

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

ELIYAHU MIRLIS
Plaintiff,

: CIV. NO. 3:16 CV 00678 (MPS)

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:

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v.

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RABBI DANIEL GREER, and YESHIVA OF
NEW HAVEN, INC.

:

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Defendants

:

JANUARY 2, 2018

MOTION FOR PROTECTIVE ORDER

Aviad Hack, through undersigned counsel, respectfully requests that this Court enter a Protective Order, prohibiting the release of the videotape of his deposition.

Good cause exists for such prohibition because the privacy interests of Mr. Hack in not having the video of his deposition distributed in public forums and replayed to the masses, far outweighs the need to access same.

None of the authorities cited by Mr. Dressler concerned the release of videotape depositions involving testimony by a victim of sexual abuse as a minor, as in this case. Further, to the extent that portions of the videotape deposition were not permitted to be played during trial, it cannot be considered a judicial document afforded a presumption of accessibility. To the extent portions of the videotape deposition were played during

trial, the presumption of access is weak and outweighed by the countervailing factors including the danger of impairing judicial efficiency by discouraging victims of sexual assault to report such incidents, to testify in judicial proceedings and the privacy interests of Mr. Hack.

I. LAW & ANALYSIS

“[T]here exists in the United States Constitution a right to privacy protecting the ‘individual interest in avoiding disclosure of personal matters.’” Burgess v. Town of Wallingford, No. 3:11-CV-1129 CSH, 2012 WL 4344194 at *10 (D. Conn. Sept. 21, 2012). The Second Circuit has recognized that the privacy rights of third parties can outweigh the right to access judicial documents. See U.S. v. Amodeo, 71 F.3d 1044 (1995). The Court is required to balance the weight of the public access against the countervailing factors, including the danger of impairing law enforcement or judicial efficiency and the privacy interests of those resisting disclosure. Although there is an “especially strong” right of access to evidence introduced at trial, Id. at 1049, if the introduction of a videotape deposition a trial was the only qualification for its release to the public at large, there would be no need for the balancing test.

◇ The countervailing considerations in the present matter far outweigh the presumption of public access. Releasing the videotape could impair the function of the judiciary by discouraging individuals who were abused as minors from submitting to video-taped depositions. If such an individual has no assurance that the video will not be released to the public, simply because it was later played in court, they have no reason to cooperate. Under Amodeo, “[i]f release is likely to cause persons in the particular or future case to resist involvement where cooperation is desirable, that should be weighed against the presumption of access.” Id. at 1050. Issuing a protective order in this case can serve to provide confidence to similarly situated deponents in future cases that they can participate in a videotaped deposition without fear that it will be released to nonparties.

A second countervailing factor for this Court to consider is “the privacy interest of the person resisting disclosure.” Id. Amodeo recognized that “[t]he privacy interest of innocent third parties ... should weigh heavily in a court’s balancing equation.” Id. at 1050. “In determining the weight to be accorded an assertion of a right of privacy, courts should first consider the degree to which the subject matter is traditionally considered private rather than public.” Id. at 1051. There is no greater right to privacy

than is afforded by courts to a minor who was victim of sexual abuse. This includes permitting a plaintiff to use a pseudonym where he was victim of sexual abuse as a minor. See Doe No. 2 v. Kolko, 242 F.R.D. 193 (E.D.N.Y. 2006). In so ruling, the Court noted that “the public generally has a strong interest in protecting the identities of sexual assault victims so that other victims will not be deterred from reporting such crimes.” Id. at 195. The Court also noted that sexual assault was a “matter of the utmost intimacy.” Id. at 196.

The balancing test requires the court to “weigh heavily” the privacy interest of Mr. Hack. Given that this case involves a subject matter that is traditionally treated as private rather than public, and weighing it accordingly, there is no reason to release the video of the deposition. Doing so simply because the testimony was provided via video instead of in person ignores the significant privacy interest involved.

II. CONCLUSION

There is no reason to order the release of the videotape deposition as requested by Mr. Dressler. Wherefore, for the foregoing reasons, a Protective Order is respectfully requested prohibiting the release of the videotape deposition of Aviad Hack.

_____/s/_____
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CERTIFICATION OF SERVICE

I hereby certify that on JANUARY 2, 2018 a copy of the foregoing was filed electronically and served by mail on anyone unable to receive electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

_____/s/_____
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