

# Sports Heroes, Sexual Assault and the Unnamed Victim

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# SPORTS HEROES, SEXUAL ASSAULT AND THE UNNAMED VICTIM

SHIRLEY A. WIEGAND\*

In 1971 Cynthia Cohn was the victim of a rape-murder. Local television stations published her name and photograph. "For Cynthia's family, the public disclosure of her name turned life into a nightmare. Her brother and sisters were subjected to humiliating taunts. Cruel children produced graffiti that read: FREE THE SANDY SPRINGS SIX [the six defendants]."<sup>1</sup> Cynthia's father sued the news organizations under a Georgia statute that prohibited publication of the names of rape victims, similar to other statutes then in effect in Florida, South Carolina, and Wisconsin.<sup>2</sup> The United States Supreme Court held the statute unconstitutional.<sup>3</sup> Fourteen years later, in 1989, the Supreme Court again held that the media cannot be penalized for printing truthful and lawfully obtained information, in particular the name of a sexual assault<sup>4</sup> victim.<sup>5</sup> The Court held that the media's right to publish the names of sexual assault victims is constitutionally protected.

Nevertheless, in 2001, despite the Court's clear message to the media, it has become the norm for news organizations not to publish the names of sexual assault victims. Nearly all news organizations<sup>6</sup> have adopted policies against releasing the names,<sup>7</sup> a policy that seems clearly in line

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1. Jerrold K. Footlick et al., *The Right to Privacy*, NEWSWEEK, Mar. 17, 1975, at 66.

2. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 471 n.1 (1975).

3. *Id.* at 476.

4. The term "sexual assault" refers to a variety of sexual offenses, including rape. In this article, I use the two terms interchangeably.

5. *Florida Star v. B.J.F.*, 491 U.S. 524, 542 (1989).

6. It is estimated that 5-10% of American newspapers publish the names of sexual assault victims. Alex S. Jones, *Naming Rape Victim is Still a Murky Issue for the Press*, N.Y. TIMES, June 25, 1989, § 1, at 18.

7. The Society of Professional Journalists includes in its Code of Ethics a statement that journalists should "[b]e cautious about identifying juvenile suspects or victims of sex crimes." SOCIETY OF PROFESSIONAL JOURNALISTS, CODE OF ETHICS, available at [http://www.spj.org/spj\\_ethics\\_code.asp](http://www.spj.org/spj_ethics_code.asp). "[M]ost newspapers' ethics policies say something about not naming sexual assault victims." Pamela Reasoner, Editorial, *Protecting a Victim's Identity*, S.F. CHRON., Aug. 27, 2000, at 1.

with public sentiment. Those who do publish the names often become the focus of widespread public anger and attack.<sup>8</sup>

This article examines the rationale of the current policy and the effect it has on those accused of sexual assault, particularly well-known defendants. It focuses on the case of one well-known sports figure and questions whether or not the current policy continues to make sense in that context. The article concludes that in the not too distant future, the circumstantial context of some sexual assault cases may favor name publication. Whether or not the public accepts such a policy change will depend on continued public education about sexual assault, thoughtful reporting, and the media's willingness to play an instrumental role in this process.

### PUBLISHING THE NAMES OF SEXUAL ASSAULT VICTIMS

It was common practice prior to the 1970s to publish the names of sexual assault victims, but pressure in the '70s from various women's groups and rape counselors prompted many editors to question their policies and prompted states to pass legislation in favor of the sexual assault victim's privacy.<sup>9</sup> Today, several states still have statutes prohibiting the press from printing the name of a sexual assault victim.<sup>10</sup> A number of states offer some protection to sexual assault victims through statutes that permit public officials to withhold victim information from the media and the public.<sup>11</sup> In some states, the law protects the names of only those sexual assault victims who are children.<sup>12</sup> Even where the

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8. See, e.g., Deborah W. Denno, *The Privacy Rights of Rape Victims in the Media and the Law: Perspectives on Disclosing Rape Victims' Names*, 61 *FORDHAM L. REV.* 1113 (1993); William Glaberson, *Times Article Naming Rape Accuser Ignites Debate on Journalistic Values*, *N.Y. TIMES*, Apr. 26, 1991, at A14; Michelle Johnson, *Of Public Interest: How Courts Handle Rape Victims' Privacy Suits*, 4 *COMM. L. & POL'Y* 201, 210 (1999).

