One-Sided Pseudonymity

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INTRODUCTION

Our legal system generally requires parties to name themselves; pseudonymous cases—*Doe v. Jones*—are allowed only in exceptional categories of cases.[1] Some of those cases have been litigated as pseudonymous on both sides *(i.e.*, as *Doe v. Roe* or the like).[2] But even when the plaintiff's identity is kept secret from the public (though not from the defendant[3]), the defendant's is often publicized.

I will argue below that, in at least some classes of cases, this one-sided pseudonymity is unfair to the defendant—especially where the plaintiff alleges sexual assault by the defendant.

To begin with, when plaintiffs are allowed to proceed pseudonymously, it is often out of concern that being identified will stigmatize them. But facing allegations of sexual assault as a defendant is at least as stigmatizing.[4]

Relatedly, one reason for plaintiff pseudonymity is that some plaintiffs may otherwise be deterred from filing even meritorious lawsuits, for fear that being publicly identified will stigmatize them.[5] But defendants may be equally deterred from raising even meritorious defenses (such as "I didn't do it" or "the sexual behavior was consensual"), for fear that being publicly identified will stigmatize them. In this respect, the case for pseudonymity for defendants in sexual assault cases stands on roughly the same footing as that for pseudonymity for plaintiffs in those cases.

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1. *See infra* Part I.

2. For more on dealing with the proliferation of confusing *Doe v. Roe* cases, see *infra* Part IX.

3. *See generally* Eugene Volokh, *The Law of Pseudonymous Litigation*, 73 HASTINGS L.J. 1353, 1362 n.25 (2022). Some cases involve named plaintiffs suing John Doe defendants because they do not yet know the defendants' identities. But the goal there is usually to use discovery (for instance, subpoenas to Internet Service Providers) to identify the defendants, and then to name them.

4. *See infra* Part V.A.

5. *See infra* Part V.C.

One-sided pseudonymity can also be unfair to the named defendant because of how it affects the litigation process. One-sided pseudonymity can change the settlement value of a case.[6] Pseudonymity granted to party witnesses may diminish incentives to tell the whole truth.[7] Party pseudonymity may also prevent other witnesses from coming forward.[8] And allowing one party to proceed pseudonymously may signal to the jury that the other party is dangerous, suggesting culpability.[9] To quote Fourth Circuit Judge J. Harvie Wilkinson's concurrence in *Doe v. Sidar*:

> Allowing one party to proceed anonymously increases the potential for abusive suits that use the threat of reputational damage to exact revenge or to extract settlements from innocent parties. Having one party incognito but not the other can tilt the scales of justice in the direction of guilt by anonymous accusation, a prospect which would be just as abhorrent to civil litigation as it is to our criminal justice system. . . . Pseudonymity may enhance the incentives for well-founded complaints to be filed, but it may also serve as a cover for actions that tarnish the innocent.[10]

This is why many courts have rejected one-sided pseudonymity,[11] and some have accepted two-sided pseudonymity.[12]

These factors, of course, are present to different degrees in different kinds of cases. For instance, say a plaintiff alleging sexual assault (or a wrongful university finding of sexual assault) is suing a university, claiming negligent supervision or a biased investigation. There is still the risk of damage to the institutional defendant's reputation. But that damage is far less—and the unfairness stemming from one-sided pseudonymity is far less—than if the lawsuit involves allegations of, say, sexual assault by a named individual defendant.[13] The same is true in many lawsuits against the government.[14]

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6. *See infra* Part III.E.
7. *See infra* Part III.B.
8. *See infra* Part III.C.
9. *See infra* Part III.F.
10. Doe v. Sidar, 93 F.4th 241, 250 (4th Cir. 2024) (Wilkinson, J., concurring). The phrase "one-sided pseudonymity" stems from this case. *See id.* (Wilkinson, J., concurring) (citing Brief of Amicus Curiae Prof. Eugene Volokh in Support of Neither Party, *id.*, 2023 WL 4447864). One court has labeled this "unilateral anonymity" and "asymmetric anonymity," Doe v. Liberty Univ., Inc., No. 6:21-CV-00059, 2022 WL 4781727, at *4–5 (W.D. Va. Sept. 30, 2022), but those are rarer terms; and "unilateral anonymity" is ambiguous, because it sometimes refers just to a plaintiff's decision to file under a pseudonym without court approval. *See, e.g.*, Patton v. Entercom Kan. City, LLC, No. CIV.A. 13-2186-KHV, 2013 WL 3524157, at *1 (D. Kan. July 11, 2013), and cases that cite this passage; Doe # 1 v. Laurel Sch. Dist., No. CIV.A. 09C-06020 WLW, 2011 WL 7063231, at *1 (Del. Super. Ct. Dec. 19, 2011).
11. *See infra* Part II.
12. *See infra* Part IV.
13. *See infra* Part VI.A.
14. *See infra* Part VI.B.

To be sure, one possible solution to the problem—mutual pseudonymity—interferes with the public's right of access to court proceedings even more than one-sided pseudonymity does.[15] But, on balance, the unfairness of one-sided pseudonymity should generally cut against the practice of allowing it, whether the optimal solution for a case would be mutual pseudonymity or none at all.

If this analysis is right, then a plaintiff who seeks pseudonymity (at least in the cases discussed above, where one-sided pseudonymity risks serious unfairness) must offer pseudonymity: The plaintiff should file with pseudonyms for both parties and move for leave for both parties to proceed pseudonymously. The judge should then decide whether to allow pseudonymity for both parties, for only one, or for neither. But, if the plaintiff seeks one-sided pseudonymity, despite publicly naming the defendant in the caption, and the judge concludes that one-sided pseudonymity is improper, then the plaintiff's motion for leave to proceed pseudonymously should be denied.[16]

I. THE BACKGROUND PRESUMPTION AGAINST PSEUDONYMITY

There is a strong presumption against pseudonymity of parties in civil litigation—whether one- or two-sided pseudonymity—which can be overcome only "in exceptional circumstances."[17] Whether exceptional circumstances are present can be a complicated question, on which courts are unsettled.[18] For instance, even on the specific question whether sexual assault plaintiffs may proceed pseudonymously, courts are sharply split.[19] They are likewise split on a wide range of other matters, such as whether plaintiffs may proceed pseudonymously to conceal mental illness.[20]

Focusing specifically on one-sided pseudonymity, this yields two related questions. First, when should a defendant's being named cut against granting the plaintiff pseudonymity, even when some plausible argument for pseudonymity is present (e.g., when plaintiff is suing over highly personal matters, such as an

15. *See infra* Part VII.

16. This article deliberately focuses on one-sided pseudonymity favoring *plaintiff*. One-sided pseudonymity favoring defendant may raise somewhat different concerns. First, the plaintiff chooses to go to court; defendants are generally dragged into court against their will, and may thus in some situations have a stronger claim for pseudonymity (though even for defendants the norm is litigating under their own names). Second, in some kinds of cases, such as defamation cases, there may be special reasons to not allow plaintiffs to proceed pseudonymously, whether or not the plaintiffs are willing to accept defendants' doing so. *See* Doe v. Doe, 85 F.4th 206, 217–18 (4th Cir. 2023) (rejecting pseudonymity for a defamation plaintiff, because "[i]t is apparent that Appellant wants to have his cake and eat it too. Appellant wants the option to hide behind a shield of anonymity in the event he is unsuccessful in proving his claim, but he would surely identify himself if he were to prove his claims."); DL v. JS, No. 1:23-CV-1122-RP, 2023 WL 8102409, at *3 (W.D. Tex. Nov. 21, 2023) (likewise); Doe v. Roe, No. 23-CV-01149-NYW-KLM, 2023 WL 4562543, at *3 (D. Colo. July 17, 2023) (likewise); Doe v. Roe, 247 N.E.3d 1143 (Ohio Ct. App.), *appeal not allowed*, 175 Ohio St. 3d 1531 (2024).

17. Doe v. Public Citizen, 749 F.3d 246, 273 (4th Cir. 2014).

18. *See generally* Volokh, *supra* note 3.

19. *See id*. at 1430–37 (cataloging cases).

20. *See id*. at 1437–41 (cataloging cases).

alleged sexual assault)? Second, when should a plaintiff's suing over such personal matters cut in favor of granting both plaintiff and defendant pseudonymity, in the interest of preventing unfairness to the defendant?

II. JUDICIAL APPROVAL OF ONE-SIDED PSEUDONYMITY

As the Introduction notes, some courts do seem open to one-sided pseudonymity. Sometimes that happens without any real discussion by the court, because of the procedural mechanisms through which pseudonymous litigation is authorized. In writing the complaint, the plaintiff decides in the first instance how the parties are to be listed. Plaintiffs seeking pseudonymity often call themselves "Jane Doe" or "John Doe" but name the defendants. Then, if the court grants the plaintiff's motion to proceed pseudonymously, one-sided pseudonymity results.

And sometimes there is discussion, with courts expressly rejecting the claim that one-sided pseudonymity is unfair. As one court reasoned, "whatever reputational harm comes to [the named] Defendant from these allegations is the same regardless of whether Plaintiff uses her actual name or Jane Doe."[21] And "[w]here Defendants know who the Plaintiffs are and are fully capable of investigating and responding to the allegations, there is no risk that allowing Plaintiffs to proceed by pseudonym will prejudice Defendants' defense."[22] Such courts conclude that the "risk of unfairness to the opposing party"[23] factor considered by many circuit courts is therefore absent so long as defendants are aware of the plaintiffs' identity. Many such cases are cited in Appendix A; they are especially common among district courts in the D.C. Circuit and the Fourth Circuit.

III. JUDICIAL DISAPPROVAL OF ONE-SIDED PSEUDONYMITY

Nonetheless, even before *Doe v. Sidar*, many courts expressed concern about such one-sided pseudonymity. "[T]here are other sources of significant unfairness

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21. Doe v. Darden Rests., Inc., No. CV JKB-24-1368, 2024 WL 2881121, at *5–6 (D. Md. June 7, 2024); *see also* Humphries v. Button, No. 2:21-CV-01412-APG-EJY, 2022 WL 744483, at *4 (D. Nev. Mar. 11, 2022); Doe v. FedEx Ground Package Sys., Inc., No. 3:21-CV-00395, 2021 WL 5041286, at *6 (M.D. Tenn. Oct. 29, 2021); Doe 167 v. Sisters of Saint Francis of Colo. Springs, No. 1:20-CV-00907-WJ-LF, 2021 WL 664006, at *3–4 (D.N.M. Feb. 19, 2021); Doe v. Penzato, No. CV10-5154 MEJ, 2011 WL 1833007, at *3–4 (N.D. Cal. May 13, 2011); Doe v. Mast, 745 F. Supp. 3d 399, 413 (W.D. Va. 2024), *appeal pending*.

