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REEVALUATING GAG ORDERS AND RAPE SHIELD LAWS: IN THE INTERNET AGE, HOW CAN WE BETTER PROTECT VICTIMS?

By Bonnie Birdsell

INTRODUCTION

The Internet changed our everyday lives in countless ways. It changed the way we receive our news, do our banking, go shopping, and socialize with our family and friends. It is an increasingly pervasive social phenomenon.¹ Unfortunately, this pervasive phenomenon has an oft-unnoticed dark side. The Internet frees users from traditional restraints of information-gathering and authority. It also serves as a means for circumventing the conventional constraints of society concerning matters of rape, pornography, sexual assault, and sexual exploitation.² This circumvention can, and does, manifest itself in a number of disturbing scenarios for victims of sexual assault. In addition to the already harrowing act or acts of sexual assault a victim can suffer, many find themselves subjected to an additional degrading situation: being tormented by photographs or messages posted online.³

This note will address the ineffectiveness of gag orders and the current rape legislation, which was designed for the protection of the victim, in an age when an individual's privacy can be decimated with the click of a button. There are many changes that could be made to the current rape shield laws and victims' rights statutes to keep pace with the ever-growing prevalence of the Internet, especially with regard to social media. Social media is such a pervasive platform, and used so easily to the advantage of many assailants, that it is necessary to

¹ Michael M. O'Hear, *EDITOR'S OBSERVATIONS: Perpetual Panic*, 21 Fed. Sent. R. 69 (2008).

² *Id.*

³ Jennifer Chandler, *Internet—Its Role in Victimization*, ESTEEM RISING (Sept. 19, 2010), <http://jenniferchandler.com/uncategorized/Internet-its-role-in-victimization>.

reshape the current legislation to incorporate it. Exploitation via social media is particularly harmful to minor victims.⁴

What is chiefly troubling is the ease with which, via the Internet in general but specifically through social media platforms such as Facebook and Twitter, a victim's identity can become public knowledge.⁵ For more than forty years, motions to protect plaintiffs' identities have been commonplace in the courts.⁶ In fact, victims' rights statutes, which were put in place with the goal of protecting victims' privacy by preventing their names and information from being disclosed to the public, have been enacted in most state legislatures since the mid-1980s.⁷ Rape shield statutes, by contrast, were enacted on the state and federal levels in an attempt to ensure fair trials for rape victims.⁸ These statutes govern the manner of a victim's treatment during the trial process.⁹ Protecting victims' privacy and ensuring their safety from additional negative treatment has long been an important legislative goal.¹⁰ The advent of the Internet age, however, necessitates a reevaluation of those statutes in order to guarantee that victims' privacy is protected in the most effective ways possible. Any such efforts to reevaluate the statutes must reflect the role played by social media in our society, and must seek to protect victims from dangers wrought thereby.

Social media is such an accessible forum that assailants (and the assailants' supporters, such as family members and friends) can utilize it in a number of ways. Assailants can post pictures and video of their attacks, making them instantly available to an expansive group of

⁴ Amit Shertzer, Note, *Plaintiff Anonymity During Civil Litigation of Childhood Sexual Abuse Cases*, 33 *Cardozo L. Rev.* 2199, 2202 (2012).

⁵ *Id.*

⁶ *Id.* at 2199.

⁷ Megan Reidy, Comment, *The Impact of Media Coverage on Rape Shield Laws in High-Profile Cases: Is the Victim Receiving a "Fair Trial"?*, 54 *Cath. U.L. Rev.* 297, 311 (2004).

⁸ *Id.* at 298.

⁹ *Id.* at 299.