9. Johnson, *supra* note 8, at 210 (citing Elizabeth M. Koehler, *Emergence of a Standard: The Rape Victim Identification Debate Prior to 1970* (1995) (unpublished master's thesis, University of Washington)).

10. GA. CODE ANN. § 16-6-23 (1999); FLA. STAT. ANN. § 794.03 (West 2000); S.C. CODE ANN. § 16-3-730 (Law. Co-op. 1985).

11. Michelle Johnson, *Protecting Child Sex-Crime Victims: How Public Opinion and Political Expediency Threaten Civil Liberties*, 20 *SEATTLE U. L. REV.* 401, 403 (1997); see also ALASKA STAT. § 12.61.140 (Michie 2000); FLA. STAT. ANN. § 92.56 (West 1999); MASS. GEN. LAWS ANN. ch. 265, § 24C (West 2000); MONT. CODE ANN. § 44-5-311 (1999); NEB. REV. STAT. § 81-1842 (1999); NEV. REV. STAT. ANN. §§ 200.3771-200.3774 (Michie 1997); TEX. CRIM. PROC. CODE ANN. § 57.02 (Vernon 2001); VA. CODE ANN. § 19.2-11.2 (Michie 2000); WASH. REV. CODE ANN. § 42.17.310(e) (West 2000) (all crime victims if present danger).

12. See, e.g., IOWA CODE § 915.36 (2001); ME. REV. STAT. ANN. tit. 30-A, § 288 (West 1996); N.J. REV. STAT. § 2A:82-46 (1994); N.D. CENT. CODE § 12.1-35-03 (1997); R.I. GEN. LAWS § 11-37-8.5 (2000); WYO. STAT. ANN. § 14-3-106 (Michie 2000). Wisconsin "urges the

victim's identity is not protected by law, nearly all news organizations have policies that withhold the sexual assault victim's name.<sup>13</sup>

Government officials often cooperate with the media in protecting the names of sexual assault victims, even when not mandated. In one recent case involving a Green Bay Packers football star, the criminal complaint identified the 17-year-old victim by only her first name and last initial, and local newspapers did not publish her name. The Waukesha County District Attorney's office (where the case originated) has a policy of not publishing the sexual assault victim's last name in court documents, although her full name is used in open court during both the preliminary hearing and trial.<sup>14</sup> Therefore, anyone attending the court proceeding would learn who she is. However, policies differ, and in the adjacent Milwaukee County the victim's full name is "almost always" included in the criminal complaint and other documents, which are freely available to the public.<sup>15</sup> In other words, if a victim's name does not appear in the media, it is because of the media's self-restraint. Wisconsin has no law that prohibits such publication. The state's most widely-circulated newspaper (as well as other state papers) has adopted a policy of not releasing the names of sexual assault victims even though the newspaper has easy access to such information, unless the victim wants her name published.<sup>16</sup>

Even in the most publicized of rape cases, the media have not wavered. In 1989 they provided extensive coverage of a particularly brutal rape in New York's Central Park involving a "Manhattan investment banker." Despite the widespread coverage, including two trials that resulted in the conviction of five teenagers, the public still knows the victim only as the "Central Park jogger."<sup>17</sup>

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news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases." WIS. STAT. § 950.055 (2000).

13. Jones, *supra* note 6.

14. Telephone interview with Paul E. Bucher, District Attorney, Waukesha County District Attorney's Office (Aug. 14, 2001).

15. Telephone interview with Paul L. Tiffin, Assistant District Attorney, Milwaukee County District Attorney's Office (Aug. 13, 2001).

16. Telephone interview with Gary Krentz, Local News Editor, Milwaukee Journal Sentinel (Aug. 13, 2001).

17. Ronald Sullivan, *2 Teen-Agers Are Convicted in Park Jogger Trial*, N.Y. TIMES, Dec. 12, 1990, at A1; Ronald Sullivan, *Defense in 2d Jogger Trial Plans a More Vigorous Fight*, N.Y. TIMES, Aug. 21, 1990, at B3.