22. N.C. *ex rel* J.C. v. Bd. of Educ. of Baltimore Cnty., No. 1:24-CV-00367-JRR, 2024 WL 1856293, at *3 (D. Md. Apr. 29, 2024). Of course, requiring defendants to build a defense without "know[ing] who the Plaintiffs are," *id*., would generally be highly unfair, and is almost never allowed. *See* Volokh, *supra* note 3, at 1362 n.225.

23. *E.g*., Doe v. Doe, 85 F.4th 206, 211 (4th Cir. 2023); *In re* Sealed Case, 931 F.3d 92, 97 (D.C. Cir. 2019); *see, e.g*., Doe v. Cabell Huntington Hosp., Inc., No. CV 3:23-0437, 2023 WL 8529079, at *3 (S.D.W. Va. Dec. 8, 2023) ("Defendant, on the other hand, argues that it is inherently unfair for Plaintiff to be permitted to proceed pseudonymously while it has been publicly named. That unfairness surely exists in almost every case where a plaintiff seeks anonymity. The Court has not, however, been apprised of specific circumstances that would make allowing this plaintiff to proceed anonymously particularly unfair to Defendant.").

or risk of prejudice"[24] in such situations, they reason, even when defendants know who the plaintiffs are. Those courts thus implicitly call on plaintiffs to keep defendants' identities confidential if they want the same in return.

A. Unfairness

Many courts express their concern about unfairness in general terms that would apply to most pseudonymity requests (except perhaps those in lawsuits against the government[25]); many such cases are cited in Appendix B. This analysis dates back to a 1979 Fifth Circuit decision, *Southern Methodist University Ass'n v. Wynne & Jaffe*, which refused to allow employment discrimination plaintiffs to proceed pseudonymously, reasoning that:

> [T]he 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. Defendant law firms stand publicly accused of serious violations of federal law. Basic fairness dictates that those among the defendants' accusers who wish to participate in this suit as individual party plaintiffs must do so under their real names.[26]

A 1982 Tenth Circuit case and a 1992 Eleventh Circuit case quoted this passage favorably, as did a 2019 D.C. Circuit separate opinion by Judge Stephen Williams.[27] Likewise, here is the view of a recent District Court case:

> Plaintiff's litigation posture and framing of her complaint establish that Plaintiff has sought to avail herself of the protections of anonymity (without prior Court order), all the while single-handedly precluding the Named Defendant from the ability to avail himself of similar protections. She named him as a Defendant in the caption of the case; identified the Named Defendant nearly 60 times in the complaint; and called the Named Defendant a "rapist" right in the introduction of the complaint. Equity does not support parties' strategic use of litigant anonymity as both sword and shield.[28]

B. Concern About False or Overstated Claims

More concretely, it may be easier for an anonymous plaintiff to make false claims—or at least claims that involve some degree of spin (*e.g.*, related to the magnitude of the plaintiff's supposed emotional distress) or incomplete presentation of

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24. Doe v. Doe, 649 F. Supp. 3d 136, 141 (E.D.N.C. 2023), *aff'd*, 85 F.4th 206, 218 (4th Cir. 2023).

25. *See infra* Part III.A.

26. S. Methodist Univ. Ass'n v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979).

27. *See* Coe v. U.S. Dist. Ct. for Dist. of Colo., 676 F.2d 411, 416–17 (10th Cir. 1982); Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992); *In re* U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig., 928 F.3d 42, 82 (D.C. Cir. 2019) (Williams, J., concurring in part and dissenting in part) (the majority did not discuss the issue).

28. Doe v. Liberty Univ., Inc., No. 6:21-CV-00059, 2022 WL 4781727, at *4–5 (W.D. Va. Sept. 30, 2022) (citation omitted).

the facts. Consider, for instance, one judge's analysis in a 2021 sexual assault lawsuit against the noted actor Kevin Spacey:

> [F]undamental fairness suggests that defendants are prejudiced when required to defend themselves publicly before a jury while plaintiffs make accusations 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.[29]

"[H]as put his credibility in issue" points to this concern about possible false, spun, or misleadingly incomplete claims by a shadowy, unnamed accuser. The judges in some of the recent sexual assault cases against rapper Sean "Diddy" Combs took a similar view.[30]

Likewise, some courts have expressly noted that a named witness, including a party witness, "may feel more inhibited than a pseudonymous witness from fabricating or embellishing an account."[31]

> 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.)[32]

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29. Rapp v. Fowler, 537 F. Supp. 3d 521, 531–32 (S.D.N.Y. 2021) (cleaned up). *But see* Doe v. Tsai, No. 08-cv-1198, 2008 WL 11462908, at *3 (D. Minn. July 23, 2008) (expressly rejecting this argument, in case involving parents suing over allegedly false claims of abuse of their children); Doe v. Word of Life Fellowship, Inc., No. 11-cv-40077, 2011 WL 2968912, at *2 (D. Mass. July 18, 2011) (expressly rejecting this argument in case against alleged child molester); Doe v. Diocese Corp., 43 Conn. Supp. 152, 167–68 (Conn. Super. Ct. 1994) (likewise).

30. *See* Doe v. Combs, No. 23-cv-10628, 2024 WL 863705, at *4 (S.D.N.Y. Feb. 29, 2024); Doe v. Combs, No. 24-cv-8054 (MKV), 2024 WL 4635309, at *3 (S.D.N.Y. Oct. 30, 2024); Doe v. Alexander, No. 25-CV-01631 (JAV), 2025 WL 784913, at *4 (S.D.N.Y. Mar. 12, 2025); *see also* Doe v. Alexander, No. 25-CV-2107 (LJL), 2025 WL 1126617, at *4 (S.D.N.Y. Apr. 16, 2025). The various *Doe v. Combs* cases are different cases from different judges, as are the various *Doe v. Alexander* cases.

31. Doe v. Delta Airlines Inc., 310 F.R.D. 222, 225 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016); Roe v. Does 1–11, No. 20-CV-3788, 2020 WL 6152174, at *3 (E.D.N.Y. Oct. 14, 2020); Lawson v. Rubin, No. 17-cv-6404, 2019 WL 5291205, at *3 (E.D.N.Y. Oct. 18, 2019); Doe v. Zinsou, No. 19 Civ. 7025, 2019 WL 3564582, at *7 (S.D.N.Y. Aug. 6, 2019); *see also* San Bernardino Cnty. Dep't of Pub. Soc. Servs. v. Super. Ct., 232 Cal. App. 3d 188, 190 (1991); Doe v. McLellan, No. CV 20-5997, 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020) ("[D]efendants would not be able to fully and adequately cross-examine the plaintiff [because of plaintiff's anonymity.]"); Doe v. Gooding, No. 20-cv-06569, 2022 WL 1104750, at *7 (S.D.N.Y. Apr. 13, 2022) ("[A]t trial, [a plaintiff's] anonymity could affect witness confrontation, evidence presentation, and jury perception.") (citing *Delta Airlines Inc.*, 310 F.R.D. at 225). *But see* Doe v. Smith, 105 F. Supp. 2d 40, 45 n.8 (E.D.N.Y. 1999) ("While the court's order authorizes the plaintiff to proceed under a pseudonym, it does not prevent the defendant from cross-examining the plaintiff regarding her professional activities either in a deposition or at trial.").

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

"'Public access creates a critical audience and hence encourages truthful exposition of facts, an essential function of a trial.'"[33] Similarly, in a case where the plaintiff accused the defendant of distributing revenge porn of the plaintiff, the Seventh Circuit held:

> [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.[34]

C. Drawing in Witnesses

When the Court recognized a public right of access to criminal trials, in *Richmond Newspapers, Inc. v. Virginia*, Justice Brennan's concurrence noted the possibility that such publicity can cause otherwise unknown witnesses to come forward.[35] Likewise, in a civil case, "[i]t 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.'"[36] And, if only one

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33. Doe v. Byrd, No. 1:18-cv-00084, 2018 WL 11691505, at *6 n.7 (M.D. Tenn. Dec. 17, 2019) (quoting Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165, 1177 (6th Cir. 1983) (a case involving sealing rather than pseudonymity)).

34. Doe v. Smith, 429 F.3d 706, 710 (7th Cir. 2005); *see also* United States v. Microsoft Corp., 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."); Doe v. JBF RAK LLC, No. 2:14-cv-00979-RFB-GWF, 2014 WL 5286512, at *8–9 (D. Nev. Oct. 15, 2014) (denying pseudonymity in part because the particular "allegations and claims" in the case "call Plaintiff's credibility into question in a manner not generally found in other cases involving sexual assault or abuse"). Jayne Ressler notes that publicly available court decisions denying plaintiffs pseudonymity might themselves injure the defendants' reputations, because they will name the defendants and describe the allegations against them. Jayne S. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff in the Information Age*, 53 U. KAN. L. REV. 195, 247–48. 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.

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

36. Doe v. Delta Airlines, Inc., 310 F.R.D. 222, 225 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016); Roe v. Does 1–11, No. 20-CV-3788-MKB-SJB, 2020 WL 6152174, at *3 (E.D.N.Y. Oct. 14, 2020); *see also* Doe v. Univ. of Vermont, No. 2:22-cv-144, 2022 WL 17811359, at *3 (D. Vt. Dec. 19, 2022); Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *5 (M.D. Tenn. June 28, 2021); Rapp v. Fowler, 537 F. Supp. 3d 521, 531 (S.D.N.Y. May 3, 2021); Doe v. Leonelli, No. 22-cv-3732 (CM), 2022 WL 2003635, at *5 (S.D.N.Y. June 6, 2022); Doe v. Combs, No. 24-CV-8054 (MKV), 2024 WL 4635309, at *5 (S.D.N.Y. Oct. 30, 2024), *reconsideration denied*, 2024 WL 4753565 (S.D.N.Y. Nov. 12, 2024); Doe v. Combs, No. 24-CV-08810 (LAK), 2025 WL 268515, at *4 (S.D.N.Y. Jan. 22, 2025); Doe v. Combs, No. 24-CV-7974 (JMF), 2025 WL 1132305, at *1 (S.D.N.Y. Apr. 8, 2025), *appeal pending*; Doe v. Cook, No. 23-CV-10362 (LJL), 2025 WL 1158932, at *3 (S.D.N.Y. Apr. 21, 2025); Roe

side is pseudonymous, "information about only [the other] side may thus come to light."[37]

To be sure, such claims are by their nature hypothetical, and some judges view them as too speculative.[38] But other judges take them seriously, and I suspect there is something to them. The decisions in some of the *Doe v. Combs* cases illustrate them well:

> In this case, the most significant form of prejudice to Defendants in the Court's view is the discovery disadvantage that Plaintiff's anonymity would present. A plaintiff who levies serious allegations "puts [her] credibility in issue." In such a situation, when one party is anonymous while others are not, there is an "asymmetry in fact-gathering." This asymmetry is more profound in cases involving substantial publicity, because "information about only one side may come to light as a result."
>
> Plaintiff's own complaint demonstrates how this imbalance could play out. Doe references previously-filed public lawsuits against Combs and Pierre, including one against Combs by Cassie. In describing Cassie's suit, the Complaint asserts that almost immediately after her allegations became public, witnesses with relevant knowledge about Combs came forward to corroborate her claims. Permitting Plaintiff to remain anonymous undermines Defendants' ability to discover relevant information about Plaintiff.[39]

Courts also sometimes express a concern about pseudonymity hampering discovery generally, for instance, by making it harder to gather information, even

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v. City of New York, No. 1:24-CV-7093 (MKV), 2024 WL 4404186, at *5 (S.D.N.Y. Oct. 4, 2024); Doe v. Del Rio, 241 F.R.D. 154, 159 (S.D.N.Y. 2006); San Bernardino Cnty. Dep't of Pub. Soc. Servs. v. Super. Ct., 232 Cal. App. 3d 188, 202 (1991); Joan Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants Be Permitted to Keep Their Identities Confidential?*, 37 HASTINGS L.J. 1, 19 (1985); Doe v. MacFarland, 117 N.Y.S.3d 476, 495 n.18 (Sup. Ct. 2019) (noting that pseudonymity could harm even the pseudonymous party this way, though allowing pseudonymity nonetheless).