¹⁰ *Id.* at 308.

people.¹¹ They can also reveal the identity of their victim in a way that is incredibly personally humiliating—in front of his or her friends and family.¹² Assailants can further torment their victims by using private messages and public posts to revictimize them, whether by contacting them or posting about them or by having friends and family post in support of the assailant publicly or via private message.¹³

The routine use of gag orders in sexual assault cases is also a concern in the ever-expanding climate of social media. Gag orders can in some instances prevent victims from a crucial step in recovery: the ability to control their narrative.¹⁴ Narrative is important for multiple reasons: not only is it crucial to the victim's recovery, but it can be crucial to the recovery of other victims, unity throughout the victim community as a whole, as well as the development of law and society.¹⁵ The defendants' rights must also be considered, especially before and during the trial when there is a presumption of innocence. A balance between the two must be struck. The current rape shield laws need to be reevaluated to keep pace with the new challenges presented by modern technology and social media if they are expected to carry out their original purpose: the protection of sexual assault victims.

Part I describes the particular case of Savannah Dietrich, a minor victim whose story includes social media in a number of ways. Part II discusses rape shield laws in their current state and their original intentions and contexts, as well as considering the appropriate usage of gag

¹¹ Postmedia News, *Victim of alleged rape at Pitt Meadows rave speaks out: Statement*, GLOBAL BC (Feb. 22, 2012), <http://www.globaltvbc.com/victim+of+alleged+rape+at+pitt+meadows+rave+speaks+out+statement/6442586770/story.html>.

¹² Associated Press, *Savannah Dietrich, 17-Year-Old Sexual Assault Victim, Faces Charge for Naming Attackers*, HUFFINGTON POST, (July 21, 2012, 3:56 PM), http://www.huffingtonpost.com/2012/07/21/savannah-dietrich-faces-charges_n_1692374.html.

¹³ *Doe v. Round Valley Unified Sch. Dist.*, 2012 U.S. Dist. LEXIS 79436 (D. Ariz. June 7, 2012).

¹⁴ Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 Yale J.L. & Feminism 75, 118 (2008).

¹⁵ *Id.* at 81.

orders instances where the victim's identity has already been made public by assailant through social media, and concludes that the ability to reclaim narrative—which is barred by many gag orders—is incredibly important to a victim's recovery. Part III analyzes how such laws protect victims in practice rather than in theory, and concludes that the laws are insufficient protection in today's technologically advanced world. Part IV balances the rights of victims to be anonymous against the constitutional rights of those accused. Finally, part V proposes possible changes to the current laws to help cope with the new challenges presented by social media by exploring the creative ways courts are handling these new privacy violations and balancing them against the victims' best interests.

I. SAVANNAH DIETRICH AND SOCIAL MEDIA EXPLOITATION

In August 2011, sixteen-year-old high school sophomore Savannah Dietrich attended a party with her friends.¹⁶ Dietrich consumed alcohol at the gathering along with her friends, and after drinking too much she passed out.¹⁷ While unconscious, two fellow students Dietrich knew and previously trusted sexually assaulted her.¹⁸ It was not until a month afterward that Dietrich learned that her assailants had photographed the assault and posted the lewd pictures to the Internet, where they were visible to her friends, family, and other students as well as perpetually available to anyone, including complete strangers, who happened to come across them.¹⁹

Dietrich, though horrified by the public photographs, was determined to seek justice.²⁰ Unlike many victims of sexual assault, she pressed charges and followed the case through to trial.²¹ Without warning to her, her assailants were offered a plea deal whereby they were

¹⁶ *Supra* note 12.

¹⁷ John Lash, *After a Sexual Assault, a Teen Victim Turns to Social Media*, JUVENILE JUSTICE INFORMATION EXCHANGE (July 27, 2012), <http://jjie.org/after-sexual-assault-teen-victim-turns-social-media/90464>.

¹⁸ *Id.*

¹⁹ *Supra* note 12.

