain kinds of litigants\textsuperscript{36}—
for example, for fellow lawyers, promising young college students, or people who are bereaved (even though such bereavement is generally not seen as a basis for pseudonymity).

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

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.

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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.


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 multifactor balancing tests42 for pseudonymity43 (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.”

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.”

[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

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); Doe 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).
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. Opinions 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

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.
51. See, e.g., DEL. R. SUPER. CT. Rule 10(e); ALASKA R. CT.—R. OF ADMIN. 40.
52. E.g., Does I thru XXII 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.”

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. Some courts have taken the view that this limits pseudonymity as well.

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.” “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.” In particular, the right to public access “protects the public’s ability to oversee and monitor the workings of the Judicial Branch,” and “promotes the institutional integrity of the Judicial Branch.” “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.”

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54. Megless, 654 F.3d at 409.
55. See, e.g., Courthouse News Serv. v. Planet, 947 F.3d 581, 589 (9th Cir. 2020).
57. Eugene S. v. Horizon Blue Cross Blue Shield of N.J., 663 F.3d 1124, 1135 (10th Cir. 2011).
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{64}

Indeed, pseudonymity is sometimes offered as a less public-access-restrictive alternative to outright sealing.\textsuperscript{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.\textsuperscript{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.\textsuperscript{67}

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


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


\textsuperscript{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.”

“Anonymous 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.”

“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.”

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, or a vexatious litigant?
- Is there evidence that the litigant is untrustworthy, perhaps in past cases or in past news reports?
- Do past cases brought by the same litigant reveal similar allegations made by the litigant, which past authorities have concluded were not corroborated?

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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).


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 gone 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?\textsuperscript{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.\textsuperscript{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

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

\textsuperscript{77}To quote a media brief opposing pseudonymity in a challenge to a vaccination mandate,

\begin{quote}
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.
\end{quote}

citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.\textsuperscript{78}

Courts have recognized that this rationale applies also to the openness of court records,\textsuperscript{79} including to the presumption against pseudonymity.\textsuperscript{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. \textit{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.\textsuperscript{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.\textsuperscript{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;\textsuperscript{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.\textsuperscript{84} And the same can apply in other situations.\textsuperscript{85}

\textsuperscript{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.”).


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

\textsuperscript{81} See infra Part III.D.1.

\textsuperscript{82} See infra Part III.E.5.

\textsuperscript{83} See, e.g., Admo 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).

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

\textsuperscript{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. Luo, a frequent litigant who had been found in a past case to have acted evasively, was originally allowed to proceed pseudonymously; but the judge eventually reversed that decision.

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, “because 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.” 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. The sealing of court orders is generally viewed as improper, and even redaction is viewed as costly to public understanding of the court’s operations, even if sometimes necessary; 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

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87. See supra note 74.
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

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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).


significant portions of such orders. 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.

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. 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. “If defendants could reveal plaintiff’s . . . identity to third parties at will, there would be little point in allowing plaintiff to proceed pseudonymously.”

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


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. 1987); 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. 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.

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.

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.

I give many more examples in Appendix 6.

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).
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 required¹¹⁸)—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.
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.”).
¹²¹. 538 U.S. 1, 7–8 (2003).
perfectly legally. 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. And indeed the defendant’s identity should then presumptively be made available to the public, though that presumption can be rebutted.

A few cases have likewise allowed pseudonymity until a motion to dismiss is decided, 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,” even when—as I generally assume in this Article—the defendant knows the plaintiff’s identity. This is often articulated in general terms that would apply to most pseudonymity requests (except perhaps those in lawsuits against the government):

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

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

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
July 18, 2011) (expressly rejecting this argument in case against alleged child molester); Doe v. Diocese Corp.,

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.

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.\footnote{See supra Part I.C.4.} 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.\footnote{Cf. Vargas v. Labella, No. CV065001941S, 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”).}

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.”\footnote{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).} 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.\footnote{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. 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.” 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.”

138. See, e.g., Balla, supra note 21, at 696.
there is a very substantial interest in doing so on a basis of equality. Others have cited fairness as a basis for rejecting pseudonymity for either party. 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.

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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-00917RIDATCB, 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 44, 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”). 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.”

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.)

“‘Public access creates a critical audience and hence encourages truthful exposition of facts, an essential function of a trial.’”

And if the party witness is not telling the truth, “there is certainly a countervailing public interest in knowing the [witness’s] identity.” 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. 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.’” And if only one

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

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.

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.
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

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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.”).


from properly evaluating the qualifications of the class representative.”

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

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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.\textsuperscript{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).\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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?\textsuperscript{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?

\textsuperscript{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).

\textsuperscript{162} Id.

\textsuperscript{163} Id.


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, 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? 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, offer a helpful perspective on facts that may bear on the plaintiff’s credibility or other traits?

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, 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.”

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.”).


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.”).

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. That becomes impossible or at least much harder if the past cases were pseudonymous. 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. 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

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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)).