## THE CASE OF MARK CHMURA

On April 10, 2000, newspapers, television stations, and other media organizations in Wisconsin and around the country trumpeted the news that Green Bay Packers football hero Mark Chmura had been arrested and accused of sexually assaulting a local teenager. For the next ten months, until he was acquitted, they continued to cover the story, both as headline news and sports news.

Media coverage commenced even before he was charged with a crime and continued for ten months until his trial. Within days of his arrest, the media observed that Mark Chmura had several years earlier “appeared in a United Way TV spot along with his wife, asking viewers to give generously to help the disadvantaged. . . . The invitation to star in the ads goes to the best and the nicest.”<sup>18</sup> They also informed the public that Chmura is the father of two children and that he frequently attended Republican Party fundraisers.<sup>19</sup> He did not like President Clinton and publicly criticized him for his affair with Monica Lewinsky, even refusing to attend a White House ceremony honoring the Packers for their Super Bowl victory.<sup>20</sup> He was a “self-professed moral pillar of the community,”<sup>21</sup> and a “vocal right wing Christian.”<sup>22</sup> Until the arrest, “everyone who met Chmura assumed—no, they knew—he was going places after pro ball. To a network broadcast booth perhaps, to political office, or with his striking looks and easy charisma, maybe even Hollywood.”<sup>23</sup> Adding fuel to the media fire surrounding Mark Chmura was the NFL draft, which took place the weekend after his arrest.

On the other hand, because the accused was so well-known, many members of the media demonstrated a certain smugness in observing a hero fallen. One local radio host commented, “I think people have had it with some of the things that athletes tend to do and think they can get away with.”<sup>24</sup> A newspaper sports writer wrote just a few days after the arrest, “Regardless of the outcome of his case, Chmura’s outstanding career with the . . . [Green Bay Packers] should be terminated. Right

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18. Rick Morrissey, *Sex Allegation Alters Views of Chmura*, CHI. TRIB., Apr. 12, 2000, at 1N.

19. *Id.*

20. *Id.*

21. Tom Oates, Commentary, *Packers Must Cut Chmura Loose—Now*, WIS. STATE J., Apr. 13, 2000, at 1C.

22. Michael Gee, *NFL Preview 2000; NFL on Crime Spree—Bad Boys, Bad News*, BOSTON HERALD, Sept. 3, 2000, at B38.

23. David E. Thigpen, *Path of a Falling Star*, TIME, Jan. 8, 2001, at 58.

24. Morrissey, *supra* note 18, at 1N.

now.”<sup>25</sup> The author believed that “playing drinking games and hot-tubbing at 4 in the morning” with teenagers warranted firing.<sup>26</sup>

No one disputed that Chmura had exercised bad judgment. He had spent the night at a friend’s home, where his friend’s daughter was hosting her high school post-prom party. While there, he played drinking games with the teenagers, stripped to his underwear to sit in a hot tub with them, and ended up in a bathroom with a 17-year-old girl who claimed he raped her.

As the media fanned the flames of public interest in Chmura’s character, his accuser sat on the sidelines. She had no name and no face.<sup>27</sup> Thus, all the media’s and public’s attention honed in on the accused. For many, it did not matter. They quickly made up their minds about Chmura’s guilt or innocence, resorting to their assumptions about athletes and athletes’ propensity to commit sexual assaults and other violent acts. Others, meanwhile, resorted to their long-held assumptions about women who “cry rape.” But many could not help but wonder about the woman who had created this media frenzy in the first place.

It is not at all surprising that a prominent sports figure would warrant such attention. As with movie stars, rock musicians, and others, the public maintains a strong interest in both their deeds and misdeeds. Indeed, we seem to enjoy reading and hearing about our heroes’ failures as much as their successes. The media often rewards our prurient interest by supplying us with titillating details about our heroes’ drug problems, domestic strife, and acts of violence.

