

1993

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

Helen Benedict

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Helen Benedict, *The Privacy Rights of Rape Victims in the Media and the Law, Panel Discussion*, 61 Fordham L. Rev. 1141 (1993).

Available at: <https://ir.lawnet.fordham.edu/flr/vol61/iss5/7>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

## PANEL DISCUSSION

HELEN BENEDICT\*

PRIVACY is a central issue in every controversy concerning the media's coverage of rape, from whether to name the victim to how to handle the accused's right to be presumed innocent. To be covered by the media in association with a sex crime, whether as the victim or as the accused, is to be opened up to merciless exposure of one's past, one's personality, and particularly one's sex life. That is the way things stand today.

The media's eagerness to examine the life of the accused is understandable, if sometimes objectionable. The media, and especially the print press, effectively takes on the role of a detective in a crime as it looks into the possible reasons why that crime occurred. In my view, that role can be proper. The main problem with the press acting in this manner, however, is that, in practice, the press considers the accused guilty until proven innocent, indeed sometimes even after proven innocent, because the press attention alone suggests guilt. That is troubling enough. In rape, however, this same practice of delving into the subject's private life also applies to the victim. This is where the media has gone tragically wrong.

At the moment, the accepted practice is for the media to investigate the life and personality of any woman who is the victim of a notorious sex crime. For example, the *New York Daily News* covered the last hours of the 1986 "Preppie Murder" victim, Jennifer Levin, under the headline, "How Jennifer Courted Death";<sup>1</sup> *New York Post* reporters traveled to the Central Park jogger's hometown, staked out her parents house, and even looked into her childhood; and *The New York Times* named and unflatteringly profiled Patricia Bowman before her accused assailant, William Kennedy Smith, was even indicted.<sup>2</sup> The press subjected all of these women to exposures of their lifestyles, their sexual tastes, and other people's opinions of them against their wills.

Why does the media assume a rape victim's life or personality is relevant to the crime? Reporters do not look into the past of a liquor store owner whose shop has been robbed. Nor do they examine the love life of a man whose apartment has been burglarized. Yet, as soon as sex enters the equation, whether in the form of rape, incest, molestation, murder or harassment, the victim is instantly suspect. For example, the *Globe*, a

---

\* Assistant Professor, The Graduate School of Journalism at Columbia University; B.A., 1975, University of Sussex, England; M.A., 1979, University of California at Berkeley. Portions of this address are derived from Professor Benedict's book, *Virgin or Vamp: How the Press Covers Sex Crimes* (1992), reprinted here with the permission of Oxford University Press.

1. *N.Y. Daily News*, Aug. 29, 1986, at 1.

2. See Fox Butterfield & Mary B. W. Tabor, *Woman in Florida Rape Inquiry Fought Adversity and Sought Acceptance*, *N.Y. Times*, Apr. 17, 1991, at A17.

Florida weekly, portrayed the alleged rape victim in the Palm Beach rape case as the villain in the following headline: "Kennedy Rape Gal Exposed."<sup>3</sup>

Why does the media so distrust the victims of sex crimes? The answer is simple: the media is still entrenched in two myths: (1) that women provoke sexual attacks,<sup>4</sup> and (2) that women who say they have been raped are usually lying.<sup>5</sup> The media remains attached to these myths partly because they uphold the misogynistic status quo of our society, and partly because they offer narratives that are quick, familiar, and require no thought.

The idea that women provoke sexual attacks is based on the erroneous but powerful misconception that sexual assault is an act of desire, ignited by the attractiveness or behavior of the victim. The truth, however, as has been explained by psychologists for decades now, is that sexual assault is a violent crime motivated by anger, hatred or, more rarely, sadism, in which perpetrators use sexual acts as weapons of degradation and punishment.<sup>6</sup> The assailant may be aroused by his dominance, by the woman's fear, or by his ability to inflict pain. This arousal is not the same as being intentionally seduced by a lover. The idea that a woman invites or provokes sexual assault is as absurd as the idea that any person would invite torture. This is true whether the assailant attacks the woman while she was walking down the street or while she was in bed with her assailant. As one teenage rape victim said to me, "[r]ape is to sex like a punch in the mouth is to a kiss."

The idea that women commonly lie about rape is equally groundless. The Federal Bureau of Investigation ("FBI") estimates that eight percent of rape cases investigated by the police are "unfounded," as opposed to two percent of any other crime.<sup>7</sup> But "unfounded" does not necessarily mean that a woman lied. Rather, it means only that the police decided not to press charges, perhaps because they could not find enough evidence to indict the accused, or because, for their own reasons, they found the woman unbelievable, or because they could not be bothered. About two years ago, Candy Cooper, an investigative reporter for *The San Francisco Examiner*, discovered that police in Oakland, California were routinely listing as "unfounded" reports of rape made by black women, prostitutes, and drug users.<sup>8</sup> After Cooper exposed this practice and the

---

3. See *Weekly Newspaper Charged With Violating Law On Rape*, N.Y. Times, May 10, 1991, at A18.

4. See Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* 15-16 (1992).

5. See *id.* at 17-18.

6. See A. Nicholas Groth, *Men Who Rape: The Psychology of the Offender* 13-57 (1979).

7. Telephone Interview from New York to Washington D.C. with FBI official (Jan. 1993).

8. See Candy J. Cooper, *Nowhere to Turn for Rape Victims*, S.F. Examiner, Feb. 1, 1991, at A1.

police began proper investigations, only one percent of rape cases in Oakland turned out to be "unfounded," which is half the FBI figure for other crimes.