37. *Del Rio*, 241 F.R.D. at 159; *Rapp*, 537 F. Supp. 3d at 531; Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *5 (M.D. Tenn. June 28, 2021); *Combs*, 2024 WL 4635309, at *5; *Combs*, 2025 WL 268515, at *4; *Combs*, 2025 WL 1132305, at *1; *see also* Doe v. United States Dep't of Just. Drug Enf't Admin., No. 1:23-cv-09407-MKV, 2023 WL 7165523, at *3 (S.D.N.Y. Oct. 31, 2023); Doe v. Skyline Automobiles Inc., 375 F. Supp. 3d 401, 407 (S.D.N.Y. 2019).

38. *See* Doe v. Purdue Univ., No. 4:18-CV-00072-JVB-JEM, 2019 WL 1960261, at *4 (N.D. Ind. Apr. 30, 2019); Doe v. Roman Cath. Diocese of Greensburg, No. 20-1750 (EGS), 2021 WL 12137383, at *9 (D.D.C. Feb. 12, 2021); Doe #1 v. Syracuse Univ., No. 5:18-CV-0496(FJS/DEP), 2018 WL 7079489, at *8 (N.D.N.Y. Sept. 10, 2018), *report and recommendation adopted*, 2020 WL 2028285 (N.D.N.Y. Apr. 28, 2020); Doe v. Cabrera, 307 F.R.D. 1, 8–9 (D.D.C. 2014); *see also* Ressler, *supra* note 34, at 223 ("At least in civil litigation, the notion [that open trials help bring out witnesses] seems rather archaic, even quaint, in this era of wide-ranging discovery. . . . With the net cast so wide [by disclosure obligations and discovery] from the very start of the litigation, it seems unlikely that any potential witness would have escaped it, only to appear voluntarily and spontaneously upon reading press accounts of the case."). *Doe v. Fedex Ground Package Sys., Inc.*, No. 3:21-cv-00395, 2021 WL 5041286, at *6 (M.D. Tenn. Oct. 29, 2021), suggests that the question may turn on whether "the defendants were public figures," so that "the possibility of unknown witnesses coming forward was not insignificant."

39. Doe v. Combs, No. 23-CV-10628 (JGLC), 2024 WL 863705, at *4 (S.D.N.Y. Feb. 29, 2024); Doe v. Combs, No. 24-CV-7777 (LJL), 2025 WL 722790, at *3 (S.D.N.Y. Mar. 6, 2025).

from known witnesses.[40] But that would be an argument against pseudonymity in general,[41] and not just an argument against one-sided pseudonymity.

D. Public Self-Defense

When plaintiffs' complaints publicly identify defendants, this may draw attention from the media, from the defendants' business partners, and others.[42] Defendants might find their reputations sharply undermined by the allegations alone, long before the allegations are ultimately adjudicated. Normally, defendants could respond by arguing that plaintiffs' claims are unreliable. But if the plaintiff is pseudonymous, such public self-defense may become much harder:

> The defendants . . . have a powerful interest in being able to respond publicly to defend their reputations [against plaintiffs' 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.[43]

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40. *See, e.g.*, Doe v. City Univ. of New York, No. 21 Civ. 9544 (NRB), 2021 WL 5644642, at *5 (S.D.N.Y. Dec. 1, 2021); Doe v. Freydin, No. 21 Civ. 8371 (NRB), 2021 WL 4991731, at *3 (S.D.N.Y. Oct. 27, 2021).

41. *See* Volokh, *supra* note 3, at 1385–86.

42. Note that this arises even when plaintiffs don't go out of their way to publicize the defendant's alleged misconduct: The very filing of the case, in a way that names the defendant, will make the allegations public.

I thus disagree with *A.D. v. Cavalier Mergersub LP*, No. 2:22-cv-095-JES-NPM, 2022 WL 4354842, at *4 (M.D. Fla. Sept. 20, 2022), which reasoned that, though "Defendants also argue that it would be unfair for Plaintiff to hide behind a cloak of anonymity while publicly disclosing her identity and facts about this case to the media or any other public forums," "[t]here is no evidence of such conduct at this point," because "[p]laintiff avers that she 'has not and does not intend to make this lawsuit public through the use of media, social media[] or any other public forum in connection with her true identity.'" The filing of the case itself associated the defendant with the allegations, as did the various pretrial decisions in the case; searching for "Cavalier Mergersub" online yields many documents from the case.

Perhaps, in this particular case, one-sided pseudonymity might not be as much of a problem, because the plaintiff sued allegedly careless or indirectly complicit hotel corporations rather than individuals, and the reputational damage to such a business defendant would be less than to, say, an individual accused of rape. *See infra* Part VI.A. My point here is simply that a lawsuit against an individual defendant can be devastatingly stigmatizing to the defendant even when the plaintiff makes the allegations public simply by filing them in court with the defendant's name attached.

43. Doe v. Ind. Black Expo., Inc., 923 F. Supp. 137, 142 (S.D. Ind. 1996) (paragraph break added); *see also* Doe v. Butler Univ., No. 1:16-CV-1266-TWP-DML, 2018 WL 11691505, at *3 (S.D. Ind. Jan. 8, 2018). Courts sometimes try to minimize this unfairness by allowing plaintiffs to be pseudonymous but threatening to revoke that permission if, for instance, plaintiff "attempts to gain an advantage through the use of the media, including social media," by "further unnecessary dissemination of public

Or, as another court put it, "[i]f Plaintiffs proceed anonymously, it is more difficult for Defendants to mitigate against the reputational damage associated with the lawsuit."[44] On the other hand, courts are not always persuaded by this argument; the Ninth Circuit, for instance, concluded in one case that defendants "argued that they face tremendous adverse publicity as a result of this lawsuit" but didn't explain how being able to publicly identify the plaintiffs would "enable them to counter that adverse publicity."[45]

Sometimes pseudonymity orders are backed by gag orders that expressly forbid defendants from naming their accusers, and thus forbid defendants from effectively defending themselves against the accusations.[46] But even where there is no gag order, few defendants would likely feel safe publicly identifying plaintiffs in whose favor the judge had issued a pseudonymity order.[47]

E. 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:

> 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.[48]

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comment about this case." Doe 1 v. George Wash. Univ., 369 F. Supp. 3d. 49, 68 n.9 (D.D.C. 2019). But even if the plaintiff doesn't talk to the public directly, the filing of the complaint is itself a public act that may draw public attention to the accusations against defendant.

44. Doe v. Leonelli, No. 22-cv-3732 (CM), 2022 WL 2003635, at *5 (S.D.N.Y. June 6, 2022); Doe v. Combs, No. 24-CV-8054 (MKV), 2024 WL 4635309, at *5 (S.D.N.Y. Oct. 30, 2024), *reconsideration denied*, 2024 WL 4753565 (S.D.N.Y. Nov. 12, 2024); Doe v. Combs, No. 24-CV-08810 (LAK), 2025 WL 268515, at *4 (S.D.N.Y. Jan. 22, 2025); Doe v. Alexander, No. 25-CV-2107 (LJL), 2025 WL 1126617, at *4 (S.D.N.Y. Apr. 16, 2025).

45. Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1072 (9th Cir. 2000); *see also* Doe v. Mayo Clinic, No. CV-24-01509-PHX-DGC, 2024 WL 4769771, at *2 (D. Ariz. Nov. 13, 2024).

46. *See* Volokh, *supra* note 3, at 1375–76 (discussing such gag orders); Doe v. Mast, 745 F. Supp. 3d 399, 407–08 (W.D. Va. 2024) (endorsing such orders), *appeal pending*.

47. *Cf.* Vargas v. La Bella, 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").

48. Doe v. Fedcap Rehab. Servs., Inc., No. 17-CV-8220 (JPO), 2018 WL 2021588, at *3 (S.D.N.Y. Apr. 27, 2018); *see also* Doe v. Zinsou, No. 19 Civ. 7025 (ER), 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); Dylan v. Doe, No. 22BBCV01327, 2024 WL 3886812 (Cal. Super. Ct. L.A. Cnty. Aug. 2, 2024).

> Allowing Plaintiff to proceed pseudonymously could disadvantage Defendants at all stages of litigation, including settlement, discovery, and trial, because Plaintiff's anonymity would . . . result in Defendants having less leverage in settlement negotiations.[49]

> [P]laintiffs' pseudonymity . . . may create an imbalance in settlement negotiation positions as a named defendant would be more eager to settle than a pseudonymous plaintiff.[50]

And this is a serious concern. Parties settle in part because of the costs of proceeding. When the subject matter of the lawsuit is personally or professionally embarrassing to both parties, that is itself part of the cost of proceeding for both parties. Allowing the plaintiff to proceed pseudonymously but having the defendant be named would reduce the plaintiff's costs but not the defendant's.

Consider a concrete scenario. Say Alan wants to sue Bob, claiming that Bob had raped him. The publicity stemming from the lawsuit may be harmful to Alan, because it identifies him as a rape victim. But it may also be harmful to Bob, because it identifies him as an alleged rapist.

Because of this, if Alan approaches Bob before the lawsuit is filed, and threatens to file a lawsuit styled *Alan v. Bob*, that case might settle for (say) $1 million. But if Alan can sue pseudonymously, as *Doe v. Bob*, Alan might hold out for (say) $2 million, because Alan no longer needs to worry about the harm to his privacy, but Bob still needs to worry about the harm to his reputation. Allowing both parties to be pseudonymous, so that the case is *Doe v. Roe*, may bring the settlement value of the case closer to the original $1 million.