When our heroes engage in sexual misdeeds, the level of interest and media attention ratchets up several notches, resulting in a barrage of reports, stories, and speculation that escapes no one’s notice. Consequently, we learn far more about our hero than anyone would think possible or even appropriate: we focus on him, his family, his career, his past personal and professional life, and his character. We dissect and analyze. If he has a good public reputation and performs well in public, we cannot help but favor his side of the sordid story. If his reputation is tarnished

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25. Oates, *supra* note 21, at 1C.

26. *Id.*

27. Throughout the pretrial proceedings, the victim’s name was not mentioned in the media. In the criminal complaint, she was known as Allison M. During the trial, however, both a local radio station and Court TV inadvertently released her name in the process of broadcasting the proceedings. Following the trial, a local football coach posted the victim’s photograph on eBay, an Internet auction service. Lisa Sink, *Judge Won’t Allow Hair Evidence; Chmura Lawyers Say Time Too Short for Tests*, MILWAUKEE J. SENTINEL, Jan. 19, 2001, at 1B; Rick Barrett, *Putting Reins on TV, Radio?; Judge May Ask High Court to Ban Broadcasts of Sexual Assault Trials*, MILWAUKEE J. SENTINEL, Feb. 21, 2001, at 4B.

or his public behavior leaves something to be desired, we doubt his truthfulness. As we draw conclusions about our hero, the accuser remains silent and invisible, with only the prosecutor to tell her side of the story.<sup>28</sup>

Charges of sexual abuse and rape polarize much of the public, especially when a sports figure is involved. In fact, the practice of protecting the sexual assault victim's identity is perhaps most controversial in this context, and the public's curiosity about (and therefore, the news value of) the victim's identity might be greater than in most other cases.<sup>29</sup> Some would argue that since the defendant is subject to such widespread attention and speculation, his victim should be as well. The public's curiosity should be satisfied—they have a “right to know.”

In addition, accusations of rape carry lifelong implications for the accused. Even if one is acquitted, he will forever be identified with the charge. The stigma attaches with the first accusation.

[T]he accused criminal is in a far more vulnerable position than is the accusing victim. The accused must submit to the coercive powers of the state and stands to lose the privileges of freedom. At the very least, the accused will suffer from the lasting public stigma of having been an accused criminal. It is only fair that a victim who is willing to subject a person to the ordeal of a criminal trial be willing to stand publicly by his accusations.<sup>30</sup>

The additional career consequences for an athlete can be devastating. Mark Chmura was arrested the weekend before the NFL draft took place, and the Green Bay Packers thereafter released him. He has not been picked up by another team despite his subsequent acquittal.<sup>31</sup>

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28. The prosecutor, unlike the sports figure, is bound by ethical rules that limit the information provided. See, e.g., ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT R. 3.6 (1996).

29. Ten years earlier, heavyweight boxer Mike Tyson was accused and ultimately convicted of rape. Shortly after the story broke, one newspaper began publishing the name of his victim, claiming that “[t]his is a very public rape case. . . . It's not like just any other rape or it wouldn't have been on the front pages all over the country.” Stan Slusher, *The Ombudsman's Report*, CURIER-J. (Louisville, Ky.), Sept. 16, 1991, at 9A. The *Courier-Journal* first published the victim's name less than two months after the rape. *Tyson Enters Innocent Plea, Calls Situation “Ridiculous,”* CURIER-J. (Louisville, Ky.), Sept. 12, 1991, at 1C. Overseas newspapers also published her name. After the trial, Desiree Washington came forward publicly.

30. Sarah Henderson Hutt, Note, *In Praise of Public Access: Why the Government Should Disclose the Identities of Alleged Crime Victims*, 1991 DUKE L.J. 368, 400 (1991).

31. The Packers' general manager cited other reasons for the release. A week after Chmura's arrest, the Packers drafted another tight end, noting that Chmura's injury the prior season forced them to think of a replacement. Bob Wolfley, *Wolf Says Tight End Was Packers' Most Critical Need*, MILWAUKEE J. SENTINEL, Apr. 16, 2000, at 2C. During the prior

## BALANCING THE INTERESTS OF THE ACCUSED AND THE ACCUSER

Balancing the interests of the accused (defendant) and the accuser (victim) constitutes a difficult task in the best of circumstances. Adding the high-profile case involving a professional athlete might encourage some to weigh in favor of publishing the victim's name.