Given society's reluctance to believe a woman who "cries" rape, a reluctance that goes back to the myths discussed above, it is safe to assume that the behavior similar to that of the Oakland police is widespread. The rate of false reports of rape is, in all probability, no higher than that of other crimes. Also, it cannot be forgotten that defense lawyers and the media, should it become interested, routinely drag a woman who says she has been raped through the mud. In addition, rape is one of the hardest crimes to prove because of the required standards of evidence, the absence of witnesses, and the jury's obligation to find the defendant guilty beyond a reasonable doubt. In short, rarely would a woman subject herself to such an unrewarding, gruelling, and humiliating process for a lie.

I have come to question not only the arguments put forth in favor of naming the victim, but the media's entire approach to covering rape. Why should the media treat the victim in the same way as the accused? Why should the media scrutinize her private life and personality? The victim committed no crime: it is not a crime to walk into one's home, to jog in a park, to walk with a man on a beach, to go on a date, to pick up someone in a bar, nor is it even a crime to go to bed with someone other people might consider dangerous. Some of these behaviors may seem unwise or reckless, but they are not criminal. Above all, it is not a crime to go to the police and say, "I've been attacked." Yet, the media assumes that, by digging into the victim's past and personality, it will uncover something about the crime, just as it might when it digs into the accused's past and personality. Every profile of a victim, every account of what that victim does or has done, is by implication, an assumption of the victim's complicity in the crime: the very act of profiling the victim treats her as if *she* is guilty until proven innocent.

What about the public's interest in the victim, you may ask? Is the public not served by learning about who the victim is and what she is like? Not really. The victim's identity adds nothing to public understanding of rape because this information has nothing to do with why the crime was committed. Anyone can be the victim of sexual assault—the very young, the very old, men, the married or the single, the gay, or the straight. The important questions are not who the victim is but who the assailant is and what his motivation is. To use a crude analogy, you do not ask the pot why it was smashed, you ask the man who smashed it why he did so. The press can educate the public about the truth of sexual assault by exploring the circumstances of the crime and the strength or weakness of the case against the accused, by explaining what rape is and why it happens, by looking at what causes our society to allow this crime to go on, and by giving statistics showing that sexual assault can happen to anyone, anywhere, at any time. To accomplish such valuable reporting, the press does not need to delve into the private life of victims.

Most debates over the privacy of rape victims are focused on the issue of naming the victim. The media justifies printing the rape victim's name with three main arguments. The first argument is that naming the victim lends credibility to the story. But who says a rape victim is more credible when her name is used? Does the public really care, or even notice? It is the thoroughness and honesty of a story that makes the information credible, not the disclosure of a mere name. And why, for that matter, is the credibility of a rape victim so much more suspect than the credibility of a victim of any other crime? Perhaps the answer lies in the erroneous assumption that rape is sex.

The second argument is that naming the accused and not the accuser<sup>9</sup> violates the suspect's right to be considered innocent until proven guilty. Although, as I have previously said, it is illogical to equate the alleged victim of a crime with the person who stands accused, this argument has some merit. The solution, however, does not. Rather than naming both victim and accused, a more humanitarian and more fair solution would be not to name the victim at all, unless she has consented, and not to name the accused until a Grand Jury or similar body has determined that there is enough evidence against him to warrant a trial. Furthermore, if the accused is acquitted, this should not give the media license to go ahead and name the victim. An acquittal does not necessarily mean the woman lied about being raped, it only means that the accused was the wrong man, that there was not enough evidence to convict, or that the prosecution did a lousy job. Moreover, it is not the press' job to avenge a man proven innocent by publicly humiliating his alleged victim. The media should turn its attention, rather, to the job done by police and by the courts.

The third argument, much in vogue now, is that treating rape like any other crime will destigmatize it and make the victims of rape no more ashamed than the victims of a mugging. But rape is not the same as being attacked by a mugger. The notion that rape can be treated like any other crime derives from the slogan "rape is not sex, it is violence," a phrase that has been passed down from the first rape speak-outs of the early 1970s and repeated blindly by every well-meaning writer on the subject. But that slogan makes it sound as if rape were as free of sexual content as pickpocketing—an untruth so blatant it will convince no one. Of course sex is involved in rape. That is what makes it worse than simply being punched in the face. Rape is best characterized as torture that uses sex as a weapon. Like a torturer, the rapist uses sexual acts to dominate, humiliate, and terrorize the victim. To deny the role of sexual humiliation in rape is to deny victims the horror of what they have been through.

As long as people in our society have any sense of privacy about sexual

---

9. I use this term loosely. Legally, the accuser in a rape case is the State; the victim is merely a witness in the case.

acts and the human body, rape will carry a stigma—not necessarily a stigma that blames the victim for what happened to her, but a stigma that links her name irrevocably with an act of intimate humiliation. To name a rape victim is to guarantee that whenever people hear her name, they will picture her in the act of being sexually tortured. To expose a rape victim to this humiliation without her consent is nothing short of punitive. At the moment, the media covers rape too irresponsibly to be able to destigmatize the crime merely by naming victims. Until rape coverage is reformed as a whole, naming victims will only further humiliate, expose, and endanger them.

In conclusion, I suggest that the media quickly reform its coverage of rape because it is currently doing much more harm than good to victims and to the public's understanding of the crime.<sup>10</sup> I believe these reforms should be carried out voluntarily, as ethical acts on the part of the media, and should not be forced by law, for I consider the freedom of the press sacrosanct to democracy. My most urgent recommendation to the media is this: stop focusing on the private lives and personalities of survivors of rape and, instead, concentrate on the much more difficult, and much more valuable question of why rape, incest, sexual assault, and harassment happen at all.

---

10. See Benedict, *supra* note 4, at 259-66, for a discussion of suggested reforms to the media's coverage of rape.

