**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 89**

**MAR 2023 – USING A PEN NAME AS AN RP**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries in separate CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 CR 400, Tobias NE 68453. My focus is SO laws; I don’t advise/assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding.

NOTE: In the past ICoNs, I have been using “Registered Citizen” (RC) to describe a person who will be forced to register as an “SO.” In “Your Life on The List, Ed. 3” & the ICoN, I have begun using the term “Registered Person” (RP) because many people were confused by “RC”, thinking it referred to an immigration issue. Language is in a constant state of flux & can change again in the future, but for now, the most commonly accepted term among anti-registry activists is RP or Registrant; thus, starting today, we will be using RP/Registrant to describe persons who will be forced to register for a publicly accessible sex offense registry. However, I still may slip up & use RC on occasion, & if you still use that term when writing me, I’ll know what you mean.

**LEGAL ROUNDUP**

*McDeid v. Johnston*, Nos. A21-0042; A21-0043 (Minn. 2023): This case arises out of the delayed transfer of two individuals civilly committed to the Minn. SO Program (“MSOP”) following court orders directing their transfer to Community Preparation Services (“CPS”), a less restrictive environment within MSOP control. The Appellants claim that State Officials violated their due process rights by delaying transfer for over 2 years following the court orders & seek relief under 42 USC §1983. The State Officials seek to invoke qualified immunity against the Patients’ section 1983 claims. MN Sup Ct held that MSOP patients had a clearly established right to transfer to CPS within a reasonable time following issuance of a Minnesota Commitment Appeals Panel transfer order, reversing an App Ct ruling & remanded to the App Ct to address whether the State Officials’ clear obligation to transfer the Patients to CPS within a reasonable time following a CAP transfer order gives rise to a federal due process right & whether the State Officials’ failure to do so is a violation of the Patients’ federal constitutional rights sufficient to support a section 1983 claim.

*People v Allen*, 2023 NY Slip Op 00496: NY 1st App Div Ct overturned an unhoused man’s conviction for failing to verify his address every 90 days as requested by SORA. The law is unconstitutional when applied to homeless defendants who lack an address, as it deprives them of due process.

*US v. Navarro*, No. 19-50662 (5th Cir. 2022): Held, in a matter of first impression, that an FTR conviction under federal SORNA is based on violation of federal SORNA’s registration requirements, which are independent of state law. Still, the 5th Cir determined that Navarro had no duty to register under state or federal registration laws in 2019 & vacated Navarro’s FTR conviction, concluding that the factual basis supporting Navarro’s guilty plea was insufficient as a “matter of law.”

*North Carolina v. Lamp*, No. 18A22 (N.C. 2022): Lamp was charged with submitting incorrect address information to the sheriff “willfully” & “under false pretenses.” Lamp was formerly homeless found & lost permanent housing within a seven day period in June of 2019. Although Defendant reported his housing changes within that same week, he was charged with failing to comply with registration requirements when a police officer was unable to verify Defendant’s housing arrangement. NC Sup Ct overturned FTR conviction for homeless RP because state law only “willful” registration violations.

*Matter of Stevens,* No. 201,997-8 (Wash. 2022): WA Sup Ct granted Stevens’s admission to the Washington State Bar after considering the applicant’s “past wrongful behavior” alongside “the steps he has taken to improve himself & hold himself accountable” concluding that applicant had adequately established his good moral character & fitness to practice law. In so ruling, the Court stated, “like all of us, [the applicant] is more than the sum of the worst moments of his life.”

*People v. Superior Court of Santa Cruz County*, No. H049691 (Cal. Ct. App. 2023): A CA community attempted to bar the release of a soon-to-be released civilly committed “SVP” by creating a private school within 1/4 mile of the proposed placement home. A superior court found the statute would not prohibit the proposed placement because the school in question is a private home school that did not exist until after the community was notified of Cheek’s pending release—suggesting the school was created for the very purpose of preventing placement in that area. CA App Ct concluded that, although the concerns raised by the lower court were not unreasonable, the SVP Act prohibiting placement of certain individuals near a school does not exempt home schools or require the school to have been operating for any particular time. The Court issued a peremptory writ of mandate directing the superior court to vacate its placement order.

*Stradford v. Secretary Pennsylvania Department of Corrections*, Nos. 21-2655 & 22-2027 (3d Cir. 2022):

PA considers “community sensitivity” as one concern when placing individuals granted parole in halfway houses in the community. This meant that RPs granted parole remained incarcerated for longer periods of time than individuals w/o a sex offense record. 3ds Cir reversed & remanded the US Dist Ct, holding that (1) plaintiffs were not similarly situated with parolees who had not committed a sex offense, & (2) policy considering community sensitivity was rationally related to legitimate government interests. Court concluded this did not violate the Equal Protection Clause.

**WRITING UNDER A PEN NAME AS AN RP**

Recently, I was asked about writing under a “pen name.” That’s a good question since the term “pen name” (aka, “nom de plume” or pseudonym) invokes a different kind of action than an “online identifier/screen name” or an alias. Throughout history, famous writers like Voltaire (François-Marie Arouet) to Mark Twain (Samuel Clemens) to George Orwell (Eric Arthur Blair) wrote under pen names. It is a way to write anonymously.