Why do some police and prosecutors and nearly all media organizations treat rape victims differently? Should these policies give way when the spotlight's glare hones in on a professional athlete (or other well-known defendant)? Before reaching a conclusion, it would be helpful to examine the reasons for guarding the rape victim from public exposure. It is possible that not all of them apply in the context of a sex crime by a well-known athlete.

The reasons for not publishing the victim's name are generally as follows:

1. If the offender is still at large, revealing the names of sexual assault victims may place them at greater risk and subject them to another assault by the same offender;
2. The victim's name is not newsworthy, and all the public needs to know are the circumstances of the rape and some details about the victims;
3. Sexual assault is an invasion of the most personal and intimate nature, and, therefore, victims should remain anonymous;
4. Sexual assault victims should not be exposed to the public while they are struggling both emotionally and physically to recover from the assault;
5. Sexual assault victims are stigmatized by a society that blames the victim for the offense;
6. Publishing the names of sexual assault victims will discourage other victims from reporting assaults.

Although these reasons are not illegitimate, examining them in the light of a highly publicized sexual assault case involving a famous sports hero may lead some to balance the scale in favor of disclosure. Let us examine the reasons one by one.

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season he suffered a neck injury that kept him benched for most of the 1999 season, though several specialists cleared him for play in the 2000 season. Lester Munson, *Scorecard: Chmura Update*, SPORTS ILLUSTRATED, Nov. 6, 2000, at 37. The Packers released Chmura less than two months after his arrest for "salary-cap reasons." Jason Wilde, *Packers, Chmura Part Ways; Team Insists Move Is for Cap Reasons*, WIS. STATE J., June 6, 2000, at 1C.



1. *If the offender is still at large, revealing the names of sexual assault victims may place them at greater risk and subject them to another assault by the same offender.*

This is no doubt true of any assault by a stranger, and there is no evidence that sexual assaulters are more likely than other assaulters to return to the scene of their crime. A wise policy, in the case of stranger-assault, is to protect the names of all victims until their attackers have been apprehended.<sup>32</sup> But when the accuser and accused know each other, as in the high-profile cases involving Mike Tyson, Mark Chmura, and other athletes, this rationale evaporates.

2. *The victim's name is not newsworthy.*

This argument is a difficult one to make for two reasons. First, if the victim's name is not newsworthy for a sexual assault, it is also not newsworthy for any other crime. Also, a sexual assault report is likely to be more "newsworthy" than most crimes, because of both the public's fascination with sex and women's general fear of sexual assault. Thus, it makes little sense to declare that the victim's name is somehow less newsworthy in this context than in any other.

Second, particularly when the defendant is a well-known sports personality, the story becomes even more newsworthy and arguably so does the name of the hero's accuser. It is difficult to accept the argument that this victim is less newsworthy than victims of other crimes, particularly when the accused's name is so much more newsworthy.

3. *Because sexual assault is an invasion of the most personal and intimate nature, victims should remain anonymous.*

Sexual assault is different from other crimes because it involves sexual conduct, which may be reason enough to protect the victim's identity. But just because the crime is "personal" (which many crimes are) and "intimate" does not mean that the victim should remain anonymous. Perhaps the victim's dignity and privacy could be maintained equally well if the media did not publish salacious details about the crime. Why does the public need to know how the act was committed and which sex organs were involved? Furthermore, if the primary concern is to prohibit publication of personal and intimate details, television stations

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32. Certainly, media organizations can exercise this option on a case-by-case basis, and many do.

should not be permitted to televise such trials, as they were in the Chmura case.