²⁰ *Id.*

²¹ *Id.*

permitted to plead guilty to sexual abuse in the first degree and a misdemeanor count of voyeurism.²² Dietrich was outraged.²³ Adding insult to injury, the presiding judge issued a gag order that covered the entire proceeding, thereby preventing Dietrich from discussing the case.²⁴ Because of the gag order, she was barred from disclosing her dissatisfaction with the trial's outcome or revealing her assailants' identities.²⁵ The judge did not appear to take into account the fact that the anonymity she granted the defendants had already been ruined for the victim by the actions the assailants took in sharing the pictures with others.²⁶irate, Dietrich defied the judge's order by posting her assailants' names online in a Twitter tirade.²⁷ She wrote on the social media website, "[t]hey said I can't talk about it or I'll be locked up....Protect [*sic*] rapist is more important than getting justice for the victim in Louisville."²⁸ Later she told the press, "[t]hey got off very easy...and they tell me to be quiet, just silencing me in the end."²⁹

This response immediately caught the media's attention.³⁰ Dietrich's name soon appeared in newspapers across the country and her form of vigilante justice was fiercely debated in the blogosphere. In response to the postings and the media attention, the defendants' attorneys filed a motion for contempt against Dietrich for defying the gag order, which carries the potential of a

²² Lash, *supra* note 17.

²³ *Id.*

²⁴ *Id.*

²⁵ Maxwell S. Kennerly, Esq., *Savannah Dietrich: A Right to Lie, But Not to Criticize a Plea Bargain?*, LITIGATION & TRIAL (July 24, 2012), <http://www.litigationandtrial.com/2012/07/articles/series/special-comment/savannah-dietrich-free-speech/>.

²⁶ There are those, to be sure, who would argue that by posting the pictures online the young men also revealed themselves to be assailants to their friends and families, thus decimating their own privacy as well as Dietrich's. The photos are not described in detail, other than a brief mention in the court's ruling that the photos were taken with the assailant's cell phones. It is possible that the photos were staged in such a way as to indicate nothing more than a "hook up," leaving Dietrich in the unfortunate position of choosing whether to claim her status as a victim or suffer the backlash against a high school girl who has relations with multiple boys at once and allows it to be photographed. (*In re the Interest of Savannah Dietrich, a Child*, No. 10-J-701053, slip. op. at 1 (Jefferson District Court, KY Aug. 28, 2012).)

²⁷ Lash, *supra* note 17.

²⁸ *Supra* note 12.

²⁹ *Id.*

³⁰ Lash, *supra* note 17.

\$500 fine and as many as six months in jail. Ironically, a sentence for contempt would have meant more jail time for Dietrich than her assailants faced, given their lenient plea bargain.³¹ Public outcry was instantaneous. Within days, defense attorney David Meija withdrew the motion, claiming that it was the futility of the motion, not the public's reaction, that caused them to drop the charge. Speaking to the press, Meija bemoaned his clients' loss of anonymity while ignoring the fact that Dietrich, the victim, never had a chance at privacy.³²

Even if victims' identities are somehow revealed news sources typically do not print their names, particularly if the victims are minors.³³ Dietrich and her parents, however, have given permission for her identity to be made public so her story may serve as an example.³⁴ The media still do not print the names of her assailants.

Dietrich's case serves as a prime example of the manner in which the current rape laws, as well as the current and somewhat cavalier method of issuing gag orders often does not result in justice for the victim. The Internet violations in Dietrich's case are twofold. First, the assailants committed a violation when they posted pictures of their attack online.³⁵ Second, Dietrich committed her own violation by posting her assailant's names online.³⁶ These two instances are examples of privacy violations that, so far, are insufficiently handled by the existing rape shield legislation.

II. AN OVERVIEW OF CURRENT LAWS AFFECTING RAPE VICTIMS AND THEIR CONTEXTUAL ORIGINS

It is necessary to view the original rape shield laws and victims' rights statutes within their historical context. While the statutes may have been effective at the time of their enactment,

³¹ Lash, *supra* note 17.

³² *Id.*

³³ *Supra* note 12.

³⁴ *Id.*

³⁵ Kennerly, *supra* note 25.

³⁶ *Id.*

the technological world has changed so rapidly within the last half century that they can no longer effectively serve their purpose. What is perhaps more troubling is that technology is constantly evolving, and therefore continuously changing the landscape of legal problems and issues.³⁷ The statutes still offer some measure of protection, to be sure, but they are now woefully inept at protecting victims' privacy.

