

By Ben Present
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Sandusky Victims' Attorneys Angered at Release of Names

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Attorneys for a number of the victims testifying against former Penn State assistant football coach and convicted child rapist Jerry Sandusky said they were displeased with the court's decision to release the trial's transcripts on the Centre County website, complete with the victims' full names as they were read in court. Senior Judge John M. Cleland, who was specially assigned to Sandusky's landmark trial, had already denied a pretrial request from several of the victims asking to testify using pseudonyms, which attorneys now say was the gateway to the posting of unredacted transcripts. In the same June 4 order, however, Cleland said the court and counsel would "cooperate when possible to protect the privacy of all witnesses."

For their attorneys, the court's posting of transcripts last month reflected an unnecessary hit to their clients' privacy. The lawyers said it had no positive public purpose and, if anything, would hamper victims from coming forward in the future.

"I was blind-sided by the fact those transcripts were posted with the names not redacted," said attorney Jeffrey P. Fritz, who is part of a legal team representing the man known as Victim 4.

The attorneys could not say it was common practice to redact transcripts in rape trials, but were adamant that, if there ever were an exceptional case to protect a victim, this was the one.

Fritz added that he has worked on at least a dozen cases in which some party, whether it was the state or private attorneys for the victims, made a motion to use pseudonyms in the transcripts and only once did the court reject it. None had been as closely followed as *Commonwealth v. Sandusky*.

"No case has ever been followed this closely in human history," Fritz said.

Apparently, at least one attorney tried to get the court to take the records down.

When the court posted the transcripts Friday, September 21, State College-based attorney Justine Andronici telephoned in, according to a court spokesman.

Jim Koval, a spokesman for the Administrative Office of Pennsylvania Courts, said Andronici requested a court administrator ask Cleland if he would take the transcripts offline until the following Monday, when she could file a motion.

Cleland, according to Koval, declined to pull the unredacted transcripts in lieu of the motion, apparently

because he had already ruled on the anonymity issue in the aforementioned pretrial order. As of last Thursday, no motion had been filed.

Andronici, who is part of a legal team representing a number of Sandusky's accusers, including some who testified at trial, declined to comment for this story.

Andronici's team includes Philadelphia plaintiffs attorney Matthew Casey of Ross Feller Casey, who said the jury's guilty verdict on 45 counts of sex abuse is even more a reason why Sandusky's accusers should be able to remain anonymous.

"Back in June, there was a trial yet to take place," Casey said. "Today, in contrast, they are proven victims. The jury has found them, beyond a reasonable doubt, to be victims of sexual abuse."

Attorney Michael J. Boni, who is part of a legal team representing the man known as Victim 1, was also nonplussed.

"I don't know why," Boni said. "I don't know what the motivation is for this judge, but he insisted on it." "I'm just baffled by the judge's decision," he added. "I don't know what the rationale is."

Two attorneys specializing in criminal law, however, said the court never promised anonymity to the witnesses, while noting the strong policy against tampering with a trial's transcript in any fashion.

Philadelphia criminal defense attorney Michael J. Engle said he has encountered cases, albeit rarely, in which a victim has been allowed to testify using a pseudonym. Accordingly, the transcripts have followed suit.

But once the victim's name is aired in open court, Engle said the victim's expectation of privacy, to a certain extent, is lost.

"The need to redact the transcripts at that point goes out the window," Engle said.

Engle also said the transcripts, just like every other document in Sandusky's case, were going to be requested, one way or another.

One former prosecutor agreed.

"This is a case that's generated a lot of interest around the country and around the world," added former Lawrence County District Attorney Matthew T. Mangino.

Mangino, who writes a column for the Law Weekly, said the public has the right to know all the facets of the case, and that includes the adults who took the stand.

The plaintiffs attorneys, however, argued Cleland got it wrong. For them, there was simply no reason not to use the numbered pseudonyms found in the grand jury presentment that led to Sandusky's arrest — aliases that have been widely relied upon by the media in reporting on the high-profile proceedings.

There also was a concern that sex-abuse victims would be less inclined to come forward.

"For victims of sexual abuse, there are already existing impediments and things that discourage victims from coming forward," Casey said. "This is just another one, and a significant one at that."

Casey said he spoke to his three clients who testified. Without using their exact words, the attorney said his clients were "incredulous" and "upset" at the news that their names were on transcripts.

While the criminal attorneys interviewed for this story viewed the pretrial order as a threshold ruling on the anonymity issue — meaning, essentially, the cat was out of the bag after the trial testimony — one victim's lawyer said releasing the names was at odds with things Cleland had said.

"Judge Cleland's pretrial order, in detail, talked about the need for sensitivity and privacy of the witnesses," said Thomas R. Kline, who is representing the man known as Victim 5. "This is quite the opposite."

After watching the trial unfold, Kline conceded he had a change of view on the issue of anonymity at trial, saying the victims' use of their real names gave a sense of validity to the testimony.

But he pointed to the fact that the court had also asked the droves of media covering the trial to be mindful of the victims' privacy.

As Cleland put it in the June 4 order: "Of course, it is also to be hoped that various news organizations that will report on the trial will use what has become their professional custom to protect the privacy of alleged victims." The judge added the court would take necessary steps to ensure the victims' privacy heading into the trial, but made no promises after that.

"While I will make every effort to be sensitive to the nature of the alleged victims' testimony, once the trial begins the veil must be lifted," Cleland said.

The Law Weekly reached out to Cleland, but he cannot comment until the Sandusky proceedings are completely over, according to Koval.

Koval, the AOPC spokesman, noted the fact that Cleland's pretrial order on the anonymity issue was never appealed. Surely, Koval said, attorneys knew the transcripts would be posted in their original form. "Courts are open," he added. "What transpires in court is public record. These victims and testifiers are adults, so there's no provision under our law to protect their identity."

The Law Weekly does not disclose the names of victims of sexual abuse.

A spokesman for the Office of the Attorney General, which prosecuted Sandusky, declined comment.