4. *Sexual assault victims should not be exposed to the public while they are struggling both emotionally and physically to recover from the assault.*

All other crime victims are exposed to the public while they are struggling to recover. Doubtless, many women who are beaten by their husbands and boyfriends would prefer anonymity. They are battered not only physically, but also no doubt suffer shame, embarrassment, and humiliation when their names appear in the media. The same is likely true for those who are mugged on the street by a stranger, or whose houses are burglarized, or who make foolish mistakes that lead to their victimization. The emotional scars that often accompany physical injury may differ for the sexual assault victim, but they may not. Women who have been battered by their husband or lover even once may never fully recover. Nevertheless, sexual assault victims receive special protection. In fact, the woman who is badly beaten but not sexually assaulted by her lover receives no protection from public scrutiny, but the woman who is sexually assaulted but not otherwise physically injured retains her anonymity.

This suggests that sexual assault is different from all other crimes. Former United States Supreme Court Justice White remarked that “[s]hort of homicide, [rape] is the ‘ultimate violation of self’” because of its “almost total contempt for the personal integrity and autonomy of the female victim and for [her] privilege of choosing those with whom intimate relationships are to be established.”<sup>33</sup> Sexual assault involves the most intimate contact between the attacker and his victim, and experts have argued that for this reason some victims never fully recover.

Publication of the victim’s name undoubtedly draws public attention and informs those who are unaware of her situation. It may delay recovery, but it may also speed the recovery. Those who know the woman will likely know of the assault and will have already provided their support and comfort. Those who know the woman but were unaware of the assault until publication may now step forward to offer their support. If they do so, they will assist her recovery. If on the other hand they demonstrate insensitivity or morbid curiosity, then their knowledge is harmful.

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33. *Florida Star*, 491 U.S. at 542 (White, J. dissenting); see also *Coker v. Georgia*, 433 U.S. 584, 597 (1977).

Under ordinary circumstances, those who do not know a crime victim would be unlikely to have contact with her at all upon learning her name, and so would do no harm. Unfortunately, when the crime is sexual assault, the reactions of those who know neither the accused nor the accuser may be hurtful. Thus, publication may help the victim in some ways and hurt her in others.

5. *Sexual assault victims are stigmatized by a society that blames the victim for the offense.*

In the 1948 case, *State v. Evjue*,<sup>34</sup> a criminal complaint was filed against a newspaper editor after he published the name of a rape victim in violation of Wisconsin law. The Court, upholding the constitutionality of the law, noted that the “statute is intended to protect the victim from embarrassment and offensive publicity which no doubt have a strong tendency to affect her future standing in society.”<sup>35</sup> One must ask why *her* standing would be so affected, and the answer confirms the notion that sexual assault victims are viewed as tainted in some way by the crime committed against them. Indeed, a number of legal scholars have discussed the “stigma” a rape victim suffers: she is “being scrutinized and judged by her community. There is no other crime in which the victim risks being blamed and in so insidious a way—she asked for it, she wanted it.”<sup>36</sup>

The stigma that attaches to rape victims stems from at least two sources: First, the public suspicion that women lie about being raped more often than victims of other crimes, because either they feel guilt or remorse about having sex, or they want to exact revenge upon the male; and second the continuing public perception that a woman bears the entire burden of any sexual encounter and if she was raped, then she was in the wrong place, at the wrong time, wearing the wrong clothing, sending the wrong message, or with the wrong people.

Both sources are difficult to overcome. Various commentators disagree about the number of false rape allegations. Many legal scholars have argued that the number of false rape claims is the same as that for other crimes (around two percent), but some assert that the figure is actually much higher.<sup>37</sup> Despite what scholars argue it is the public’s

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34. 33 N.W.2d 305 (Wis. 1948).

35. *Id.* at 312.

36. Paul Marcus & Tara L. McMahon, *Limiting Disclosure of Rape Victims’ Identities*, 64 S. CAL. L. REV. 1020, 1030 (1991).

37. Edward Greer, *The Truth Behind Legal Dominance Feminism’s “Two Percent False Rape Claim” Figure*, 33 LOY. L.A. L. REV. 947, 962 (2000) (“It is not implausible that at least twenty percent of non-stranger rape claims are false.”).

perception that can most damage the rape victim. If the majority believe that women's claims of rape cannot be trusted, then all victims will carry the stigma and suspicion, and publication of their names may bring unwarranted and unpleasant attention. Under these circumstances, her recovery may be prolonged or even exacerbated.

