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ARRESTING THE VICTIM

A 17-year old girl is arrested for not showing up at the trial of her alleged rapist

By Julius (Jay) Wachtel. According to [section 1219\(b\)](#) of the California Code of Civil Procedure, “no court may imprison or otherwise confine or place in custody the victim of a sexual assault [for] refusing to testify concerning that sexual assault or domestic violence crime.” So how is it that a 17-year old rape victim was locked up for three weeks after failing to appear at her alleged assailant’s preliminary hearing and trial? Why is she now [wearing a GPS ankle bracelet](#)?

Because a “material witness” warrant isn’t about testifying. It’s about showing up. After [having to dismiss and refile](#) the case against Frank Rackley, 37, something that the courts are unlikely to allow twice, that’s what prosecutors are determined that the teen do.

If guilty, Rackley is truly a dangerous man. His alleged victim, a state ward who lives at a foster home, was only sixteen when he allegedly approached her at a transit station, asked if she had a boyfriend, then forced her into a truck, drove to a dark area and raped her. He then pushed her from his truck. She immediately reported the crime, and her description and a DNA match led to his arrest.

Rackley wasn’t hard to find. A parolee with *six* prior felony convictions (three for robbery and one each for stolen property, stalking and felony evasion), he is literally covered with tattoos, including one of a huge swastika. His record also includes arrests for two 1996 rapes. Neither went to court, one for unknown reasons and the other because the victim wouldn’t testify. He is now being prosecuted for two year-old sexual assaults. One is of the teen, and the other, which took place a month earlier, of a 30-year old prostitute who identified him from a photograph and described his tattoos. Naturally, as an adult and sex worker her testimony isn’t expected to be as compelling as the youth’s.

According to the 17-year old’s lawyer, her client has changed her mind and is now willing to appear and testify. But her travails with the system have become a cause célèbre.

Some claim that prosecutors overstepped their authority. Lisa Franco, the lawyer who negotiated the juvenile’s release, claims that [Marsy’s Law](#), a 2009 act that

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enshrined victim rights in the California constitution, [prohibits punishing victims](#) for failing to cooperate. “She’s afraid of confronting her rapist, and she doesn’t want to testify. By imprisoning her it’s just punitive, punishing her for not wanting to testify, which is contrary to what Marsy’s Law stands for. She’s being bullied because she doesn’t want to do what the D.A. wants her to do.”

So far the courts have disagreed. Still, even if detaining victims is legal, it’s arguably bad public policy. Another lawyer who has represented the teen, Amina Merritt, claims that the [youth’s motivation is simple](#). “She is at risk and that is the reason she did not testify previously. She’s afraid, she’s afraid for her life.” Along the same lines, Sandra Henriquez, executive director of the California Coalition Against Sexual Assault, warns that the youth’s arrest may dissuade future victims from cooperating with the authorities. “We’re potentially sending a message that our concern over public safety supersedes our concern over a particular victim. We could also be jeopardizing public safety if fewer victims come forward.”

According to the National Center for Victims of Crime (NCVC), [about six in ten sexual assaults are never reported](#). Among the reasons are fears of “intrusive” and “re-victimizing” court procedures, as well as “shame, embarrassment, self-blame, fear of media exposure, fear of further injury or retaliation, and fear of a legal system that often puts the victim’s behavior and history on trial.” Yet the NCVC cites evidence that reporting these crimes can benefit victims psychologically:

“...many sexual assault survivors report that choosing to follow through with prosecution contributes to a feeling of accomplishment and empowerment because they are attempting to protect themselves and others in the community from being victimized. Many victims also report the attempt to put their assailant(s) in jail allows for a feeling of closure, enabling them to put the assault behind them.

The [Rape, Abuse & Incest National Network \(RAINN\)](#) agrees:

Many victims say that reporting is the last thing they want to do right after being attacked. That’s perfectly understandable – reporting can seem invasive, time consuming and difficult. Still, there are many good reasons to report, and some victims say that reporting helped their recovery and helped them regain a feeling of control.

In fact, this case began with the victim reporting the crime. Once the machinery of justice was in motion, though, the youth changed her mind. But the authorities didn’t,

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eventually arresting her as a material witness. One of the many who question that approach is criminal justice ethicist Dr. Joycelyn Pollack:

Rape is a crime where the victims have lost all power over themselves and their choices – that’s why rape crisis clinics and counselors never push the victim to even go to the police because the whole point is to help her regain some control over her own life. This is the worst case scenario of the victim being controlled by others. What it needs is not sheer power/coercion but, rather, some degree of finesse and empathy on the part of the prosecutors. If she runs, there’s a reason. Fix that and the case may get taken care of as well.

Yet the teen promised to appear but reneged twice, and this in a case where the nature of the alleged crime and the characteristics of the defendant could hardly be more extreme. Assistant D.A. Albert Locher [neatly summed up](#) the dilemma:

It’s the last thing we ever want to do. You never want to have a victim or a witness in custody. But you have to balance protecting the community. When you look at (Rackley’s) background – multiple victims already – it’s important that we try to prevent another victim from being harmed.”

A victim’s failure to cooperate usually dooms sexual assault prosecutions, as it leaves defense lawyers free to argue that whatever happened was consensual. One saving grace in this case is that California’s [age of consent](#) is eighteen. Given the DNA match jurors could convict the defendant of sexual assault (although probably not kidnapping) even without the teen’s testimony. But all bets are off if she doesn’t even appear.

Courtrooms are a humbling experience. Your blogger knows that if one can get a recalcitrant witness to show up – and that’s not always so simple – they’ll usually testify. That’s probably what prosecutors are counting on. Should the accused be guilty and go unpunished, imagine the next girl who might be raped, and how she would feel during and after the act, that is, if she survives.

We’ll see how this plays out over the next few weeks. Stay tuned!