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.” 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.

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.” 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.

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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.”

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.” This reasoning counsels in favor of allowing pseudonymity more often in such cases.

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,” especially when plaintiff makes serious charges of misconduct by government officials. Other courts reason that the interest in openness “is heightened because Defendants are public officials and government bodies.” 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.
Thus, though courts often note “whether the action is against a governmental or private party” as a factor in the pseudonymity analysis, it is not clear which way this factor cuts. 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.

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[ ]” 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. The cases dealing with such substantial basis claims can be helpfully divided into several categories, laid out below.

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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 impropropriety 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

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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. 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. 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. 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, 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.”


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]eny[ing] 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).


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

though the information was required to be kept confidential).\textsuperscript{201} Requiring plaintiffs to litigate under their names would undermine the very confidentiality that they sought to protect.\textsuperscript{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\textsuperscript{203}). After all, requiring such plaintiffs to identify themselves would only further exacerbate the injury. And a few cases have taken this view.\textsuperscript{204} But the dominant view is contrary, which is why libel and privacy cases (see Part III.F.2) are routinely litigated without pseudonyms.\textsuperscript{205}

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


\textsuperscript{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.”) (citations 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: “[i]n [most of the cases cited in support of pseudonymy,] 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 public
III. REBUTTING THE PRESUMPTION OF NON-PUEDONYMITY: SPECIFIC JUSTIFICATIONS

A. REASONABLE FEAR OF PHYSICAL HARM OR OTHER EXTRAORDINARY RETALIATION

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

would inflect 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.”


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


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).

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

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

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.

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.

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.” And courts


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{225} though that presumption can be rebutted.\textsuperscript{226} Likewise, some cases allow parents who are suing on behalf of their minor children to proceed pseudonymously,\textsuperscript{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

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

\textsuperscript{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.

\textsuperscript{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).

\textsuperscript{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).


\textsuperscript{227} See Appendix 1a.
be eviscerated unless the parent was also permitted to proceed using initials. Minor defendants (and their parents) are generally pseudonymized as well. A few courts, however, have declined to pseudonymize parents in such situations.

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.
- Others suggest a rigid cutoff at the age of majority.
- Still others suggest the cutoff should be around age twenty.

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• 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.”

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. Others do not.

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). 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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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).


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”).


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 children245 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

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. FSTCV2050231278, 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. 317-0574-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).


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] 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.”[249] 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).


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

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

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.” Another refused pseudonymity as to exhibitionism. And courts generally do not allow pseudonymity to prevent disclosure of other, more conventional sexual or romantic relationships.

Some courts have allowed pseudonymity (though others have rejected it) 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.’” Likewise, one case allowed pseudonymity for an actress who

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

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.

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. 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, including when they are defendants being sued for libel and related torts. 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. 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.

   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.

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272. See infra Appendix 2a.


274. See infra Appendix 2b; Jayne S. Ressler, Anonymous Plaintiffs and Sexual Misconduct, 50 SEITON 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).

c. Sexual Harassment Victimization

Allegations of sexual harassment falling short of sexual assault are often not seen as sufficient to justify pseudonymity, 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 labor280 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


herpes, or other communicable (and generally sexually transmitted) illnesses.

\[284\]

\[b. \text{Mental Illness or Disorder}\]

Courts are divided on this as well.

\[286\]

c. \text{Nonmental, Noncommunicable Illness or Disability}

And courts are divided on this, too.

\[287\]
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.” 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, though others have disagreed. Stegall relied on the threat of “violent reprisals,” not just social opprobrium, 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, with only one clear exception that I have seen. Indeed,

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.” On the other hand, some other cases allowed challenges to vaccine mandates to proceed pseudonymously, because of concern about public hostility to such challenges. 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” 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.

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).


298. See infra Part III.G.
challenges, so that naming the parties was seen as less likely to be valuable. And even in such controversial contexts, pseudonymity is not always allowed.

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 or alcohol abuse or addiction. In the words of one case:

“We 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.”

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

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


300. See supra Part I.D.


are shown to have invited an opprobrium analogous to the infamy associated with criminal behavior.  

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, for which pseudonymity is generally more available. But one case allowed pseudonymity even as to a factual dispute, in a lawsuit over expunged convictions.

Yet even for some such legal challenges, pseudonymity was denied. 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 (though the result may be


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)).
different for juvenile criminal history\textsuperscript{312}). This has included cases involving disclosure of sex offender history.\textsuperscript{313} And, of course, criminal prosecutions and habeas cases routinely discuss the named parties’ criminal behavior.

F. \textbf{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.\textsuperscript{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. \textbf{Risks of Reputational Harm}

   a. \textit{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,\textsuperscript{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.\textsuperscript{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


\textsuperscript{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.


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. 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.” 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. 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 Pub’l 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).


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. Com’tL 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.

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.

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 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. 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


321. See Ressler, supra note 15.

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

they sued were false. 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. 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 or lawyer or professor, 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.”