In some cases—generally ones where one side has much more to lose than the other, by way of privacy or reputation—one can say that the non-pseudonymity default itself causes improper settlement leverage, which pseudonymity might solve.[51] Say, for instance, that Pamela is threatening to sue an insurance company for failing to pay on claims arising from a sexual assault against her. She might be highly reluctant to sue in her own name, because the lawsuit would reveal the highly private information about the sexual assault. If the insurance company recognizes this, then it might offer a low settlement, thinking that Pamela would accept it to avoid the publicity of a lawsuit. Letting her proceed pseudonymously may well allow her to settle for an amount that better reflects the legal merits of the case.

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49. Doe v. United States Dep't of Just. Drug Enf't Admin., No. 1:23-cv-09407-MKV, 2023 WL 7165523, at *3 (S.D.N.Y. Oct. 31, 2023) (cleaned up) (quoting Doe v. Skyline Autos. Inc., 375 F. Supp. 3d 401, 407 (S.D.N.Y. 2019)); Doe v. McLellan, No. CV 20-5997 (GRB) (AYS), 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020); *see also* Ramsbottom v. Ashton, No. 3:21-CV-00272, 2021 WL 2651188 (M.D. Tenn. June 28, 2021); Poe v. Lowe, 756 F. Supp. 3d 537, 548 (M.D. Tenn. 2024).

50. Dylan v. Doe, No. 22BBCV01327, 2024 WL 3886812, at *8–9 (Cal. Super. Ct. L.A. Cnty. Aug. 2, 2024) (citing Volokh, *supra* note 3, at 1380–82).

51. *See, e.g.*, Donald P. Balla, *John Doe Is Alive and Well: Designing Pseudonym Use in American Courts*, 63 ARK. L. REV. 691, 696 (2010).

Likewise, say that Pete is threatening to sue his former lawyer Don, alleging that Don defrauded him. Don might be worried that the lawsuit would badly damage his reputation, even if he is later vindicated. If Pete knows this, he might offer a high settlement, thinking that Don would be quite reluctant to allow the case to go to court. Letting Don proceed pseudonymously may well allow him to settle for an amount that better reflects the legal merits of that case.

But where both sides face a good deal of harm from publicity—perhaps loss of privacy for a sexual assault plaintiff, and career-killing reputational harm for a sexual assault defendant—then one-sided pseudonymity is likely to distort settlement values, rather than restore them to a level that reflects the strength of the case.

F. Jury Prejudice in Favor of Pseudonymous Party

Letting a party testify pseudonymously might also prejudice the jury, by "risk[ing] . . . giving [the party's] claim greater stature or dignity,"[52] 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]."[53] "Defendant might well be prejudiced in defending against a complaint by being perceived as a wrongdoer by the very fact of anonymity alone."[54] "Were Doe permitted to proceed on a no-name basis, one or more jurors might conclude that she, for unknown reasons, merited extra-solicitous treatment. This might skew the jury's assessment of Doe's credibility and her claims."[55]

Query whether these risks could be minimized through suitable jury instructions,[56] or through allowing pseudonymity before trial but not at trial.[57] Indeed, many courts are particularly reluctant to allow pseudonymity to extend to trial, but are willing to allow it until then:

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52. Lawson v. Rubin, No. 17-cv-6404 (BMC) (SMG), 2019 WL 5291205, at *3 (E.D.N.Y. Oct. 18, 2019); *see also* James v. Jacobson, 6 F.3d 233, 240–41 (4th Cir. 1993) (describing the lower court's "concern that the jury's very knowledge that pseudonyms were being used would tend to validate the claim of intangible harms from the wrongdoing alleged"); Doe v. Ayers, 789 F.3d 944, 946 (9th Cir. 2015) (likewise describing the "risk that," in some cases, "the . . . use of pseudonyms might prejudice the jury" in the anonymous party's favor); Doe v. Gooding, No. 20-cv-06569 (PAC), 2023 WL 3775292, at *2 (S.D.N.Y. June 2, 2023); Doe v. Trs. of Ind. Univ., 577 F. Supp. 3d 896, 907 (S.D. Ind. 2022); Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 68 n.8 (D.D.C. 2019); Doe v. Rose, No. CV-15-07503-MWF-JCx, 2016 WL 9150620, at *3 (C.D. Cal. Sept. 22, 2016); Doe v. Cabrera, 307 F.R.D. 1, 10 (D.D.C. 2014); EEOC v. Spoa, LLC, No. CCB-13-1615, 2013 WL 5634337, at *3 (D. Md. Oct. 15, 2013); Doe v. N. Carolina Cent. Univ., No. 1:98CV01095, 1999 WL 1939248, at *4 (M.D.N.C. Apr. 15, 1999).

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

54. *A.B.C.*, 282 N.J. Super. at 504.

55. Doe v. Delta Airlines, Inc., 310 F.R.D. 222, 225 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016).

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

57. *See* Doe v. MIT, 46 F.4th 61, 74 (1st Cir. 2022) ("[E]ven if the case does go to trial and John is compelled to self-identify then, that fact alone does not explain why he should not remain anonymous at earlier stages of the litigation.").

> 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.[58]

Thus, for instance, in a recent sexual assault lawsuit against actor Cuba Gooding, Jr., the court allowed the plaintiff to proceed pseudonymously in the initial stages of the case, but then denied continuing pseudonymity when the time came for trial.[59]

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."[60] To be sure, such pseudonymity is not as valuable to the party as permanent pseudonymity—but it can still be quite valuable, given that nearly all cases are terminated before trial.[61]

IV. JUDICIAL EMBRACE OF TWO-SIDED PSEUDONYMITY

For these reasons, some courts have indeed endorsed two-sided pseudonymity: "[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

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58. Doe v. Elson S Floyd Coll. of Med. at Wash. State Univ., No. 2:20-cv-00145-SMJ, 2021 WL 4197366, at *3 (E.D. Wash. Mar. 24, 2021) (paragraph break omitted); *see also, e.g.*, Doe v. MacFarland, 117 N.Y.S.3d 476, 498 (Sup. Ct. 2019); Doe v. Rose, No. 15-cv-07503-MWF-JCx, 2016 WL 9150620, at *2 (C.D. Cal. Sept. 22, 2016); Doe 1 v. Ogden City Sch. Dist., 1:20-cv-00048-HCN-DAO, 2021 WL 4923728, at *3 n.2 (D. Utah Oct. 21, 2021); S.Y. v. Uomini & Kudai, LLC, No. 2:20-cv-602-JES-MRM, 2021 WL 3054871, at *6 (M.D. Fla. June 11, 2021); Al Otro Lado, Inc. v. Nielsen, No. 17-cv-02366-BAS-KSC, 2017 WL 6541446, at *8 (S.D. Cal. Dec. 20, 2017); Doe v. Regis Univ., No. 1:21-cv-00580-DDD-NYW, 2021 WL 5329934, at *3 (D. Colo. Nov. 16, 2021); Doe v. Gooding, No. 20-cv-06569 (PAC), 2022 WL 1104750, at *7 (S.D.N.Y. Apr. 13, 2022); Doe v. Hobart & William Smith Colls., No. 6:20-CV-06338 EAW, 2021 WL 1062707, at *4 (W.D.N.Y. Mar. 19, 2021); Lawson v. Rubin, No. 17-cv-6404 (BMC) (SMG), 2019 WL 5291205, at *2 (E.D.N.Y. Oct. 18, 2019); Doe v. Rollins Coll., No. 6:16-cv-2232-Orl-37KRS, 2017 WL 11610361, at *2 (M.D. Fla. Mar. 22, 2017). *But see* Doe v. Neverson, 820 F. App'x 984, 987–88 (11th Cir. 2020) (suggesting that pseudonymity could be allowed at trial as well). For more cases discussing how the pseudonymous analysis might change as the case progresses, see Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1069 (9th Cir. 2000); Minute Entry Granting Plaintiff's Motion to Proceed Anonymously, Doe v. Loyola Univ. Chi., No. 1:20-cv-07293 (N.D. Ill. Dec. 30, 2020); Doe v. Haynes, No. 4:18CV1930 HEA, 2019 WL 2450813, at *4 (E.D. Mo. June 12, 2019); Moe v. Grinnell Coll., No. 4:20-cv-00058-RGE-SBJ, 2020 WL 12617299, at *2 (S.D. Iowa Apr. 24, 2020); Does 1-2 v. Hochul, No. 21-CV-5067 (AMD) (TAM), 2022 WL 836990, at *9 (E.D.N.Y. Mar. 18, 2022) ("[S]hould this action continue beyond the motion to dismiss phase . . . it may be necessary to revisit whether Plaintiffs' anonymity is obfuscating discovery, causing reputational damage to Defendants, or undermining the fundamental fairness of the proceedings."); *see also* Steinman, *supra* note 36, at 36.

59. *See* Doe v. Gooding, No. 20-cv-06569 (PAC), 2023 WL 3775292, at *1–2 (S.D.N.Y. June 2, 2023).

60. SEB Inv. Mgmt. AB v. Symantec Corp., No. C 1802902 WHA, 2021 WL 3487124, at *2 (N.D. Cal. Aug. 9, 2021).

61. *See* Volokh, *supra* note 3, at 1391 n.179.

on equal footing as they litigate their respective claims and defenses."[62] "If we are to have a policy of protecting the names of individual litigants from public disclosure, there is a very substantial interest in doing so on a basis of equality."[63]

V. BROADER REASONS FOR PSEUDONYMITY APPLYING TO BOTH SIDES

Those then are the arguments why one-sided pseudonymity is unfair. But beyond this, three of the key arguments in favor of plaintiff-side pseudonymity in some cases also tend to apply equally to defendants in many such cases.