A. A HISTORY OF RAPE VICTIMS AT TRIAL AND ATTEMPTS TO PROTECT THEIR PRIVACY

Rape shield statutes were first created and implemented at the state and federal levels to ensure that rape victims could receive “fair trial[s].”³⁸ Such statutes are necessary for sexual assault trials because the history of rape cases, unlike trials for any other crime, are resplendent with instances of victims being treated as defendants at trial.³⁹ Defense attorneys engaged in a common practice and a somewhat accepted trial strategy of referring to a victim's past history or sexual predispositions (real or rumored) as attempts to discredit their testimony—a practice which many advocates and legislators found unsavory and sought to change.⁴⁰ Rape shield laws are particularly important when the victims in question are female.⁴¹ This is because research has shown that impartial observers—for instance, jury members—generally perceive women to be less credible than men, which is a notion that could easily be exploited by defense attorneys as a potential advantage.⁴² Social science studies have shown that women are often considered, at face value, to be no more credible than children.⁴³

³⁷ Adam Cohen, *Steubenville Rape Guilty Verdict: The Case That Social Media Won*, TIME (March 17, 2013), http://ideas.time.com/2013/03/17/steubenville-rape-guilty-verdict-the-case-that-social-media-won/?iid=op-main-lead&hpt=hp_t1

³⁸ Reidy, *supra* note 7, at 298.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Goodmark, *supra* note 14, at 116.

⁴² *Id.*

⁴³ *Id.*

The federal courts responded to this injustice by implementing Rule 412 of the Federal Rules of Evidence, and almost all jurisdictions in the United States have enacted their own rape shield laws.⁴⁴ Rule 412 is widely viewed as the nation's strongest rape shield and is in fact often used as a template for state shields.⁴⁵ It functions as a "constitutional catch-all" and governs the evidence that is admissible in any federal sexual assault proceeding.⁴⁶ Specifically, it prohibits evidence that attempts to prove a victim had, within a close period of time, engaged in sexual behavior other than the alleged attack as well as prohibiting evidence offered in an attempt to prove, or make sufficient implications about, a victim's sexual predisposition.⁴⁷ Some exceptions may be made in criminal cases, however.⁴⁸ The first exception allows evidence of specific instances of behavior that attempt to prove that bodily fluid, injuries, or other pieces of physical evidence could be byproducts of a sexual encounter that would be additional to the alleged assault.⁴⁹ The second allows evidence of specific instances of sexual behavior with respect to the defendant if offered to prove consent.⁵⁰ The third and final exception allows evidence that would violate the defendant's constitutional rights if excluded.⁵¹

Before rape shields were implemented, it was not uncommon for defense lawyers to take advantage of cross-examinations as opportunities to interrogate victims concerning topics such as past sexual history, behavior, and manner of dress.⁵² Due to the nature of the crime, private, intimate, and potentially embarrassing details about a victim's life become especially

⁴⁴ Richard I. Haddad, Note, *Shield or Sieve? People v. Bryant and the Rape Shield Law in High-Profile Cases*, 39 Colum. J.L. & Soc. Probs. 185, 192 (2005).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Fed. R. Evid. R. 412(a)(1) and (2).

⁴⁸ Fed. R. Evid. R. 412(b)(1).

⁴⁹ Fed. R. Evid. R. 412(b)(1)(A).

⁵⁰ Fed. R. Evid. R. 412(b)(1)(B).

⁵¹ Fed. R. Evid. R. 412(b)(1)(C).

⁵² Reidy, *supra* note 7, at 308.

significant.⁵³ These kinds of cross-examinations are known as subjecting the victim to a “second rape.”⁵⁴ They are so-named because of the immense violation of privacy, humiliation, and extreme distress often suffered by the victim during the course of these cross-examinations.⁵⁵

Legislatures have also implemented victims’ rights statutes as a means of combating yet another form of victim degradation.⁵⁶ Despite the patent degradation wrought by a “second rape,” many victims are subject to further indignity. This additional violation, known as “third rape,” occurs when a victim unwittingly becomes the subject of media attention.⁵⁷ When this happens, the rape, the events surrounding the rape, and the personal details of the victim’s life are frequently played out on a public scale, and in some cases a national scale.⁵⁸ Rape shield statutes, by nature of their formation, only function effectively within the courtroom—they can have no force outside it, nor are they meant to.⁵⁹ Because of this, that many states have implemented victims’ rights statutes, which are designed to prevent the media from publishing victims’ names and other information central to their identities.⁶⁰

