

ANONYMITY FOR WOMEN IN RAPE TRIALS



BY CONRAD RUSSELL

Anyone wanting to argue for anonymity in any legal proceedings must wrestle with the Kafkaesque innuendoes of the word. It is one of the oldest traditions of the common law that those who are accused should know who accuses them, and should be able to confront their accusers in open court. This is part of the traditional belief that justice must be seen to be done. For these reasons, requests for anonymity are always likely to be resisted, and must be argued carefully.

It is therefore the more important to make it clear what 'anonymity' in rape cases actually involves, since it does not threaten any of these legal traditions. We read in the press that the charge has been brought by 'Miss X', but inside the court, she passes under her own name. The man knows who accuses him. The right to anonymity, then, is more properly seen, not as a case of secret justice, but as a case of press privacy.

Probably no one who has not experienced it can imagine the sheer battering weight of press attention in a rape case. Even seasoned actors or politicians, who are used to press attention, may find it difficult to deal with. To those who are not used to it, and are not theatrical in their temperament, the effect may be shattering. To be unable to move without a salvo of flash bulbs is disconcerting enough, but to have the press camped, not only outside one's door, but outside one's parents' door, can induce paranoia in the strongest. If the press should attempt to trace people's previous sexual history, they may do real damage, and not only in terms of prejudicing the trial.

The strongest may need courage to undergo this ordeal. For a woman who has just suffered rape, and is in a state of shock, the difficulty may be insuperable. Even with the protection of anonymity, many women find that admitting in public that they have been raped is something they simply cannot do, and their cases never come to court. The loss of anonymity could only make their number increase.

Most people who have experience of talking to rape victims know that women's reactions to the experience vary a very great deal. One of the common ones is that of victim guilt, in which the woman struggles to persuade herself that what happened to her has been somehow her fault. That type of reaction is found among victims of many things, even of routine accidents. It is a reaction to the shock of finding oneself completely unable to control events. The attempt at self-blame is an attempt to reassert the idea that, all appearances notwithstanding, the situation was somehow controllable. What is totally terrifying is the fact that it was not.

To any woman suffering this sort of victim guilt, a massive press intrusion into her private life may present innumerable new opportunities to indulge it, and may lead, in the end, to real breakdown. Such dangers must deter women from reporting cases of rape. This is easy enough to do already. If there were further discouragement to complaint, the rate of reporting for rape would become unacceptably low, and the potential rapist who asks 'am I going to get caught?' would too easily be able to answer 'no'.

The progress of an ordinary rape trial is already a very considerable deterrent to complaining. This is inevitable. When two witnesses tell conflicting stories of the same incident, justice cannot be done without close cross-examination, and detailed accounts of sexual behaviour cannot be avoided. Yet the fact that so much unpleasantness is necessary is surely an argument for avoiding further unpleasantness which is not necessary - especially since it is by no means impossible that unreported rapists may offend again.

Those who would deny women anonymity argue on the ground that it is necessary to deter frivolous or vexatious complaints. There is no sense in denying that such complaints do happen. There is probably no criminal field in which false charges do not happen, and in a field which stirs such strong and such mixed, emotions as sexual behaviour, they may be more likely than in some others.

The question which needs asking is whether it is the false or the true charges which are more likely to be deterred by the publicity which would follow from loss of anonymity. The equivalent question needs asking in other fields. Some thirty years ago, doctors overburdened by patients making what they saw as frivolous demands for prescriptions used sometimes to defend prescription charges as a way of deterring such frivolous demands. Yet anyone who has known a real hypochondriac will know that they are unlikely to be deterred from asking for prescriptions by any charge whatever. On the other hand, the frugal and the stoic, even when more ill, are much more likely to be deterred.

A woman who tells, as some are alleged to have done, a cock and bull story of being abducted at knife-point and driven around the country being raped at various points along the way, may well be looking for attention. Someone who is looking for attention may be attracted, rather than being deterred, by the thought of massive press publicity. On the other hand, it is the women who have suffered the deepest trauma from a genuine rape who most often want to go away and hide. People who make false accusations may have something of the theatrical in their makeup, and find being put on stage in front of an audience an attraction rather than deterrent. On the other hand, a woman who has suffered a breakdown from a genuine rape is very easily deterred indeed from telling her story. The loss of anonymity might deter the genuine, while failing to discourage the false accuser.

Finally, we should consider what is to happen after the trial to the woman who is branded by name as a false accuser. If a man sees her home after a party, and she invites him in, with what confidence will he accept the invitation? She may find that she has to make her own way home after parties. What is to happen if, like the boy who cried 'wolf', the next time she meets a genuine rapist? If he knows she is branded as a false accuser, may he not calculate that he can rape her with impunity? May she not be left complaining, like Cain, that 'every one

that findeth me shall rape me'? The Lord decided that even Cain deserved protection from this fate. Some may say that she brought it on herself, but that fate is one no one deserves. It completely contradicts the basic idea of the law, that everyone, no matter what their record, is entitled to the equal protection of the law. Without anonymity, that basic right cannot be preserved.

Rape cases are an extreme example of the potential for conflict between the right to impartial justice and the right to a free press. Conflict should be avoided where possible, but where it cannot be avoided, the right to impartial justice should surely take priority. At the moment of decision, the focus must be on allowing the court to get at the truth. There is no other institution which has no vested interest in anything else.

This may mean that we have to look at claims, in some circumstances, for anonymity for witnesses. It is by no means unknown for witnesses to decide they do not want to 'get mixed up in' such a case, and a subpoena for an unwilling defence witness will not always solve the problem. Moreover, witnesses may have to testify to things severely embarrassing to themselves. If, for example, a woman has to testify to having exercised her undoubted right to say 'no means no' at the very last moment, and describe the accused's reaction

when she did so, she may find cross-examination almost as unpleasant as the accuser herself. The thought of one's relations reading such a story over their Sunday breakfast is not particularly attractive. Giving evidence in such circumstances calls for courage and integrity of an order not all of us possess, and the chance to do justice may depend on the willingness of such witnesses to tell their story. Should we then consider how far the judge should enjoy a discretion to direct that the name of a witness may not be published in the press?

The rights of a free press and the rights of impartial justice may conflict at many points. Witnesses, quite rightly, are not allowed to sit in court before they give their testimony. The risk that witnesses may prepare their evidence is a real one. Yet this restriction is nugatory if the witnesses who cannot hear the testimony of those who testify before them can nevertheless read it splashed all over the papers. It is good that the press should be free, but not if it becomes so free that everyone else is not. One of the reasons why the anonymity of women in rape cases is so valuable is that it is one of the few fields in which we already have a press privacy law.

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## WHAT'S IN A NAME? ANONYMITY IN RAPE CASES

BY PETER HUGHES, Q.C.

The trial, in October last year, of London University student, Austen Donnellan, on a charge of raping a fellow student, generated considerable public interest and media attention. This was in part for the light which it shed on current student mores, and also for the attitude of the university authorities towards such an allegation within a collegiate community.

During and in the immediate aftermath of the trial he and the young lady, Madelaine Allen, who was called by the defence to give evidence of her own sexual relationship with the defendant to prove that he was not the sort of person likely to commit rape, were widely identified in newspapers and on television, not just by name but also by photograph. This was all in stark contrast to the anonymity afforded

throughout by law to the complainant.

Austen Donnellan was eventually acquitted with an accompanying blaze of publicity, letters to "The Times" [for one of which I must confess my own responsibility], and articles in the so-called "quality press". Naturally one hopes that he has been able to slip back into relative obscurity, and get on with his