We are required to register “aliases” & many states also require registration of “online identifiers” (i.e., screen names or nicknames you use while on the Internet). On the other hand, the 1st Amdt guarantees the right to free & ANONYMOUS speech. Yet, it seems the courts are hell-bent on abridging that right.

There is scant evidence RPs have gotten into trouble for using pen names. In 2012, an IL man who wrote books through Amazon under the pen name “Lex Fonteyne” was harassed by local media; the IL media outlet proclaimed that pen names “are not exempt” from registry laws. Fonteyne was arrested, but based on media reports, it was seemingly for FTR as he failed to register at all in IL, not as the result of his pen name. He is currently on the IL-SOR & his pen name is now registered. An RP in OK wrote a number of books for sale on Amazon; his pen name is also listed on the OK-SOR as an alias.

Courts have been divided on allowing RPs to post anonymously. Below are a couple of examples:

In *Doe v. Nebraska*, 898 F.Supp.2d 1086 (D. Neb. 2012), a federal judge struck down NE’s internet identifier law in a scathing rebuke. “Earlier I paraphrased Justice Oliver Wendell Holmes & observed that if the people of NE wanted to go to hell, it was my job to help them get there… I can only help Nebraskans get to the figurative hell that Holmes spoke of if they follow a constitutional path. For three sections of NE’s new SOR law, NE has violently swerved from that path.” The NE statute was stricken as overly broad, hopelessly vague, forced people to choose between 1st & 4th Amdt rights, unnecessarily chills political speech, & motivated by legislative animus. NE does not require RPs to register online identifiers.

In *Cornelio v. Connecticut*, No. 20-4106 (2d Cir. 2022), the 2nd Circuit declared forcing a registrant to disclose internet identifiers violated the 1st Amdt. The 2nd Cir. reversed the dismissal of Plaintiff’s 1st Amdt claim, concluding that (1) the statutory disclosure requirement for Internet communication identifiers burdened protected speech under the 1st Amdt, triggering strict scrutiny, (2) the State’s asserted governmental interest in such disclosure requirement was too speculative to support dismissal of the 1st Amdt claim, & (3) the Plaintiff plausibly alleged that the disclosure requirement was overbroad in violation of the 1st Amdt. This case was sent back to the US District Court for further hearings.

But in *State v. Jackson*, No. 2018AP2074- CR (Wis. Ct. App. 2019), the WI Court of Appeals found that, facially, the statute was not an unconstitutional abridgement of the Defendant’s right to free speech, & that because the statute included at least some protections against public disclosure of that information, it did not infringe on the right to anonymous speech. in *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2010), the 10th Cir ruled registering online IDs doesn’t violate the 1st or 4th Amdts. Changes to UT Code §77-27-21.5 lessened the code’s chilling effect, plus the Doe “did not have a reasonable expectation of privacy in regard to his internet identifiers.”

Online identifiers/screen names are used for more than just publishing anonymous statements online. But they are still different from pen names because pen names are names that are typically simply attributed to a literary work & intended to help the writer remain anonymous. While you can use a screen name to publish on a blog, online identifiers are often used for social media & emails, where there is direct contact with other people through the Internet. Unfortunately, even the courts confuse the two terms. (Example: State v Christensen, 102 So. 3d 984 (La. Ct. App. 2012), where under the “Facts & Procedural History” section, what is obviously a screen name or Online ID is referred to as a “pen name.”)

If you want to become a writer but you are afraid that writing under your real name might tank sales or may bring negative publicity to you or your loved ones, then you may have to consider the following options:

1. Writing anonymously: You can simply not add a name at all to your work.

2. Find a friend or loved one willing to publish on your behalf under a pen name.

3. Use your initials or at least your first & middle initial & your last name.

Thanks to Amazon’s “Print on Demand” book service, becoming a published author is easier than ever. That is why I use it for Your Life on The List.

A lot of people get confused because they know that they have to create a "publisher's account" at Amazon & the others with their real name & SSN. This is so you can be paid. It's for EFT (Electronic Funds Transfer), & checks. You also have to provide all your own banking information, so that you can receive the Wire Transfers. But, just because you have to use your real name on your Publisher's Account doesn't mean you have to use it for your author name.

A lot of authors use a Kindle publishing pseudonym. It's not even hard to do. You log into your KDP Publisher's Account, go to your Bookshelf, & then "Add New Title." Then, under 1, "Enter Your Book Details," you'll do two things. You'll type your Publisher name, which is optional. Then, you'll click "Add Contributors." In that section, you'll type the Kindle publishing pseudonym that you've chosen, as the Author. Doing this creates your Amazon self-publishing pseudonym.

If you are looking more for a traditional publisher, one piece of advice from a legal site states, “There is nothing legally required to use a pen name. You would just notify the publisher. Your contract & payment would come under your name/SS# or the S Corp & EIN. Also, you may want to discuss your situation with an IP attorney, you may be able to file a trademark for the pen name if it is used for a series of books, but not the name itself or just the title of one book. You should file for copyright protection on the works as well.” That is something you should discuss with your local registry office as well.

**A QUICK REMINDER**

On Tuesday, March 7th at 9:00am, rain, shine or snow, anti-registry activists will host a vigil at the steps of SCOTUS in DC. If you have friends or family who can attend, please tell them about this event.