B. A DISTINCT INCONSISTENCY IN RIGHTS AND RULINGS PLAGUES JUVENILE COURTS DUE TO THE LACK OF A FEDERAL STANDARD

The matter of rape shields and victims’ rights statutes is even more complicated in the context of juvenile courts.⁶¹ Because juvenile courts are not governed by a federal statute, and the Supreme Court has yet to make a relevant ruling on the subject, states have created their own

⁵³ Reidy, *supra* note 7, at 309.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 310.

⁵⁷ *Id.* at 320.

⁵⁸ *Id.*

⁵⁹ *Id.* at 325.

⁶⁰ *Id.* at 311.

⁶¹ Courtney R. Clark, Note, *Collateral Damage: How Closing Juvenile Delinquency Proceedings Flouts the Constitution and Fails to Benefit the Child*, 46 U. Louisville L. Rev. 199, 202 (2007).

unique and varied laws to govern their proceedings, thereby causing varying, uncertain, and inconsistent rights across the states.⁶²

Though the respective legislative bodies of various jurisdictions have continued to implement statutes of the types addressed above, the judiciary as a whole has not been particularly supportive of these kinds of privacy-protecting statutes.⁶³ The judiciary's general view is that there is a delicate balance to be struck between the rights of victims and the freedom of the press guaranteed by the First Amendment to the Constitution.⁶⁴ Thus far, whenever a direct conflict has arisen between victims' privacy rights and freedom of the press the state courts have typically come down in favor of the media's constitutional right of freedom of speech and expression.⁶⁵

Another roadblock to a federal juvenile standard is a faction of citizens who believe that rape shield laws and victims' rights statutes are actually limitations that encroach upon the civil rights of all Americans.⁶⁶ Perhaps surprisingly, these citizens believe this is true even when the statutes specifically protect the privacy rights of minors.⁶⁷ Individuals oppose this type of protective legislation as contrary to civil rights, and instead advocate pure openness in the judicial system as provided for in the Sixth Amendment.⁶⁸ They claim that laws protecting identity are the product of lawmakers seizing a political opportunity, and thus a chance at reelection, by passing laws that are essentially civil rights limitations even though they are preferred by a majority of citizens.⁶⁹ The erosion of civil liberties as well as the dangers in

⁶² Clark, *supra* note 61, at 202.

⁶³ Reidy, *supra* note 7, at 312.

⁶⁴ Clark, *supra* note 61, at 220.

⁶⁵ Reidy, *supra* note 7, at 312.

⁶⁶ Michelle Johnson, *Protecting Child Sex-Crime Victims: How Public Opinion and Political Expediency Threaten Civil Liberties*, 20 Seattle Univ. L. R. 401, 447 (1997).

⁶⁷ *Id.*

⁶⁸ Johnson, *supra* note 66, at 447.

⁶⁹ *Id.*

concealing any part of judicial proceedings are important aspects to be contemplated when assessing the effectiveness and necessity of statutes of this kind which protect and encourage a certain level of secrecy.⁷⁰ This view is not inconsistent with the preference of the courts, as evidenced by their frequent affirmation of the rights of the press over a victim's right to privacy.⁷¹

These are some of the competing and varied interests and concerns that must be considered when contemplating drafting new types of victim-sheltering legislation. As the courts have insisted, there is a delicate balance that must be struck between civil liberties, victims' rights and the rights of other parties to the proceedings as well.

