

1993

## The Privacy Rights of Rape Victims in the Media and the Law, Panel Discussion

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### Recommended Citation

Michael Gartner, *The Privacy Rights of Rape Victims in the Media and the Law, Panel Discussion*, 61 Fordham L. Rev. 1133 (1993).

Available at: <https://ir.lawnet.fordham.edu/flr/vol61/iss5/5>

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## COMMENTARIES

### PANEL DISCUSSION

MICHAEL GARTNER\*

WHY did NBC News name the victim in the William Kennedy Smith rape case? How was that decision made? I am President of NBC News and was instrumental in making that decision. What follows is a discussion of the reasons supporting the decision and the procedural steps NBC News took in making it.

For years, journalists and feminists have debated whether the names of rape victims (or alleged rape victims) should be made public. Among both journalists and feminists, there is no agreement. At NBC, we debated the journalistic arguments.

The function of journalists is not to change the world, or to change the public's views. People who want to change the world should become teachers or politicians, not newsmen and newswomen. Journalists have only one duty—to present the news as clearly, as fairly, as thoroughly, and as accurately as possible. That is why, after great debate, I chose to air the name of the alleged rape victim in the Palm Beach case. In my opinion, a number of reasons supported this decision: First, we are in the business of disseminating news, not suppressing it. Names and facts are news. They add credibility to stories and give viewers or readers information they need to understand issues. Accordingly, my inclination is always toward telling the public all the germane facts that we possess.

Second, it is my view that producers, editors, and news directors should make editorial decisions, rather than lawyers or legislatures. For this reason, I oppose preventing news organizations from disclosing the names of rape victims who prefer to remain anonymous. Importantly, we do not give newsmakers in any other category of news the option of being named or not being named.

Third, by not naming rape victims, we are participating in a conspiracy of silence which does a disservice to the public by reinforcing the idea that there is something shameful about being raped. Rape is a despicable crime of violence, and rapists are deplorable people. Rape victims, on the other hand, are blameless. One role of the press is to inform the public, and one way of informing the public is to destroy incorrect impressions and stereotypes.

Fourth, and finally, is the issue of fairness. There was no debate in our newsroom about whether to name the suspect in the Palm Beach rape

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case even though at the time we ran the story the defendant, William Kennedy Smith, had not yet been charged with the commission of a crime. We dragged his name and his reputation into the public domain, however, without regard to what might happen to him should he be acquitted, or indeed, should he not even be charged. Unquestionably, rapists are contemptible people. Suspects, however, are not necessarily rapists.

Those are the points made in our internal debates at NBC News. I first raised this issue when the "Central Park jogger" was raped.<sup>1</sup> We reported that story on "Nightly News," and afterward I told my colleagues that if this story were to gain a continuing national interest, we should debate the question of naming the victim. As it turned out, the story did not receive continuing national interest, and we never needed to address the issue of naming the victim for that story.

In early April of 1991, I first started to consider naming the victim in the Palm Beach rape case. A week later, I discussed this issue with some colleagues from outside NBC News. On Monday, April 16, 1991, I raised the issue with three colleagues within NBC News. The next day, these discussions continued. They were passionate and spirited. By the end of that day, the debate encompassed approximately thirty people, men and women of all views. There was no unanimity of opinion. If a vote had been taken, however, the result probably would have been to not print the victim's name. Nevertheless, I decided, for the reasons listed above, to name her. The fact that her identity was known to many in her community was another factor—but not a controlling one—in my decision.

A number of people at NBC News—including people who were involved in the preparation, production and presentation of the piece—disagreed with my decision. No one, however, asked to be removed from the story, and everyone did a thorough job. The story was fair and accurate; it was not sensational or promoted in an effort to boost our ratings. It was presented merely as one of many interesting stories on our "Nightly News" broadcast that evening.

At 5 p.m., we advised our affiliates that we were naming the rape victim. Our Florida affiliates, especially, needed to be told in advance. In the time since we aired this story, six of our 209 affiliates have complained to us about the decision; at least one, WBZ in Boston, actually bleeped out the woman's name and covered her picture. Several affiliates said that although our decision ran counter to their own policies, they respected our judgment and aired the story. Several other affiliates called to say they agreed with our decision. Most affiliates said nothing.

I am particularly proud of the process we went through in reaching our conclusion. In fact, the process may have been more important than

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1. See Craig Wolff, *Youths Rape and Beat Central Park Jogger*, N.Y. Times, Apr. 21, 1989, at B1.

the conclusion itself. We vigorously and freely debated an important issue of journalism; all sides were discussed. The story was shaped and reshaped as a result of that debate. And when we ultimately decided to air the victim's name, everyone involved in that decision at least understood the reasons for our doing so.

Our decision engendered a national debate. Although much of the debate has been focused on the wrong issues, some of it has been focused on the right issue: the crime of rape. The debate has raised the public's awareness of the vileness of the crime, the innocence of the victims, and the baseness of rapists. That has been a beneficial side effect.

Rape is rarely a national story. If another rape receives national attention, however, we will have the same debate again. The position at NBC News is this: We will consider the naming of rape victims or alleged rape victims on a case-by-case basis.

I think the duty of a free press is to allow people to make their own decisions. Censorship is one crime that may be as repulsive as the crime of rape. I would hate to see any laws passed, or any government pressures, that would interfere with the decisions news organizations make to name anyone for any issue.

NBC named the rape victim in the Palm Beach case in an effort to be thorough as reporters and fair as journalists. It was a controversial decision that was made with some anguish. But I believed then, and I believe now, that it was the right decision.