This is particularly true when the sexual assault defendant is not a "knife-wielding stranger" but rather is acquainted with the victim, if only briefly.<sup>38</sup> In the Chmura case, the high school student had served as babysitter for Chmura's children. For rapes involving acquaintances, the strongest defense is that she consented, a defense that is not ordinarily effective for stranger rape. When the defendant is a handsome, wealthy or popular sports hero, the public can easily imagine that many women—including perhaps the victim—would want to have sex with the defendant. Criminal defense attorneys naturally take advantage of this attitude. "With a consent defense, the woman's character is inevitably a critical issue, because if their sexual encounter was consensual, then her story of rape must have been a fabrication or at least an exaggeration."<sup>39</sup>

The criminal defense attorney (and the defendant) must, in nearly all non-stranger cases, adopt this position. Ordinarily, if a woman reports her sexual assault in a timely fashion, there is little doubt that she has had sexual relations, and DNA evidence can connect semen traces to the defendant. The fact of such damning evidence is similar to a robbery in which the stolen goods are found in the house of a defendant who is an acquaintance of the robbery victim. The only defensible position is that the victim gave (or sold) the goods to the defendant. The question then becomes whether this particular victim is likely to give away (or sell) such items, and whether it is likely that the victim would have turned over these items to this particular defendant.

It is inevitable then that the jury (and the public) would want to know not only who the defendant is, but also who the victim is and what sort of characters they both are. This is particularly true when the defendant is a sports hero; not only are his reputation and career on the line, but also in some cases the team itself may suffer, which affects fans directly. One could witness this during the Mark Chmura trial, when some

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38. David P. Bryden & Sonja Lengnick, *Criminal Law: Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1202-03 (1997) (citing statistics for stranger rape ranging from 15% to something less than 50% of all rapes). True stranger rape, rape by a man the victim has never seen before, is not as common as acquaintance rape. "The traditional image of a rapist is a knife-wielding stranger. . . . But most rapes are perpetrated by acquaintances of the victim: lovers, dates, co-workers, neighbors, relatives, and so on." *Id.* at 1202-03.

39. *Id.* at 1204.

who attended the trial wore their Green Bay Packers jackets as a show of support.<sup>40</sup>

The defense's cross-examination of an accuser in the sexual assault case is considered one of the most difficult parts of the legal process. Releasing her name prior to the trial may hasten the point at which she is subjected to probing, intruding, and embarrassing questions in an environment where the prosecutor cannot protect her.

It is interesting to note that a number of public surveys indicate the public recognizes that rape is different from other crimes, because the public opposes releasing the victim's name.<sup>41</sup> On the other hand, not publishing the names of rape victims may tend to perpetuate the stigma, suggesting that the victim has something about which to be ashamed. Furthermore, as long as the victim remains in the shadows, she is unable to tell her story and thereby educate the public. But placing this burden on victims before public opinion has changed may be asking too much.

6. *Publishing the names of sexual assault victims will discourage other victims from reporting assaults.*

This depends upon how the public responds to the victim once her name is known, which in turn depends upon how the public views sexual assault generally and whether they hold traditional stereotypes about its victims. It seems likely that public perceptions are changing. Despite the nationally televised rigorous cross-examination of Mark Chmura's accuser, and the fact that he was acquitted after only two hours of jury deliberation, "many callers to the Sexual Assault Treatment Center . . . were grateful that the Chmura case had been reported and prosecuted. . . ."<sup>42</sup> Throughout the ten months of media coverage, the major Wisconsin newspapers printed very few letters to the editor that constituted personal attacks on the victim. Many letters were critical of Chmura.

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40. Laurel Walker, *Drama, Details Draw Spectators to Chmura Trial*, MILWAUKEE J. SENTINEL, Jan. 27, 2001, at 3B.