C. THE ORIGIN AND PURPOSE OF GAG ORDERS

Gag orders, or protective orders, are issued by a court to prevent the parties involved in a proceeding, or anyone else in the courtroom, from disclosing the events of the court to the press or other outsiders.⁷² Judges may issue them based upon their own judgment, or the order may be requested by one of the parties to the proceeding.⁷³ Gag orders are common in cases involving minor parties, as the hope in respect to juveniles is that the guilty parties will be rehabilitated and able to return to society as stable and productive adults.⁷⁴ The anonymity gives minors the opportunity to correct errant behavior and grow into adults without carrying the public stigma of their juvenile crimes.⁷⁵

While gag orders are meant to prevent the parties from discussing the details of the events that transpired in court, they are not intended to prevent the parties from expressing their

⁷⁰ Reidy, *supra* note 7, at 312.

⁷¹ *Id.*

⁷² What to do if a court issues a gag order, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, <http://www.rcfp.org/first-amendment-handbook/introduction-what-do-if-court-issues-gag-order>.

⁷³ *Id.*

⁷⁴ Deanne Katz, Esq., *Sex Assault Victim Savannah Dietrich's Twitter Justice*, FINDLAW (July 23, 2012), <http://blogs.findlaw.com/blotter/2012/07/sex-assault-victim-savannah-dietrichs-twitter-justice.html>.

⁷⁵ *Id.*

satisfaction or dissatisfaction with the events of the court or the outcome.⁷⁶ Neither does a gag order serve to “erase the event[s]” of the court from history.⁷⁷ In the matter of rape prosecutions, it is clear that an attack still happened, a trial still occurred, and the assailant must still in some cases serve a form of penance for the crime committed. A gag order is not a time machine, nor is it analogous to an expungement. Essentially, the gag order is meant to function as an added protection for victims in many cases, for defendants in the case of minors, and to sometimes conceal the details of a verdict and sentencing.⁷⁸

When a court case involves social media, the victim’s name is frequently already attached to the incident in an incredibly personal way—on a forum easily and frequently accessed by his or her friends and family. An important question that must next be considered is which party the court seeks to protect by issuing a gag order in a sexual assault case. If the answer is the victim, then the gag order in these instances is nothing more than a vain attempt on the part of the court to put the toothpaste back in the tube, as it were, considering the privacy of the victim has already been lost to the Internet.⁷⁹ If the intent is then to shield minor defendants from exposure, one must consider the implications of fairness and justice to the victim. The debate becomes whether it is more important to protect the identities of minor criminals in order to give them the opportunity to be rehabilitated, or to protect a victim’s free speech rights.⁸⁰

In cases such as Savannah Dietrich’s, in which her identity had already been revealed prior to trial and the gag order was placed on the proceedings after their close, one could conclude that the order was given more as a matter of course than given with an actual

⁷⁶ Kennerly, *supra* note 25.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Jason Cheung, *17yr Old Redefines Sexual Assault Confidentiality Laws Through Twitter*, LEGALMATCH L. BLOG (July 30, 2012), <http://lawblog.legalmatch.com/2012/07/30/17yr-redefines-sexual-assault-confidentiality-laws-twitter/>.

⁸⁰ Katz, *supra* note 74.

expectation of effectiveness.⁸¹ When the gag order serves merely to bind a victim from discussing the events of a trial or, more importantly, when it keeps one from complaining about an outcome one sees as unfair, the gag order has clearly intruded upon his or her right to free speech guaranteed by the First Amendment.⁸²

While there is a dearth of case law on the constitutionality of gag orders that limit parties closely tied to a case, the case law that does exist generally finds the gag order to be unconstitutional.⁸³ Considering the judiciary's proclivity for First Amendment rights for the media over a victim's right to privacy, this view appears to be consistent.⁸⁴ It would be patently inconsistent to allow the media the right to reveal information about a victim while simultaneously depriving the victim of the right to reveal information about his or her own case.