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.


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.” And this is true both for plaintiffs and defendants, and in a wide range of cases, such as defamation cases. 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.’” 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. 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.

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

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330. See infra Appendix 6.
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. 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. 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.

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

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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 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).

school instructor.” 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?

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.” One court did the same in a libel lawsuit. 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.” 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.”

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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”).


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 Plaintiff’s 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).


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

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. 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.”

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). 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.

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, and is done ad hoc in other cases where courts want to shield parties in some measure.

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)).


347. See Appendices 4a & 4b.


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.

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. Indeed, sometimes the full name appears even in the appellate docket—just not in the opinion. 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. “Law-suits 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.

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).
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 or revenge porn victims.360
- Laws in some states mandating pseudonymity for family law cases.361
- Some federal courts’ practice of routinely pseudonymizing social security benefits appeals.362

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357. See Balla, supra note 21, at 709–35 (suggesting that courts create such express rules).
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).
Many administrative agencies’ practice of pseudonymizing their decisions.  

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.

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.


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


2D CIRCUIT


366. See supra note 192.
367. See supra Part III.D.1.


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).


4TH CIRCUIT


5TH CIRCUIT


6TH CIRCUIT


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).

8TH CIRCUIT

9TH CIRCUIT

10TH CIRCUIT

11TH CIRCUIT

D.C. CIRCUIT
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


2D CIRCUIT

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).

3D CIRCUIT


4TH CIRCUIT


5TH CIRCUIT


6TH CIRCUIT


7TH CIRCUIT

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

8TH CIRCUIT


9TH CIRCUIT
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).

10TH CIRCUIT

11TH CIRCUIT

appeal dismissed on procedural grounds, 823 F. App’x 862 (11th Cir. 2020).

D.C. CIRCUIT

Doe v. De Amigos, LLC, No. 11-cv-1755, 2012 WL 13047579, at *2–3
(hidden photographing of plaintiffs when they were naked).

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

1ST CIRCUIT

2D CIRCUIT


3D CIRCUIT


4TH CIRCUIT

5TH CIRCUIT

6TH CIRCUIT

7TH CIRCUIT

8TH CIRCUIT
9TH CIRCUIT


10TH CIRCUIT


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).

APPENDIX 3A: MENTAL ILLNESS OR CONDITION: PSEUDONYMITY ALLOWED

1ST CIRCUIT


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


5TH CIRCUIT


7TH CIRCUIT


9TH CIRCUIT


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).

psychiatric health problems that resulted from bearing witness to the suicide of a coworker in her workplace”

11TH CIRCUIT


D.C. CIRCUIT


APPENDIX 3B: MENTAL ILLNESS OR CONDITION: PSEUDONYMITY NOT ALLOWED

1ST CIRCUIT


2D CIRCUIT


4TH CIRCUIT


5TH CIRCUIT


6TH CIRCUIT


7TH CIRCUIT

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

9TH CIRCUIT

Doe v. Unum Life Ins. Co. of Am., 164 F. Supp. 3d 1140 (N.D. Cal. 2016) ("general anxiety disorder").


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)).


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. 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. 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


3D CIRCUIT

4TH CIRCUIT

5TH CIRCUIT


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).

7TH CIRCUIT

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., 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).

8TH CIRCUIT

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”).

**9TH CIRCUIT**


**10TH CIRCUIT**


**11TH CIRCUIT**


**D.C. CIRCUIT**

religious and cultural values’ and ‘sexual relations outside of marriage are illegal’

APPENDIX 4B: ALLEGEDLY IMPROPER UNIVERSITY INVESTIGATIONS: PSEUDONYMITY NOT ALLOWED

1ST CIRCUIT


2D CIRCUIT


3D CIRCUIT


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).


6TH CIRCUIT


7TH CIRCUIT


11TH CIRCUIT


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


2D CIRCUIT


3D CIRCUIT


4TH CIRCUIT


5TH CIRCUIT

Southern Methodist University Ass’n v. Wynne & Jaffe, 599 F.2d 707, 712–13 (5th Cir. 1979).  

**6TH CIRCUIT**


**7TH CIRCUIT**

Doe v. Smith, 429 F.3d 706, 710 (7th Cir. 2005).

**8TH CIRCUIT**


**9TH CIRCUIT**


**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)).
11TH CIRCUIT

Doe v. Frank, 951 F.2d 320, 323–24 (11th Cir. 1992).

D.C. CIRCUIT


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.”).


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. 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.”).


E. OTHER DISCRIMINATION/RETALIATION


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)).

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


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


2D CIRCUIT

Doe v. Delta Airlines Inc., 672 F. App’x 48, 52 (2d Cir. 2016) (“economic or professional concerns”).


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").

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").

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”).
7TH CIRCUIT


8TH CIRCUIT


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. 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).


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”).


11TH CIRCUIT


D.C. CIRCUIT

In re Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019) (annoyance and criticism).


FEDERAL CIRCUIT