
**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NO. 10-3352

ARTHUR ALAN WOLK, ESQUIRE

Appellant,

v.

**WALTER K. OLSON, ESQUIRE, THEODORE H. FRANK, ESQUIRE,
DAVID M. NIEPORENT, ESQUIRE, THE OVERLAWYERED GROUP
AND OVERLAWYERED.COM**

Appellees.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania, No. 2:09-CV-4001

**APPELLANT'S EMERGENCY MOTION TO SEAL
PORTIONS OF COURT FILINGS REFERENCING LIBELOUS
STATEMENTS MADE BY OTHERS**

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Appellant, Arthur Alan Wolk (“Wolk”), respectfully requests this Honorable Court to grant emergency relief in the form of sealing portions of the docket in this appeal which cite to the libelous statements made by others against Wolk falsely accusing him of bestiality and pedophilia. Amicus Curiae Eugene Volokh has republished these libelous statements on his blogging website by posting the filings from this Court’s docket which referenced these horrible accusations, obviously disregarding the very nature of the relief requested in this litigation.

Wolk respectfully requests that an order granting this motion be applied *nunc pro tunc* as to the date the subject docket entries were filed in this Court.

I. BASIS FOR EMERGENCY RELIEF

Wolk has filed several briefs in this Court which advise that certain internet websites associated with Overlawyered and Amici Curiae Eugene Volokh and Glenn Reynolds have published defamatory statements falsely and maliciously accusing Wolk of bestiality and pedophilia. See Doc. 03110388655 pgs. 2, 3, 14; Doc. 03110390553 pg. 14, 16; Doc. 03110388537 pg. 33.

More specifically, Eugene Volokh and Glenn Reynolds filed a motion in this Court seeking leave to appear as amicus curiae in support of Overlawyered, which was granted on January 14, 2011. Wolk opposed their motion for amici status asserting, *inter alia*, that these individuals are associated with other websites

against whom Wolk has filed lawsuits seeking equitable relief for publishing false accusations relating to bestiality and pedophilia.

In apparent retaliation for Wolk's opposition, Amicus blogger Volokh has taken portions of Wolk's opposition that quoted the defamatory statements of bestiality and pedophilia (Doc. 03110390553 at pg. 14, 16) and published them on *his own blogging website* with the effect of inciting his blogging readership to further accuse Wolk of bestiality and pedophilia. (Ex. A)(“Volokh Blog,” filed under seal.) The Volokh Blog then led to the publication of a second blog (attached as Ex. B)(filed under seal), appearing on a separate website with a headline directly accusing Wolk of bestiality. (Ex. B.) This second blogger states that he obtained the quote for the headline from a source who requested “anonymity.” The blog links to the original Volokh Blog and claims to have “learned” about the situation from a “Professor Glenn Reynolds,” who is part of the same proposed amici group as Volokh. (Ex. B.)

Wolk has written to request that Volokh and the second blogger remove the defamatory material from their websites (Ex. C, D)(filed under seal), to which Volokh responded by threatening to sue Wolk. (Ex. E.)

Wolk respectfully submits that time is of the utmost essence to prevent Volokh's and other Amicus bloggers' republication of libelous statements against Wolk from reaching the internet search engines which will thrust them to the

forefront of cyberspace. Wolk had previously been successful in persuading others to remove the blogs falsely accusing him of these heinous acts, but Reynolds and Volokh have rendered Wolk's efforts meaningless by republishing only the portions of the brief which recite these false accusations, thereby letting them loose on the internet once again. By sealing the relevant portions of the briefing which cite to these defamatory statements, the Court can ensure that the Amici bloggers (and any other parties) will refrain from publically disseminating such horrific accusations. Likewise, an order sealing the relevant portions of Wolk's briefing will compel Amicus blogger Volokh to remove his internet blog, which republished the defamatory accusations that will be placed under seal.

II. LEGAL ARGUMENT

The United States Supreme Court has said that generally, "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Nixon v. Warner Communications, Inc., 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978). The Court, however, has also noted that "the right to inspect and copy judicial records is *not* absolute." Id. at 598 (emphasis added).

Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes. **For example, the common-law right of inspection has bowed before the power of a court to insure that its records are not used to gratify public spite or promote public**

scandal . . . Similarly, courts have refused to permit their files to serve as reservoirs of libelous statements for press consumption.

Id. (internal citations and quotations omitted)(emphasis added).

In this Circuit, the issuance of protective orders sealing court records is governed by Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994). Under Pansy, “good cause must be demonstrated to justify” an order of confidentiality sealing court records. Id. at 786. “[S]everal factors, which are neither mandatory nor exhaustive, . . .” may be considered in evaluating whether ‘good cause’ exists:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 2) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- 7) whether the case involves issues important to the public.”

Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995)(citing Pansy, 23 F.3d at 787-91). In addition to these factors, courts should consider any other factors relevant to the dispute. Id.

To protect his rights, Wolk presented argument to this Court disclosing the horrible accusations of bestiality and pedophilia as a means to stress the importance of his cause and to provide the Court with the context of the type of malicious internet defamation that had taken place during the pendency of this appeal, particularly by those with whom the amici are affiliated. Wolk justifiably believed that the officers of this Court would act honorably and not resort to devious tactics which bring immeasurable harm to him in retaliation for pursuing his rights. In hindsight, Wolk's assumption of the good faith, ethical conduct of amici was misplaced.

Eugene Volokh, a professor at law, is resorting to unlawful gamesmanship by republishing defamation *per se* on his website under the banner of presenting privileged information from a court filing. Volokh and his amici partner Reynolds are using this Honorable Court's docket as a "reservoir[] of libelous statements for press consumption." Nixon, 435 U.S at 597. Their intentions are to harm Wolk and intimidate him from seeking redress for the horrible libelous statements which are now appearing on the internet daily. Volokh has even threatened Wolk with litigation to intimidate Wolk from protecting his good name. (Ex. C, D, E.)

This is not the conduct of a professor, an *amicus curiae*, an officer of this Court, or a respected journalist, but the malicious actions of an individual who is facilitating the character assassination of his adversary. Wolk is a father of two, a

grandfather, a well respected member of the Philadelphia community, and a respected advocate for his clients. The accusations of bestiality and pedophilia are horrific and must be stopped. Volokh and Reynolds have shown disdain for the integrity of this judicial system and are using Court filings as a reservoir for libelous statements that they believe they may publish with impunity.

To say that these publications will bring harm to Wolk is an undersatement of epic proportions. There could be no lawful or legitimate purpose behind this except to punish Wolk for opposing Reynolds' and Volokh's amicus status. Considering this is an internet libel case, republishing the libel on the internet for purposes of disseminating it even further is hardly fair, hardly in the public interest, and will make it extremely difficult for Wolk to live in the city of his birth and interact among his professional and social colleagues. More importantly, the legacy being created for Wolk's family and loved ones is being horribly corrupted.

Wolk respectfully requests this Honorable Court to remove the ammunition these malicious "amicus" bloggers are using to assassinate Wolk by placing the referenced court filings under seal *nunc pro tunc*. These internet bullies are a fringe element in our society that serve no purpose other than to spew invective and incite hatred as a substitute for tolerance. There must be a stop to it and the place is here and the time is now.

III. CONCLUSION

In this litigation, Wolk has learned that a posting on an internet blog site may be thrust to the forefront of cyberspace search engines in a matter of days by careful manipulation of the blog website host. Time is of the essence to prevent Volokh's and Reynolds' character assassination from being swept up by Google and other similar search engines. The conduct of officers of this Court in using court filings as a reservoir for libel is outrageous. Wolk is helpless to these individuals' and their blogging cohorts' merciless barrage of attacks.

This Court has the authority to control its docket so that the filings made therein are not put to unlawful use. Wolk respectfully requests emergency relief so that the Amici's misconduct may be halted before it is unstoppable. Accordingly, Wolk respectfully requests the Court to enter an Order sealing *nunc pro tunc* the following portions of the Court's docket:

- (a) Pages 2, 3 14 and Exhibit B of Plaintiff's Response in Opposition to the Motion for Leave to File Brief of Amici Curiae from Reporter's Committee for Freedom of the Press, filed on 12/22/10 (Doc. # 03110388655);
- (b) Pages 14 and 16 and Exhibit 7 of Plaintiff's Response in Opposition to the Motion for Leave to File Brief of Amici Curiae Eugene Volokh, *et al.*, filed on 12/27/10 (Doc. # 03110390553);
- (c) Page 33 and Exhibit 28 of Appellant's Motion to Strike Main Brief of Defendants for Presenting Non-record Evidence and Engaging in Scandalous Character Assassination, filed on 12/22/10 (Doc. # 03110388537);

(d) Page 2 and Exhibits A and B of Appellant's Supplement to Opposition to the Motion for Leave to File Brief of Amici Curiae Eugene Volohk, et al, filed on 1/5/11 (Doc. # 003110398378); and

(e) Exhibits A, B, C and D of this Emergency Motion.

Respectfully Submitted:

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Date: January 17, 2011

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CERTIFICATE OF SERVICE

I, David P. Heim, Esquire, hereby certify that on **January 17, 2011**, a copy of the foregoing Appellant's Emergency Motion to Seal Portions of Court Filings Referencing Libelous Statements Made by Others was served upon the following counsel via electronic filing:

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On the same date, an electronic copy of the Appellant's Emergency Motion to Seal Portions of Court Filings Referencing Libelous Statements Made by Others was electronically transmitted to the Clerk of the United States Court of Appeals for the Third Circuit.