41. See, e.g., Denno, *supra* note 8, at 1127; *Should the Media Continue to Withhold the Names of Alleged Rape Victims?*, BOSTON GLOBE, Mar. 26, 1993, § Metro/Region, at 27 (in this opinion sample, 87% favored withholding the names); Dennis Cauchon, *Papers Reconsider Naming Accuser*, USA TODAY, Dec. 12, 1991, at 2A (even after a verdict acquitting a rape defendant, 63% responded that the woman should remain anonymous); *Most Kentuckians Still Say "No" to Naming the Victims of Rape; Sexual Assault; Domestic Violence*, COURIER-J. (Louisville, Ky.), Oct. 23, 1991, at 8A (76% of women, 71% of men).

42. Tom Kertscher, *Experts Worry Some Rape Victims May Not Speak Out Now; Chmura Verdicts, Cross-Examination Send Message*, MILWAUKEE J. SENTINEL, Feb. 6, 2001, at 11A.

## IS A CHANGE WARRANTED?

Because public opinion is squarely on the side of not publishing the names of sexual assault victims, media organizations are unlikely to change current practices. Until sexual assault victims are viewed on a par with other crime victims, they should receive protection. But a blind adherence to current policy is not necessarily the best approach.

For one thing, the Internet ensures that traditional media organizations will be left out of the story that is swirling around them. In the case of a high-profile defendant like Mark Chmura, the Internet buzzes with speculation, accusation, and information. Because it is relatively easy to learn a rape victim's identity—by going to the courthouse and reading the complaint, by attending the preliminary hearing and/or trial, or by contacting individuals familiar with the case—it is a simple task to post such information on the Internet and distribute it as widely, even more so, than if it were published in a newspaper. In fact, the Chmura case demonstrates how easy it is to accomplish this. A local football coach posted the victim's photograph on eBay, an Internet auction service, to be sold to the highest bidder.<sup>43</sup> He removed it only when public pressure turned against him.<sup>44</sup> It is nearly impossible to guard against such private conduct, and if the information is going to be widely available, the media may decide to follow suit, as they have done in at least one earlier high-profile case.<sup>45</sup>

Compared to the wild west terrain of the Internet, responsible media outlets might take the opportunity to provide well-informed, thoughtful information about the case and might provide the accuser with an opportunity to present her side of the case. This is exactly why earlier victims—Desiree Washington after Mike Tyson was convicted and Patricia Bowman after William Kennedy Smith was acquitted—agreed to speak to the media. Both said they wanted to defend their actions and tell their own stories.<sup>46</sup>

Furthermore, if more victims are encouraged to speak out, they may contribute to a better understanding of sexual assault and thereby lessen the stigma they currently suffer. Some have argued that until victims can

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43. Sink, *supra* note 27, at 1B; Barrett, *supra* note 27, at 4B.

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45. That was in fact the reason that the *New York Times* published the name of William Kennedy Smith's accuser in 1991. Once a couple of tabloid newspapers and NBC News had published the information, the *New York Times* did so, too. *On Names in Rape Cases*, N.Y. TIMES, Apr. 17, 1991, at A17.

46. Laura Myers, *Lifting Veil of Secrecy in Rape Cases Called an Effort to Regain Control*, L.A. TIMES, Apr. 5, 1992, at B5.

safely speak out, the time is not right for them to be forced to go public. On the other hand, the Internet appears to have done that already.

The key to resolving this issue, of course, is to eliminate the stereotypes that people hold about rape victims. In the case involving a sports hero or other well-known defendant, eliminating stereotypes about him can be just as important. The media has an opportunity to confront these issues squarely but rarely seems to do so. Simply taking the victim out of the picture slows the process by which the public might become more fully aware of the complexity of sexual assault.

Until that time, however, one must ask this question. If my daughter, wife, mother, or sister were sexually assaulted, would I want to see her name in the newspapers or on television? If not, why not? If the answer has anything to do with the shame you or she would feel, or fear that she would become the subject of vicious personal attacks, then current policy of protecting her name should remain in place, and individuals and the media should continue to educate the public about sexual assault. Until the time that the public treats sexual assault victims just like any other crime victim, famous defendants like Mark Chmura will face the glare of the public spotlight alone. Thus, it is in everyone's interest to contribute to a better understanding of sexual assault.