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62. Doe v. Doe, No. 20-CV-5329, 2020 WL 6900002, at *4 (E.D.N.Y. Nov. 24, 2020); *see also* Roe v. Doe, No. 18666 (CKK), 2019 WL 1778053, at *3 (D.D.C. Apr. 23, 2019); Doe v. Smith, No. 1:19-CV-1121 (GLS/DJS), 2019 WL 6337305, at *2–3, *3 n.1 (N.D.N.Y. Nov. 27, 2019); Doe v. Trs. of Boston Coll., No. 23-cv-12737-ADB, 2024 WL 816507, at *3 (D. Mass. Feb. 27, 2024) ("Given the agreement of the parties, the circumstances of this case and the unfairness of allowing Doe to proceed anonymously, but not the third parties, the cross-motion for nonparty BC employees to proceed by pseudonym is GRANTED."); Doe v. Liberty Univ., Inc., No. 6:21-cv-00059, 2022 WL 4781727, at *5 (W.D. Va. Sept. 30, 2022) ("Had Plaintiff filed a complaint in which she identified herself as Jane Doe and Named Defendant as 'John Doe'—*i.e.*, providing anonymity both for herself and the accused—the Court would have granted the request for relief with little hesitation."); Doe v. Roe, No. 1:25-cv-02978, 2025 WL 2651241, slip op. at 3 (D.D.C. Sept. 16, 2025) ("Roe [being] a private individual" "weighs against allowing the plaintiff to use a pseudonym in a claim against a private litigant who will undoubtedly have concerns about his reputation. Plaintiff has, however, attempted to mitigate this issue and avoid any risk of unfairness by moving to allow Roe to also proceed under a pseudonym. To be sure, Plaintiffs' motion on behalf of Roe is a novel approach and, if he so chooses, Roe may subsequently move to remove his pseudonym. At this stage, permitting Defendant Roe to proceed pseudonymously removes the risk to his reputation." (cleaned up)).

63. 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-00917 (RDA/TCB), 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'n. of Gov't Emps., No. 1:20-cv-01558, 2020 WL 14023400, at *3 n.2 (D.D.C. June 19, 2020); Doe v. Intel Corp., No. 24-CV-6117 (JPO), 2024 WL 4553985, at *5 (S.D.N.Y. Oct. 22, 2024) (endorsing the view that "[i]f we are to have a policy of protecting the names of individual litigants from public disclosure, there is a very substantial interest in doing so on a basis of equality," though that solution was impossible in that case, where plaintiff had already publicly identified defendants); Doe v. Anonymous #1, No. 520605/2020E (N.Y. Sup. Ct. Kings Cnty. Feb. 24, 2021); Affirmation in Support of Defendants' Motion to Dismiss the Complaint, *id.* (Dec. 21, 2020); Doe v. Moravian College, No. 5:20-cv-00377-JMG, 2021 WL 12318058, at *1 n.2 (E.D. Pa. Jan. 11, 2021); Doe v. Smith, 105 F. Supp. 2d 40, 43–44 (E.D.N.Y. 1999); Doe v. Immaculate Conception Church Corp., No. HHBCV095011968, 2009 WL 4845449, at *1 (Conn. Super. Ct. New Britain Dist. 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-WHP (S.D.N.Y. May 12, 2016) (allowing two-sided pseudonymity "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. Middlesex Dist. 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. Cnty. filed Dec. 3, 2019 (progressing with the individual defendant being pseudonymous, though without an explicit court decision allowing this); Adam A. Milani, *Doe v. Roe: An Argument for Defendant Anonymity When a Pseudonymous Plaintiff Alleges a Stigmatizing Intentional Tort*, 41 WAYNE L. REV. 1659, 1698–1706 (1995) (arguing for such mutual pseudonymity, at least "until judgment is entered" in cases against "defendants accused of stigmatizing intentional torts").

A. Avoiding Stigma

When a plaintiff is allowed to sue pseudonymously, it is often on the grounds that naming the plaintiff would cause social stigma, especially in sexual assault cases.[64] Regrettably, being identified as an alleged sexual assault victim does indeed stigmatize the plaintiff in some measure (though one hopes this is less true today than it was in past decades and centuries).

But being identified as an alleged sexual assault perpetrator stigmatizes the defendant at least as much, and likely more. Indeed, it may spell professional ruin for a defendant, even if the defendant is ultimately vindicated.[65] If the legal system is willing to sacrifice some degree of public access to prevent stigma to plaintiffs, that rationale would appear to apply equally to many of the defendants that those plaintiffs might be suing.[66]

To be sure, the mere concern that being identified will lead to reputational or professional harm is generally not seen as enough to justify pseudonymity[67]—or else likely most individual defendants, as well as many individual plaintiffs, would be entitled to pseudonymity. (Surely it's professionally harmful to be publicly accused of malpractice, fraud, or even of many kinds of breach of contract; likewise, it's professionally harmful for a plaintiff in an employment case to become known as a litigious employee.) My point here is simply that if a sexual assault plaintiff is entitled to proceed pseudonymously to avoid stigma, it is fair to offer the same consideration to the defendant in that very case.[68]

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64. *See* Volokh, *supra* note 3, at 1409, 1430–34.

65. The same rationale would go the other way as well: When plaintiffs sue alleging that they were falsely found guilty of sexual assault—as in the many Title IX lawsuits where such plaintiffs have sought pseudonymity, see *id.* at 1441–48—it would be unfair to allow them to avoid stigma by proceeding pseudonymously, but to have their initial accusers (who claimed they were sexually assaulted by the plaintiffs) be named. *See, e.g.*, Doe v. Virginia Polytechnic Inst. & State Univ., No. 7:21-CV-00306, 2022 WL 67324, at *4 (W.D. Va. Jan. 6, 2022) (rejecting pseudonymity):

> This case deals with a matter of a sensitive and highly personal nature because it involves allegations of sexual assault by one female student against another female student in a same-sex relationship. But it appears plaintiff in this case is not seeking to preserve her own privacy in any legitimate way. Instead, she seeks privacy while naming two non-parties . . . who assert that they are plaintiff's victims.

See also Ayala v. Butler Univ., No. 1:16-cv-1266-TWP-DKL, 2018 WL 11691505, at *3 (S.D. Ind. Jan. 8, 2018) (rejecting pseudonymity on similar grounds). Compare *Doe v. Ind. Univ.*, No. 1:19-cv-02204, 2019 WL 13510795, at *1 (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."

66. *Doe v. Doe*, 189 A.D.3d 406, 406 (N.Y. App. Div. 2020), summarily rejected a claim for defendant pseudonymity in such cases, relying chiefly on a New York statutory provision that required confidentiality for sex offense victims but didn't do the same as to accused offenders; it acknowledged the possibility of pseudonymity for other parties, but simply stated that "this exception is not properly applied here," *id.* at 407.

67. *See* Volokh, *supra* note 3, at 1415–23, 1457–60.

68. *Doe v. Diocese Corp.*, 43 Conn. Supp. 152 (1994), rejects this argument, reasoning that, "[i]n the instance where a plaintiff presents a credible case for anonymity based on neither economic harm nor on

Of course, when defendants are indeed sexual assault perpetrators, then they deserve to be stigmatized. But while the case is being litigated, they are generally merely accused. They are not presumed guilty; indeed, the burden of proof even in a civil case remains on the accuser. Some of the defendants may well be innocent.

And even if one might think that the typical defendant is indeed guilty, the civil justice system has to remain impartial. It can't just assume away defendants' privacy interests on the theory that they are likely guilty while their accusers are likely correct. In the words of one court,

> Plaintiff essentially argues . . . that [defendant] deserves to be sued anonymously because he allegedly raped and threatened a virtual stranger. However, in this posture, the allegations in Plaintiff's Complaint are merely allegations, and the Court, at this stage, must not . . . make any assumptions about whether her allegations are true or false.[69]

B. Avoiding Physical or Mental Harm

Sometimes plaintiffs argue that naming them might expose them to the risk of physical harm. Occasionally, such risks may be based on concretely identified concerns, such as past threats; in such situations, courts appear to be quite open to allowing pseudonymity.[70] But sometimes the claims of risk stem from speculative assertions that some people who dislike those in plaintiff's position might harm the plaintiff; such assertions may be equally present for defendants.[71]

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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." *Id.* at 163–64; *see also* Doe v. Purdue Univ., No. 4:18-cv-89, 2019 WL 1757899, at *6 (N.D. Ind. Apr. 18, 2019) (likewise). For the reasons given above, in this section and in Part II, the need to avoid unfairly unequal treatment of the parties *is* relevant to the merits of the plaintiff's claim for pseudonymity.

69. Doe v Combs, No. 24-CV-8054 (MKV), 2024 WL 4635309, at *5 (S.D.N.Y. Oct. 30, 2024), *reconsideration denied*, 2024 WL 4753565 (S.D.N.Y. Nov. 12, 2024); *see also* Doe v. Alexander, No. 25-CV-2107 (LJL), 2025 WL 1126617, at *4 (S.D.N.Y. Apr. 16, 2025) ("[Plaintiff] has made serious charges and has put her credibility in issue. Fairness requires that she be prepared to stand behind her charges publicly. Although Defendant is already in the public eye due to six pending sex trafficking charges, he is presumed innocent and has a right to fight Plaintiff's allegations. The plaintiff's anonymity may undermine the defendants' efforts to mitigate the alleged reputational damage stemming from these serious allegations." (cleaned up)).

70. *See* Volokh, *supra* note 3, at 1397–99; Doe v. Mast, 745 F. Supp. 3d 399, 409 (W.D. Va. 2024), *appeal pending*.

71. For instance, *Doe v. Garland*, No. 1:22-cv-00722, 2022 WL 22624640 (D.D.C. Mar. 10, 2022), rejected plaintiff's claim of pseudonymity that stemmed from plaintiff's having a high security clearance and thus possibly attracting "threats of violence or retaliation from subjects of investigation, or exploitation by foreign intelligence entities." *Id.* at *3. Part of the court's rationale was that plaintiff had named his former supervisors, but "offer[ed] no explanation why using defendants' full names does not create the same risks for violence, retaliation, or exploitation to OPM-OIG's investigations and operational team." *Id.*

Likewise, courts sometimes allow pseudonymity on the grounds that public exposure may expose plaintiff to mental harm, for instance if it would publicize some traumatic event (such as a sexual assault) in the plaintiff's life.[72] But defendants may equally worry that public exposure of serious allegations against them—such as allegations that the defendant had committed sexual assault—would be mentally traumatic as well. Many of us would be traumatized, at least to some extent, by allegations that expose us to public shame and the risk of immediate professional ruin (even if we hope to eventually be vindicated at trial).

At the very least, defendants should have the opportunity to equally raise mental harm concerns when the plaintiff is seeking pseudonymity on such grounds. Plaintiffs' filing complaints that name the defendants denies the defendants such an opportunity.

C. Avoiding Deterrence of Meritorious Claims and Defendants

Another reason sometimes given for pseudonymity is that requiring plaintiffs to be publicly identified can undermine the public policy that the civil causes of action are aimed to serve.[73] Plaintiffs faced with the prospect of this harm might choose not to litigate: People who were sexually assaulted, for instance, might be reluctant to continue with their lawsuits once pseudonymity is denied. Likewise for people who have been libeled, or who have been pretextually fired by their employers. They might decline to sue or might decline to continue with their lawsuits once pseudonymity is denied.