Date: January 17, 2011

By: /s/ David P. Heim

EXHIBIT A

(Filed Under Seal)

EXHIBIT B

(Filed Under Seal)

EXHIBIT C

(Filed Under Seal)

EXHIBIT D

(Filed Under Seal)

EXHIBIT E



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January 12, 2011

VIA EMAIL AND U.S. MAIL

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Re: December 31, 2010 Volokh Conspiracy Blog Posting

Dear Mr. Bochetto:

We are in receipt of your January 6, 2011 letter requesting that Eugene Volokh remove his December 31, 2010 *Volokh Conspiracy* blog posting and any comments thereto. As you know, in that post Professor Volokh quoted from Arthur Alan Wolk's Response in Opposition to the Motion for Leave to File Brief of *Amici Curiae* ("Response"), publicly filed on December 27, 2010 in *Wolk v. Olson*, Case No. 10-3352. Professor Volokh did so in order to respond to the false statements and insinuations against him made by your firm on Mr. Wolk's behalf in that Response. In quoting the Response, Professor Volokh made clear that he was not endorsing the statements that you claim are defamatory. Indeed, Professor Volokh specifically quoted the Response's denial of those very statements.

As such, your letter's assertion that Professor Volokh's blog posting is defamatory or in any manner improper is without basis.

First, Professor Volokh's posting is absolutely privileged as a fair comment on the *Wolk v. Olson* case. Cal. Civ. Code § 47(d) (West 2011) (privilege applies to "a fair and true report in, or a communication to, a public journal of ... a judicial ... or other public official proceeding ... or ... anything said in the course thereof"); see also *Colt v. Freedom Communications, Inc.*, 109 Cal. App. 4th 1551 (2003) (applying § 47(d) protection to postings on online message boards). Pennsylvania law recognizes the same privilege. *Mathis v. Philadelphia Newspapers, Inc.*, 455 F. Supp. 406, 415-16 (E.D. Pa. 1978).

Second, accurately quoting statements from Mr. Wolk's own lawyers cannot be defamatory. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 981 (9th Cir. 2002); *Thomas v. Pearl*, 998 F.2d 447, 452 (7th Cir. 1993).

Third, the statements regarding Mr. Wolk mentioned in your letter obviously could not be understood by any reasonable reader as allegations of fact given their context. They are, accordingly, not actionable. See, e.g., *Greenbelt Cooperative Publishing Assn., Inc. v. Bresler*, 398 U.S. 6, 14 (1970) (holding that an allegation of "blackmail" cannot in the context of the particular statement be seen as a factual claim that the plaintiff was a blackmailer); *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 161 (Tex. 2004) (holding that what appeared at first glance to be a news account had to be reasonably understood, in context, as a joke). This is particularly true given that Professor Volokh quoted the Response's denial of those statements in his post.

Fourth, under 47 U.S.C. § 230, "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another." Professor Volokh cannot be held liable to Mr. Wolk for merely redistributing online material that he has received from Mr. Wolk's own lawyers. *Barrett v. Rosenthal*, 40 Cal.4th 33, 59-60 (2006); *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003).

Fifth, your letter's suggestion that Professor Volokh is responsible for any comments posted by others on the *Volokh Conspiracy* is incorrect. Under 47 U.S.C. § 230, those comments cannot be attributed to Professor Volokh. See, e.g., *Fair Housing Counsel of San Fernando Valley v. Roommates.com, Inc.*, 521 F.3d 1157, 1173-74 (9th Cir. 2008) (applying Communications Decency Act to preempt claim based on web site user comments); *Nemet Chevrolet, Ltd. v. ConsumerAffairs.com, Inc.*, 591 F.3d 250, 257 (4th Cir. 2009) (likewise); *DiMeo v. Max*, 248 Fed. Appx. 280, 282 (3d Cir. 2007) (likewise).

With respect to your firm's threat that it will commence legal proceedings if Professor Volokh does not comply with your demand, please be advised that Professor Volokh will not tolerate any attempts to interfere with his free speech rights and expressly reserves any and all rights with respect to this matter. As I am sure you are aware, California permits the recovery of attorney's fees for the cost of defending against an unmeritorious lawsuit arising from the exercise of free speech. Cal. Civ. Proc. Code § 425.16(b) (West 2011). In view of your threat to file a lawsuit, we are further constrained to request that Mr. Wolk and your firm preserve documents relating to the filing of the Response and the false statements and innuendo concerning Professor Volokh contained therein, including any communications relating to the preparation or dissemination of any drafts of the Response.

Very truly yours,



David W.T. Daniels