Reporting On Kobe
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The Kobe Bryant rape accusation case has become a national cause celebre in the past few weeks. Heavily reported by traditional print and electronic media, it has also produced enormous interest on the Internet. One search engine reports Kobe related searches have been more popular than any other topic.

None of this interest is surprising. The case, which one observer has described as a combination of O.J. Simpson and the Clarence Thomas/Anita Hill hearings, has all the elements needed to stir the public imagination: allegations of a serious crime involving a famous athlete; a mysterious woman; some murky facts together with high financial stakes -- all likely to play out in a classic courtroom confrontation.

But the Kobe case, for all its drama and spectator interest, has also raised a controversial issue. It is an issue that is urgent to talk about -- and in fact is being talked about across the country -- and that is the policies followed in reporting on rape cases.

Some 33 states have rape shield laws that protect the identity of someone alleging rape. In addition, operating policy today in virtually all mainstream media is to not publish the names of someone alleging rape, while usually publishing names of those accused.

This policy -- identifying adults accused, but shielding the identity of accusers -- is not followed for any other alleged crime, violent or non-violent. It is unique to the crime of rape. The rationale for treating rape differently than any other crime is that it is different from any other crime in that a stigma is attached to rape by a society that still fails to understand it as a crime of violence.

In addition, the policy of shielding the identity of accusers has been justified as necessary to encourage rape victims to report the crime. Rape is one of the least reported crimes (some studies estimate only 16 percent of rapes are reported) and shielding the identity of accusers may encourage higher reporting of the crime.

Not everyone has been comfortable with a policy that treats accusers differently than those accused. Journalists for at least a decade have wrestled with the inherent unfairness in the policy, but by and large, support for it has been steady, if not enthusiastic.

But that steady if unenthusiastic support seems threatened by the publicity given to the Kobe case. The case seems to be crystallizing long-simmering unease about using the media to skew the balance between accusers and the accused.

In fact, both journalists and non-journalists are increasingly arguing that we should examine and probably end the practice of naming the accused, but shielding the accuser's identity. Opponents of that policy generally make four basic arguments:

**THE POLICY IS IMPRACTICAL AND UNWORKABLE** -- Shielding the identity of accusers is patently impossible in the age of the Internet. Traditional media are no longer the exclusive gatekeepers of public
information. It is out there and people are going to get it. Bryant’s accuser’s name has been announced over talk radio in at least 60 cities. Anyone with a browser and 20 minutes can get her name, picture, home address and e-mail address, as well as an enormous amount of other personal information about her. In addition, some tabloids have published information on the accuser including a picture. What has happened in the Kobe Bryant case will happen again and again. The cat is out of the bag, and nobody is going to get it back in again.

**THE POLICY IS UNFAIR AND HYPOCRITICAL** -- Accusing someone of rape while shielding the accuser treats those accused of rape differently than those accused of any other crime. And naming the accused but shielding the identity of the accuser implies guilt. Moreover, the policy is outrageously hypocritical. We proclaim that rape is not about sex but a crime of violence, but then we hypocritically create a special category of sex crime victims giving them special standing not available to victims of other violent crimes. This is trying to have it both ways and it doesn’t work.

**THE POLICY MOCKS THE PRESUMPTION OF INNOCENCE** -- Under our legal code, the presumption of innocence is given to anyone accused of a crime. And the presumption of innocence is no mere legal nicety. It is based on centuries of common law experience that has taught that some people do make false accusations. How widespread are false rape charges? In fact, there is no agreement among the experts. The estimates range from a low of 2 percent cited by Susan Brownmiller to a high of 40 percent reported by Eugene Kanin. The FBI (1995) estimate is 8 percent. But whatever the true figure, some false reporting does exist, and because it does, every accused person is entitled to the presumption of innocence.

**THE POLICY IS SELF-DEFEATING** -- The policy actually produces the very effect it is trying to avoid. Shielding rape accusers from identification merely reinforces the public perception that rape, unlike other crimes, is something to be hidden and concealed -- somehow shameful and demeaning. To the extent public opinion believes that to be the case, the policy of shielding accusers actually reinforces that belief. The clear message of the policy is that rape victims have something to hide, something to be ashamed about.

Any one of these arguments would gives us pause to consider the wisdom of continuing to name accused while shielding the identity of accusers. But together they seem compelling.

Clearly, maintaining the status quo is not an option. The only real choice mainstream media have is to continue the old policy and become increasingly marginalized by non-traditional media or to break with the now no longer workable policy and come up with a new one.

But we have some options as to how we do that. Simply reporting on rape cases like any other crime is simplest and probably best. Media tend to lose their way when they violate what one journalist has referred to as the ?north star? of journalism: the principle that the press should report what it knows when it knows it.

However, media that are not prepared to do that can otherwise begin to treat accusers and the accused evenhandedly, perhaps by not publishing any names at all when reporting on rape stories. That is far from ideal, but would at least begin to move us away from the unfair, impractical and hypocritical policy now in place.

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