But lack of pseudonymity for defendants can likewise deter defendants from presenting meritorious defenses. Defendants—especially ones accused of an extremely serious offense such as sexual assault—might equally feel pressed to settle before complaints are filed that would publicly identify them as defendants, even if they have sound legal or factual defenses. Someone who is being accused of rape might be reluctant to defend himself in court, even if he is innocent, if he knows that the very filing of the lawsuit would publicly label him as an accused rapist.

VI. SITUATIONS WHERE ONE-SIDED PSEUDONYMITY RAISES FEWER PROBLEMS

A. Defendants That Face Little Risk of Privacy or Reputational Harm

To be sure, in many cases the stigma facing defendants is a good deal less than that facing plaintiffs. Consider a sexual assault victim suing a large employer for failing to properly protect her against a work-linked sexual assault. In that situation, the large employer will only be mildly stigmatized by the allegation—the employer itself, after all, is only accused of being careless, not of being a rapist.[74] But any individual codefendants who are actually accused of the assault (or any

72. *See* Volokh, *supra* note 3, at 1399–1400.
73. *See id.* at 1394–35.
74. *See, e.g.*, Doe v. Alger, 317 F.R.D. 37, 41 (W.D. Va. 2016).

nondefendants who are nonetheless accused by name in the complaint) will face stigma.

Or consider a mentally ill employee suing a large employer under the Americans with Disabilities Act for failing to provide suitable accommodations. The plaintiff may face considerable stigma by being named—whether or not a court concludes that the stigma suffices to justify pseudonymity[75]—but the institutional defendant likely will not.

B. Challenges to Government Action

Likewise, when a plaintiff is suing the government, without naming any supposedly highly culpable individual officials, such a lawsuit would "involve no injury to the Government's 'reputation.'"[76] In this respect, it would be different from lawsuits "against other private parties," which "may cause damage to their good names and reputation and may also result in economic harm."[77]

To be sure, there are often other reasons to deny pseudonymity to plaintiffs challenging government action.[78] But those reasons are separate from the fairness concerns raised by one-sided pseudonymity.

C. Situations Where Defendant Has Already Been Found Guilty

Of course, the unfairness described above is especially stark when the plaintiff and defendant are both merely presenting their claims, and either might be correct. When the defendant has been found guilty of the underlying sex offense—for instance, if a civil lawsuit follows a criminal conviction—the unfairness may be absent.[79] Likewise in the rare cases when the pseudonymity question arises only after the defendant has defaulted as to liability, as in *Doe v. Sidar*. Indeed, the *Sidar* majority opinion expressly (and, I think, correctly) reasoned:

> That Sidar has already been found liable for raping Doe and that further proceedings will be limited to determining the damages he must pay significantly

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75. *See* Volokh, *supra* note 3, at 1437–41 (noting the disagreement among courts on whether pseudonymity can be justified to conceal plaintiff's mental illness).

76. S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979). *See also* One Standard of Just., Inc. v. City of Bristol, No. 3:22-CV-00863 (SVN), 2022 WL 17688053, at *5 (D. Conn. Dec. 9, 2022); Roe v. Doe, No. 18-cv-666-CKK, 2019 WL 2058669, at *4 (D.D.C. May 7, 2019); Doe v. Skyline Automobiles Inc., 375 F. Supp. 3d 401, 406 (S.D.N.Y. 2019); Doe v. Drake Univ., No. 4:16-cv-00623-RGE-SBJ, 2017 WL 11404865, at *3 (S.D. Iowa June 13, 2017); Doe v. JBF RAK LLC, No. 2:14-cv-00979-RFB-GWF, 2014 WL 5286512, at *5 (D. Nev. Oct. 15, 2014); Rose v. Beaumont Indep. Sch. Dist., 240 F.R.D. 264, 266–67 (E.D. Tex. 2007); Doe v. Bd. of Trustees of Univ. of Ill., No. 2:20-cv-02265-CSB-EIL, at *4 (C.D. Ill. Nov. 9, 2020); S.D. v. Decker, No. 1:22-cv-03063-VSB-BCM, 2022 WL 1239589, at *3 (S.D.N.Y. Apr. 27, 2022); Freedom From Religion Found., Inc. v. Emanuel Cnty. Sch. Sys., 109 F. Supp. 3d 1353, 1361 (S.D. Ga. 2015).

77. *S. Methodist Univ.*, 599 F.2d. at 713.

78. *See* Volokh, *supra* note 3, at 1392 (citing cases so holding).

79. *See, e.g.*, Doe v. Tenzin Masselli, No. MMXCV145008325, 2014 WL 6462077, at *2 (Conn. Super. Ct. Oct. 15, 2014) (endorsing 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).

> reduces any "risk of unfairness to" Sidar resulting from Doe's continued anonymity.
>
> To see why, consider two sources of potential unfairness when a plaintiff seeks to proceed anonymously while making allegations against a known defendant. For one, there is a concern that anonymity may serve as a "shield behind which" false or "defamatory charges may be launched without shame or liability," thus creating the risk a blameless defendant will suffer embarrassment and reputational damage merely by being sued. There is also the one-sidedness of allowing a plaintiff to "have [their] cake and eat it too" by gaining the ability to stay anonymous if they lose—thus avoiding reputational harms from disclosing the underlying facts or bringing an unsuccessful lawsuit—while retaining the power to reveal their identity if they win.
>
> Those risks evaporate once liability has been established. At this point, Doe is not seeking to keep her identity secret because she fears she might lose this case. There is also no risk Sidar's reputation will be damaged by false accusations of wrongdoing.[80]

VII. THE PUBLIC ACCESS COST OF TWO-SIDED PSEUDONYMITY

Of course, while two-sided pseudonymity better protects parties' privacy and reputations, it undermines public access to court records even more than one-sided pseudonymity does. 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). Though you could still see the allegations, the parties' arguments, and the court's decisions, you would be unable to independently investigate the facts. And of course, if two-sided pseudonymity is accepted as the norm in 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.

Yet on balance, I think that this does not justify one-sided pseudonymity. One-sided pseudonymity would tend to lead to one-sided stories, where the reporter can quote the complaint (and the plaintiff's lawyer's elaboration on the assertions in the complaint), and can investigate the background of the named defendant, but cannot investigate the background of the pseudonymous plaintiff. The defendant can deny the allegations in the complaint, but (for reasons given in Part III.D) would likely be unable to pass along information that undermines the plaintiff's credibility, so long as that information would tend to identify the plaintiff. A concern about the public's right of access can, and usually does, require both parties to proceed in their own names.[81] But it shouldn't require the unfair preference for plaintiffs over defendants that one-sided pseudonymity would often involve.

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80. 93 F.4th 241, 248 (4th Cir. 2024).
81. *See supra* Part I.

VIII. PROCEDURE

Once a party's name is publicly disclosed, there's generally no getting the cat back in the bag[82] (or, if you prefer, the "toothpaste back in the tube"[83] or the genie back in the bottle[84]). Some courts categorically forbid retroactive attempts to seal documents or pseudonymize a party.[85] Others are open to retroactive pseudonymization[86]—but even if retroactive pseudonymization is legally authorized, it is unlikely to succeed in practice: Once a case is publicly filed, its docket sheets and many of its documents tend to get picked up by various publicly accessible and Google-searchable research services (such as Justia, Law360, and more). Certainly, if a reporter finds the case and writes about it, a named defendant's identity would become publicly known even if the court later tries to conceal the defendant's name.

Plaintiffs who seek to proceed pseudonymously should therefore file their cases with the defendants' names (or the names of third parties who are being accused of serious misconduct) pseudonymized as well. They should then move

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82. *See, e.g.*, Braxton v. Minnesota, No. 24-CV-2455 (JMB/LIB), 2024 WL 4756041, at *4 (D. Minn. Sept. 30, 2024), *report and recommendation adopted*, 2024 WL 4753636 (D. Minn. Nov. 12, 2024); GEICO Gen. Ins. Co. v. M.O., No. 21-2164-DDC-ADM, 2021 WL 4476783, at *10 (D. Kan. Sept. 30, 2021).

83. Doe v. Liberty Univ., Inc., No. 6:21-CV-00059, 2022 WL 4781727, at *6 (W.D. Va. Sept. 30, 2022).

84. Doe v. Washington Univ., 652 F. Supp. 3d 1043, 1047 (E.D. Mo. 2023); Ford v. Norton, No. 22-0355 (NLH) (EAP), 2023 WL 5164073, at *2 (D.N.J. Aug. 11, 2023).

85. Singh v. Amar, 2023 WL 3267851, at *1 (7th Cir. May 3, 2023) ("Retroactive anonymity is an oxymoron . . . ."); Kansky v. Coca-Cola Bottling Co., 492 F.3d 54, 56 n.1 (1st Cir. 2007) ("[A]t this late stage in the litigation, changing appellant's name on all court records is not feasible. It is simply too late to impose confidentiality on the materials involved in this case."); *cf.* Gambale v. Deutsche Bank AG, 377 F.3d 133, 144 & n.11 (2d Cir. 2004) (concluding—as to sealing more broadly, rather than just pseudonymity—that, once "the genie is out of the bottle" and "the cat is out of the bag," "the ball game is over," even when that stemmed from a court's own error); *see also, e.g.,* Doe v. Amar, 2023 WL 4564404, at *4 (C.D. Ill. July 17, 2023); Stankiewicz v. Universal Com. Corp., 2017 WL 3671040, at *1 (S.D.N.Y. Aug. 9, 2017); Doe v. F.B.I., 218 F.R.D. 256, 260 (D. Colo. 2003).

86. Doe v. Superior Ct., 3 Cal. App. 5th 915, 919–20 (2016); Doe v. Garland, No. 19-56522 (9th Cir. May 31, 2023) (ordering that "[t]he Clerk will replace appellants name with John Doe on the public docket," though without any publicly available analysis); Doe v. Preciado, No. 10-56218 (9th Cir. July 10, 2022) (likewise). *See also* Doe v. FriendFinder Networks, Inc., 738 F. Supp. 3d 829 (W.D. Tex. 2024) ("the retroactive pseudonymization of the record will minimize further harm and the continued likelihood that this case will be the subject of future academic blogs or appear in public media"), *aff'd in relevant part and rev'd as to other matters*, No. SA-19-CV-00727-XR (W.D. Tex. 2024); Doe No. 1 v. United States, 143 Fed. Cl. 238, 241 (2019) ("the Government's 'cat is out of the bag' argument fails because the fact that Plaintiffs have not been harassed or attacked yet does not imply that anonymizing their names now has no value"); Roe v. Doe, 2019 WL 1778053, at *4 (D.D.C. Apr. 23, 2019); Order, Doe v. Bryson, No. 1:12-cv-10240 (D. Mass. Sept. 10, 2021); Order, T.K. v. K.N., No. 1:23-cv-05441-ARR-LB, at 10 (E.D.N.Y. June 26, 2024).

for leave to proceed pseudonymously, as courts already say they must.[87] The courts would then decide whether to grant two-sided pseudonymity, grant only one-sided pseudonymity for cases where one-sided pseudonymity is proper—such as those discussed in Part VI—or deny pseudonymity altogether. (If the defendant does not want pseudonymity, then the court may consider that as well in allowing one-sided pseudonymity for the plaintiff; presumably such defendants should be able to waive their opportunity to be treated evenhandedly with the plaintiff.)

