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Sandusky's Accusers to Be Named in Court, Judge Rule

The alleged victims accusing former Penn State assistant football coach Jerry Sandusky of sexual abuse will be named in open court, the judge presiding over the coach's case has ruled.

In one of three key orders that came down the day before jury selection was set to begin, Senior Judge John M. Cleland said there was no Pennsylvania case law suggesting the victims of one form of crime may conceal their identities while others may not. The ruling came in response to motions from five of Sandusky's accusers — through their own attorneys and bolstered by an amicus brief from several organizations — asking the court to shield the alleged victims' identities by use of a pseudonym.

In a five-page memorandum order handed down Monday in *Commonwealth v. Sandusky* , Cleland denied the accusers' requests, calling attention to the collective responsibility of witnesses to testify "no matter how personally unpleasant fulfilling that duty may be."

"It is argued in the motions that for an alleged victim of a sexual assault to fulfill that responsibility is so uniquely embarrassing that the person should be protected by being able to conceal his name," Cleland said. "But why should only that class of witnesses be protected? No victim of crime, after all, is spared the trauma of crime's effects — and the severity of the trauma does not necessarily mirror the nature of the crime."

In the memorandum, Cleland addressed motions from alleged victims known until this point as Victims 3, 4, 5 and 7, all asking to keep their names concealed. He separately denied a motion from Victim 6 later in the morning.

According to Cleland, the defense raised no objection to the alleged victims' efforts to testify under a pseudonym while attorneys for the Office of the Attorney General advised the accusers that their efforts had no legal basis.

Cleland, who cannot force reporters to withhold the names of victims once they are aired in open court, added that he hopes media outlets will report on the trial by using "what has become their professional custom" to protect the privacy of alleged victims.

The Legal 's policy is to not disclose the names of alleged victims testifying at proceedings such as the recent priest sex-abuse trial in Philadelphia.

But, according to one alleged victim's attorney, the ruling all but guarantees the names will reach the public.

Philadelphia attorney **Thomas R. Kline**, who represents Victim 5, said he has faith that the host of major media outlets slated to cover the trial will follow what he called the "time-honored tradition" of not disclosing victims' names.

Regarding the bevy of blogs and Internet media that will converge on Bellefonte, Pa., over the next week, Kline did not have the same confidence.

"There is also no doubt in my mind that the names of the victims will be circulated through the Internet and blogs," Kline said Monday.

He said Victim 5's legal team was weighing its options as to whether an appeal on an "emergency basis" would make sense, calling the ruling a "disappointment."

"We believe that the judge had discretion on this topic," Kline added. "There's no good basis or reason for the disclosure of the names of the victims. While there was no case directly on point in Pennsylvania, we cited good law in other jurisdictions and we hoped he would find that law instructive and persuasive."

Monday was a busy day on the ex-coach's docket.

As Cleland ruled on a number of pretrial issues, the state Supreme Court also denied Sandusky's last-ditch effort to delay his trial's start date, slated for today. The justices' order came Monday afternoon without comment.

In two other orders filed Monday, Cleland blocked reporters from tweeting and transmitting information from the courtroom and denied a request from Sandusky's defense to gather what it believes is a body of information about the jury pool collected by the prosecution.

According to Cleland, Sandusky's attorneys told the court that it had received an anonymous letter suggesting prosecutors have collected possible jurors' background information using what the defense called "unlimited investigative, financial and governmental resources."

The prosecution denied that it had investigators, in its own words, "improperly peering" into prospective jurors' lives, arguing that the information collected was no more than "what any diligent defense attorney would collect" and arguing its material is protected under work-product privilege.

According to Cleland, Sandusky's counsel requested that the court schedule a hearing on the matter, but conceded the defense could call no witness to testify in support of the allegations. Instead, Cleland said, the defense suggested putting an attorney for the state on the stand to resolve the dispute.

Cleland denied the request, pointing to a lack of credible facts in support of Sandusky's claims. Allowing the dispute to move forward absent a credible defense witness could lead to the court and attorneys "chasing chimeras," he said.

He also ruled that any juror background information in possession of the commonwealth was attorney work product, and therefore afforded privileged protection, although there was not much case law on point.

The underlying issue was whether it "transcends due process" to allow prosecutors to develop juror information that the defense can't afford to produce on its own, Cleland said.

In an eight-page memorandum order, Cleland ultimately concluded that the defense has no constitutional right to the information, even if its underlying allegations were true.

In a third key pretrial ruling, Cleland also blocked the transmission of any information from the courtroom — which means no tweeting, texting or emailing — calling a previous order allowing limited forms of such communications "unenforceable."

Cleland wrote in response to media outlets' request to clarify a May 30 order on court decorum. It was not clear if the court, on its own volition, would have adjusted the decorum order, which allowed for tweeting at previous pretrial proceedings.

Following Monday's decision, it appeared the news outlets may have provided the rationale to deny their own request.

According to an eight-page memorandum opinion Cleland filed Monday, the media outlets joined in the motion last week after the Administrative Office of Pennsylvania Courts told several news agencies that the court's decorum order barred the use of direct quotations.

In an effort to clarify, the media argued the court should not block the transmission of direct quotes for the following reasons:

• It would risk diminishing accuracy.

• There would be no "workable way" for reporters to avoid using direct quotes.

• Using direct quotes does not impede upon the judicial process.

• Any restriction on reporting on direct quotes would be unconstitutional.

Instead, the court eliminated the transmissions altogether.

According to Cleland, the use of the term "broadcasting" in both Pennsylvania Rule of Criminal Procedure 112 and Canon 3(7) of the Code of Judicial Conduct did not appear to prohibit tweeting so long as the tweets did not reflect verbatim testimony.

But, following the media's last-minute filing, Cleland rethought his analysis.

"Permitting reports from the courtroom while court is in session did not, in my view, constitute 'broadcasting,' as long as the reports did not contain simultaneous verbatim quotations," Cleland said. "It is readily apparent from the allegations in the media's motion, however, that the standard I applied in my definition is confusing to reporters, unworkable, and, therefore, likely unenforceable."

The media outlets making the motion included The Associated Press, Advance Publications Inc.(publisher of the *Harrisburg Patriot-News*), ABC Inc., Philadelphia Media Network Inc. (which publishes the *Philadelphia Inquirer)* , CNN and *The New York Times* .

Gayle C. Sproul of Levine Sullivan Koch & Schulz, who represented the media outlets, declined to comment on the court's decision.