Of course, a plaintiff could still sue under a pseudonym but name the defendant. But in that situation, a judge considering the motion for leave to proceed pseudonymously could reject the motion on the grounds that one-sided pseudonymity is improper—even if the judge would have been inclined to grant the motion had two-sided pseudonymity been an available option.[88]

IX. NAMING THE CASES

More *Doe v. Doe* or *Doe v. Roe* cases means more confusion, since one important function of a case name is to distinguish precedents from each other. But similar confusion can arise from Doe cases against named institutional defendants, such as *Doe v. Trustees of Indiana University*. In a recent article,[89] I discuss some possible solutions for the problem, and ultimately recommend the EEOC's solution of choosing arbitrary first names and last initials for parties (e.g., *Ellen G. v. Peter B.*). But in any event, that problem is separate from the one-sided vs. two-sided pseudonymity question.

CONCLUSION

There are powerful reasons to allow certain plaintiffs to remain pseudonymous. But there are also powerful reasons to treat plaintiffs and defendants alike, especially when they face comparable levels of stigma from being identified as alleged wrongdoers. Judge Wilkinson was correct: One-sided pseudonymity should generally be avoided.

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87. *See, e.g.*, Citizens for a Strong Ohio v. Marsh, 123 F. App'x 630, 637 (6th Cir. 2005); W.N.J. v. Yocom, 257 F.3d 1171, 1172 (10th Cir. 2001).

88. *See, e.g.*, Doe v. Liberty Univ., Inc., No. 6:21-CV-00059, 2022 WL 4781727, at *5 (W.D. Va. Sept. 30, 2022) (refusing to allow plaintiff to proceed pseudonymously, but noting that, "[h]ad Plaintiff filed a complaint in which she identified herself as Jane Doe and Named Defendant as 'John Doe'—*i.e.*, providing anonymity both for herself and the accused—the Court would have granted the request for relief with little hesitation").

89. Eugene Volokh, *If Pseudonyms, Then What Kind?*, 107 JUDICATURE 77 (2023).

APPENDIX A: CASES SUGGESTING UNFAIRNESS TO DEFENDANT IS ABSENT WHENEVER DEFENDANT KNOWS PLAINTIFF'S IDENTITY

Second Circuit: Doe v. New York City Hous. Auth., No. 22-CV-4460 (LJL), 2022 WL 2072570, at *2 (S.D.N.Y. June 9, 2022); Doe v. Colgate Univ., No. 5:15-CV-1069-LEK-DEP, 2016 WL 1448829, at *3 (N.D.N.Y. Apr. 12, 2016).

Fourth Circuit: Doe v. Mast, 745 F. Supp. 3d 399, 413–14 (W.D. Va. 2024), *appeal pending*; Doe v. Chesapeake Med. Sols., LLC, No. CV SAG-19-2670, 2020 WL 13612472, at *2 (D. Md. Feb. 26, 2020); Doe v. 2 Unk[n]own Employee[s] of [the] EEOC, No. CV DKC 18-930, 2018 WL 3159068 (D. Md. June 28, 2018); EEOC v. Spoa, LLC, No. 13-1615, 2013 WL 5634337, at *3–4 (D. Md. Oct. 15, 2013); Doe v. Fowler, No. 317CV00730FDWDSC, 2018 WL 3428150, at *3 (W.D.N.C. July 16, 2018); Doe v. Williams, No. CV 1:23-5745-JDA-SVH, 2024 WL 1120175, at *2 (D.S.C. Mar. 14, 2024); Doe v. George Mason Univ., No. 1:19-CV-1249, 2020 WL 14000928 (E.D. Va. Apr. 23, 2020); Doe v. Burkman, No. 1:24-CV-00181, at *2 (E.D. Va. Sept. 4, 2024); Doe v. Virginia Polytechnic Inst. & State Univ., No. 7:19-CV-00249, 2020 WL 1287960, at *5 (W.D. Va. Mar. 18, 2020); Doe v. Virginia Polytechnic Inst. & State Univ., No. 7:18-CV-320, 2018 WL 5929645, at *4 (W.D. Va. Nov. 13, 2018); EEOC v. Wal-Mart Stores E., L.P., No. 5:23-CV-00623, 2024 WL 349760, at *2 (S.D. W. Va. Jan. 30, 2024); Doe v. Cabell Huntington Hosp., Inc., No. CV 3:23-0437, 2023 WL 8529079, at *3 (S.D. W. Va. Dec. 8, 2023); *cf.* Doe v. Virginia Polytechnic Inst., & State Univ., No. 7:21-CV-378, 2022 WL 972629, at *3 (W.D. Va. Mar. 30, 2022) (though noting that defendants' response to the motion for pseudonymity "described no unfairness that will result if [plaintiff] is allowed to proceed anonymously").

Fifth Circuit: Roe v. Patterson, No. 419CV00179ALMKPJ, 2019 WL 2407380, at *5 (E.D. Tex. June 3, 2019); Doe v. Univ. of Miss., No. 3:18-CV-138-DPJ-FKB, 2018 WL 1703013 (S.D. Miss. Apr. 6, 2018).

Sixth Circuit: Doe v. Lee, No. 3:22-CV-00569, 2023 WL 2587790, at *5 (M.D. Tenn. Mar. 21, 2023).

Seventh Circuit: Doe v. Butler Univ., No. 1:22-CV-01828-SEB-MG, 2022 WL 18540513, at *5 (S.D. Ind. Nov. 18, 2022).

Eighth Circuit: Doe v. Tsai, No. 08-cv-1198, 2008 WL 11462908, at *3 (D. Minn. July 23, 2008); Doe v. Sutton, No. 4:23-CV-01312-SEP, 2025 WL 871656, at *5 (E.D. Mo. Mar. 20, 2025).

Ninth Circuit: Doe v. Mayo Clinic, No. CV-24-01509-PHX-DGC, 2024 WL 4769771, at *2 (D. Ariz. Nov. 13, 2024); Doe v. City of Newport Beach, No. SACV150608JAKKES, 2015 WL 13917137, at *4 (C.D. Cal. Oct. 30, 2015).

Tenth Circuit: Williams v. New Mexico State Univ., No. 23-CV-1059 GBW/KRS, 2025 WL 894954, at *9 & n.14 (D.N.M. Mar. 24, 2025).

Eleventh Circuit: Doe v. Gutteridge Jeancharles, M.D., P.A., No. 6:24-CV-34-WWB-RMN, 2024 WL 701277, at *3 (M.D. Fla. Feb. 20, 2024), *appeal dismissed*, No. 24-10701, 2024 WL 1733980 (11th Cir. Apr. 23, 2024); Doe v. Predator Catchers, Inc., 343 F.R.D. 633, 638 (M.D. Fla. 2023); Doe v. Vazquez,

No. 2:22-CV-200-JLB-KCD, 2022 WL 3099254, at *2 (M.D. Fla. Aug. 4, 2022); Doe v. Garland, 341 F.R.D. 116, 119 (S.D. Ga. 2021); Doe v. Rollins Coll., No. 6:16-CV-2232-ORL-37-KRS, 2017 WL 11610361, at *2 (M.D. Fla. Mar. 22, 2017).

D.C. Circuit: *In re* Sealed Case, 971 F.3d 324, 326 n.1 (D.C. Cir. 2020); Doe v. Austin, No. CV 22-3474 (RC), 2024 WL 864197, at *4 (D.D.C. Feb. 29, 2024); Doe v. McKernan, No. CV 24-488 (JEB), 2024 WL 1143932, at *3 (D.D.C. Feb. 23, 2024); Doe v. Fed. Republic of Germany, 680 F. Supp. 3d 1, 6 (D.D.C. 2023), *reconsideration denied*, No. CV 23-1782 (JEB), 2023 WL 4744175 (D.D.C. July 21, 2023); Doe v. United States Dep't of Just., No. CV 23-1467 (JEB), 2023 WL 3883939, at *3 (D.D.C. June 1, 2023), *aff'd*, No. 23-5127, 2023 WL 7268249 (D.C. Cir. Oct. 31, 2023); Doe v. U.S. Dep't of Homeland Sec., No. 1:22-MC-00028, 2022 WL 1210689, at *4 (D.D.C. Mar. 14, 2022); Doe v. Garland, No. 1:22-CV-00722, 2022 WL 22624640 (D.D.C. Mar. 10, 2022); Doe v. Dep't of Army, No. 1:21-MC-00114, 2021 WL 4260393, at *3 (D.D.C. Sept. 14, 2021); Doe v. United States, No. CV 21-2142, 2021 WL 12241004, at *3 (D.D.C. Aug. 17, 2021); Doe v. Garland, No. 1:21-MC-00044, 2021 WL 3622425, at *3 (D.D.C. Apr. 28, 2021); Doe v. Roman Cath. Diocese of Greensburg, No. CV 20-1750 (EGS), 2021 WL 12137383, at *9 (D.D.C. Feb. 12, 2021); Doe v. Barr, No. 1:20-CV-03553, 2020 WL 12674163, at *3 (D.D.C. Dec. 4, 2020); Doe v. Lieberman, No. 1:20-CV-02148, 2020 WL 13260569 (D.D.C. Aug. 5, 2020); Doe v. McAleenan, No. 1:19-CV-02648, 2019 WL 13251664, at *3 (D.D.C. Sept. 5, 2019); Doe v. Benoit, No. 1:19-CV-01253, 2019 WL 13079193, at *5 (D.D.C. Apr. 30, 2019); Doe 1 v. George Wash. Univ., 369 F. Supp. 3d 49, 67 (D.D.C. 2019); Doe v. Wash. Post, No. CV 19-477, 2019 WL 2336597 (D.D.C. Feb. 26, 2019); Doe v. Merrill Lynch, No. CV 16-253 (BAH), 2016 WL 10844617, at *1 (D.D.C. Apr. 28, 2016); Doe v. U.S. Dep't of State, No. 15-cv-1971, 2015 WL 9647660, at *3 (D.D.C. Nov. 3, 2015); Doe v. Cabrera, 307 F.R.D. 1, 8 (D.D.C. 2014); Doe v. De Amigos, LLC, No. CV 11-1755 (ABJ), 2012 WL 13047579, at *3 (D.D.C. Apr. 30, 2012).

Note that some of these cases nonetheless deny pseudonymity, because they conclude that the other factors do not come out sufficiently in the would-be pseudonymous litigant's favor.

I have omitted cases where the court expressly notes that the motion was unopposed, or was not opposed on fairness grounds, since in such situations the defendants are essentially waiving any objections based on unfairness to them. (Of course, even if defendants do not oppose the motion, a judge may still deny it on the grounds that pseudonymity would unduly interfere with *the public's* right of access, or is likely to cause juror confusion or other difficulties; but this Article focuses on unfairness to the defendants.)

APPENDIX B: CASES GENERALLY SUGGESTING ONE-SIDED PSEUDONYMITY IS UNFAIR

First Circuit: Doe v. Bell Atlantic Bus. Sys. Servs., Inc., 162 F.R.D. 418, 420 (D. Mass. 1995); Doe v. Trustees of Bos. Coll., No. 23-CV-12737-ADB, 2024 WL 816507, at *3 (D. Mass. Feb. 27, 2024).

Second Circuit: K.D. v. City of Norwalk, No. 3:06-cv-406-WWE, 2006 WL 1662905, at *2 (D. Conn. June 14, 2006); Doe v. Wal-Mart Stores, Inc., No. 3:96-cv-1789-AHN, 1997 WL 114700, at *1 (D. Conn. Feb. 25, 1997); Doe v. McLellan, No. 20-cv-5997-GRB-AYS, 2020 WL 7321377, at *3 (E.D.N.Y. Dec. 10, 2020); Pierre v. Cnty. of Broome, No. 3:05-cv-332, 2006 WL 8453057, at *2 (N.D.N.Y. Mar. 13, 2006); Doe v. Colgate Univ., No. 5:15-cv-1069-LEK-DEP, 2015 WL 5177736, at *2 (N.D.N.Y. Sept. 4, 2015); Doe v. NYSARC Tr. Serv., Inc., No. 1:20-cv-00801-BKS-CFH, 2020 WL 5757478, at *7 (N.D.N.Y. Sept. 28, 2020), *report & recommendation adopted*, 2020 WL 7040982 (N.D.N.Y. Dec. 1, 2020); Doe v. Cornell Univ. No. 3:19-cv-1189-MAD-ML, 2021 WL 6128738, at *7 (N.D.N.Y. Jan. 28, 2021), *aff'd*, 2021 WL 6128807 (N.D.N.Y. Sept. 22, 2021); Doe v. St. Lawrence Univ., No. 8:23-CV-426 (BKS/DJS), 2024 WL 3339859, at *5 (N.D.N.Y. July 9, 2024); Doe v. Shakur, 164 F.R.D. 359, 361 (S.D.N.Y. 1996); Mateer v. Ross, Suchoff, Egert, Hankin, Maidenbaum & Mazel, P.C., No. 96-cv-1756-LAP, 1997 WL 171011, at *6 (S.D.N.Y. Apr. 10, 1997); Anonymous v. Simon, No. 13-cv-2927-RWS, 2014 WL 819122, at *2 (S.D.N.Y. Mar. 3, 2014); Doe v. Delta Airlines, Inc., 310 F.R.D. 222 (S.D.N.Y. 2015), *aff'd*, 672 F. App'x 48 (2d Cir. 2016); Doe v. Skyline Automobiles Inc., 375 F. Supp. 3d 401 (S.D.N.Y. 2019); Doe v. Gong Xi Fa Cai, Inc., No. 19-cv-2678-RA, 2019 WL 3034793, at *2 (S.D.N.Y. July 10, 2019); Doe v. Townes, No. 19-cv-8034-ALCO-TW, 2020 WL 2395159, at *6 (S.D.N.Y. May 12, 2020); Doe v. Freydin, No. 21-cv-8371-NRB, 2021 WL 4991731, at *3 (S.D.N.Y. Oct. 27, 2021); Doe v. Leonelli, No. 1:22-cv-03732-CM, 2022 WL 2003635, at *5 (S. D.N.Y. June 6, 2022); Doe v. N.Y. City Dep't of Educ., No. 1:23-CV-00198 (MKV), 2023 WL 5237520, at *4 (S.D.N.Y. Aug. 15, 2023); Doe v. Telemundo Network Grp. LLC, No. 22 CIV. 7665 (JPC), 2023 WL 6259390, at *6 (S.D.N.Y. Sept. 26, 2023); Doe v. Intel Corp., No. 24-CV-6117 (JPO), 2024 WL 4553985, at *5 (S.D.N.Y. Oct. 22, 2024); Doe v. Combs, No. 24-CV-7777 (LJL), 2025 WL 722790, at *3 (S.D.N.Y. Mar. 6, 2025); Doe v. Fashion Inst. of Tech., No. 25 CIV.950 (JPC), 2025 WL 1000927, at *3 (S.D.N.Y. Apr. 3, 2025); Doe v. Combs, No. 24-CV-7974 (JMF), 2025 WL 1132305, at *3 (S.D.N.Y. Apr. 8, 2025), *appeal pending*.

Third Circuit: B.L. v. Zong, No. 3:15-cv-1327, 2017 WL 1036474, at *4 (M.D. Pa. Mar. 17, 2017); Doe v. Ct. of Common Pleas of Butler Cnty., No. 17-cv-1304, 2017 WL 5069333, at *3 (W.D. Pa. Nov. 3, 2017).

Fourth Circuit: Doe v. Doe, 649 F. Supp. 3d 136, 140 (E.D.N.C.), *aff'd*, 85 F.4th 206 (4th Cir. 2023); Doe v. Corp. Sec. Sols., Inc., No. 5:24-CV-451-D, 2024 WL 4342800, at *4 (E.D.N.C. Sept. 27, 2024); Doe v. N. State Aviation, LLC, No. 1:17CV346, 2017 WL 1900290 (M.D.N.C. May 9, 2017); Doe v. N. Carolina Cent. Univ., No. 1:98CV01095, 1999 WL 1939248, at *4 (M.D.N.C.

Apr. 15, 1999); Candidate No. 452207 v. CFA Inst., 42 F. Supp. 3d 804, 810 (E.D. Va. 2012); Doe v. Liberty Univ., Inc., No. 6:21-CV-00059, 2022 WL 4781727, at *5 (W.D. Va. Sept. 30, 2022); Doe v. Kuhn, No. 7:23-CV-209, 2023 WL 4687209, at *4 (W.D. Va. July 21, 2023).

Fifth Circuit: S. Methodist Univ. Ass'n v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979). Doe v. BrownGreer PLC, No. 14-cv-1980, 2014 WL 4404033, at *3 (E.D. La. Sept. 5, 2014); Doe v. Merritt Hospitality, LLC, 353 F. Supp. 3d 472, 474–75, 482 (E.D. La. 2018); Plaintiff Dr. v. Hosp. Serv. Dist. #3, No. 18-cv-7945, 2019 WL 351492, at *3 (E.D. La. Jan. 29, 2019); Doe *ex rel*. Doe v. Harris, No. 14-cv-00802, 2014 WL 4207599, at *2 (W.D. La. Aug. 25, 2014); Doe v. Hallock, 119 F.R.D. 640, 644 (S.D. Miss. 1987); Rose v. Beaumont Indep. Sch. Dist., 240 F.R.D. 264, 266–67 (E.D. Tex. 2007); Doe v. Compact Info. Sys., Inc., No. 3:13-cv-5013-M, 2015 WL 11022761, at *7 (N.D. Tex. Jan. 26, 2015); Doe v. Univ. of the Incarnate Word, No. SA-19-cv-957-XR, 2019 WL 6727875, at *4 (W.D. Tex. Dec. 10, 2019).

Sixth Circuit: Doe v. Webster Cnty., No. 4:21-cv-00093-JHM, 2022 WL 124678, at *2 (W.D. Ky. Jan. 12, 2022); Doe v. Wolowitz, No. 01-73907, 2002 WL 1310614, at *2 (E.D. Mich. May 28, 2002); Doe v. Bruner, No. CA2011-07-013, 2012 WL 626202, at *3 (Ohio Ct. App. Feb. 27, 2012); Ramsbottom v. Ashton, No. 3:21-cv-00272, 2021 WL 2651188, at *5 (M.D. Tenn. June 28, 2021); Poe v. Lowe, No. 3:24-CV-368, 2024 WL 4678470, at *6 (M.D. Tenn. Nov. 1, 2024).

Seventh Circuit: *In re* Boeing 737 MAX Pilots Litig., No. 1:19-cv-5008, 2020 WL 247404, at *2 (N.D. Ill. Jan. 16, 2020); Doe v. Trustees of Ind. Univ., No. 1:21-cv-02903-JRS-MJD (S.D. Ind. Jan. 3, 2022).

Eighth Circuit: Doe v. Hartz, 52 F. Supp. 2d 1027, 1048 (N.D. Iowa 1999).

Ninth Circuit: Doe v. JBF RAK LLC, No. 2:14-cv-00979-RFB-GWF, 2014 WL 5286512, at *9 (D. Nev. Oct. 15, 2014); Doe No. 1 v. Wynn Resorts Ltd., No. 219CV01904GMNVCF, 2022 WL 3214651, at *9 (D. Nev. Aug. 9, 2022).

Tenth Circuit: Sherman v. Trinity Teen Solutions, Inc., 339 F.R.D. 203, 206 (D. Wyo. 2021); Doe v. Regents of Univ. of Colorado, 603 F. Supp. 3d 1014, 1020 (D. Colo. 2022); Doe v. Maloit, No. 24-cv-02383-PAB-KAS, at *3 (D. Colo. Jan. 31, 2025).

Eleventh Circuit: Doe v. Frank, 951 F.2d 320, 323–24 (11th Cir. 1992); A.L. v. G6 Hosp. Prop. LLC, No. 25-80056-CV, 2025 WL 1151750, at *2 (S.D. Fla. Apr. 18, 2025); Doe v. Alabama Dep't of Corr., No. 2:24-CV-455-ECM, 2025 WL 942750, at *8 (M.D. Ala. Mar. 27, 2025); Doe v. Family Dollar Stores, Inc., No. 1:07-cv-1262-TWT-CCH, 2007 U.S. Dist. LEXIS 105268, at *9 (N.D. Ga. Oct. 17, 2007).

D.C. Circuit: United States v. Microsoft Corp., 56 F.3d 1448, 1463–64 (D.C. Cir. 1995); *In re* U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig., No. 17-5217, 2019 WL 2552955, at *28 (D.C. Cir. June 21, 2019) (Williams, J., concurring in part and dissenting in part).

State courts: Doe v. Heitler, 26 P.3d 539 (Colo. Ct. App. 2001); R.W. v. Hampe, 426 Pa. Super. 305, 316–17 (1993); Doe v. Briscoe, 61 Va. Cir. 96, at *3 (2003).