III. A NEW SCENARIO: SOCIAL MEDIA HAS CREATED A VASTLY ALTERED LANDSCAPE FOR BOTH VICTIMS AND THEIR ASSAILANTS

A. RAPE SHIELDS DO LITTLE TO PROTECT A VICTIM'S LOSS OF PRIVACY IN THE FACE OF SOCIAL MEDIA'S PERVASIVENESS AND PERMANENCE

The Internet brings a new complication to sexual assaults and, by default, sexual assault legislation.⁸⁵ The Internet gives individuals the ability to access sexually explicit materials more easily than ever before—in some cases, whether that individual is searching for them or not.⁸⁶ Individuals can easily be directed to explicit content that features minors, and, similarly, the Internet also provides the ability to connect sexual predators with potential victims who are underage.⁸⁷ The Internet gives society at large the means to skirt traditional sources of authority,

⁸¹ Lash, *supra* note 17.

⁸² Kennerly, *supra* note 25.

⁸³ *Id.*

⁸⁴ Reidy, *supra* note 7, at 312.

⁸⁵ O'Hear, *supra* note 1.

⁸⁶ *Id.*

⁸⁷ *Id.*

and some take advantage of this capability with abandon.⁸⁸ Unfortunately, there are far too many instances of victims being exploited online. This exploitation occurs in many ways and on a plethora of social media platforms, and it is occurring with alarming and increasing frequency.

In September 2010, a girl was brutally raped at a rave in Pitt Meadows, British Columbia.⁸⁹ This attack was not only horrifying, but public, and the event was so confused and disorienting that the victim could not even be sure how many assailants were involved.⁹⁰ Rather than intervene, several other concertgoers filmed and photographed the attack.⁹¹ Much of this documentation was subsequently posted to Facebook and other social media websites.⁹² After the attack, no witnesses could be convinced to come forward voluntarily, and as such, prosecutors could not move forward on the case because they lacked sufficient evidence as to the attackers' identities.⁹³ Ultimately, three individuals were charged in the event.⁹⁴ One man, who was above the age of majority, was charged with sexual assault, but this charge was stayed due to a lack of evidence; the other two individuals were charged with production and distribution of child pornography for recording the events and posting them online.⁹⁵

Social media can have a positive impact on sexual assault investigations and prosecutions. As in the above example, it can be used as persuasive evidence of a particular individual's guilt. In terms of pictures and video, it can often bring to light a persona different from one an assailant may present during courtroom proceedings.⁹⁶ This type of evidence can be especially effective when the assailant does not fit society's vision of a typical assailant, such as

⁸⁸ O'Hear, *supra* note 1.

⁸⁹ Jennifer Chandler, *Rape and the Harmful Impact of Social Media*, BLOGHER (Feb. 15, 2012), <http://www.blogger.com/rape-and-harmful-impact-social-media>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Supra* note 11.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Cohen, *supra* note 37.

when the defendant is a successful student or athlete, looks particularly young, or boasts a sterling reputation in the community⁹⁷

The impact of social media is, however, a “double-edge[d] sword,” largely because the “Internet never forgets.”⁹⁸ In many instances, assailants wittingly or unwittingly utilize social media to revictimize those they attacked. Revictimization occurs when assailants remind the victim of the attack via photographs, messages, or perhaps even by just appearing on their computer screen.⁹⁹ When revictimization takes place online, it can be repeated endlessly due to the permanent nature of the Internet.¹⁰⁰ Unlike physical paper photographs and newspaper articles, items posted online exist perpetually.¹⁰¹ Though the revictimization of Dietrich and the Pitt Meadows victim were public, victims can also be forced to relive their attacks through private social media communication, such as private messaging on Facebook or direct messaging on Twitter.

A high school student in Arizona found herself the victim of such private revictimization after she and her parents brought charges against an older student, alleging that he violently raped her on multiple occasions.¹⁰² After the charges became public knowledge at her school, the victim received threats and insults from her classmates via private messages on Facebook.¹⁰³ The students called her names, disparaged her, harassed her for “putting our friend...in prison for the rest of his life,” and threatened her with bodily harm.¹⁰⁴ The victim eventually became so afraid of her classmates that she avoided going to school, and her grades suffered.¹⁰⁵ Regardless of her

⁹⁷ Cohen, *supra* note 37.

⁹⁸ *Id.*

⁹⁹ Chandler, *supra* note 3.

¹⁰⁰ Cohen, *supra* note 37.

¹⁰¹ *Id.*

¹⁰² Doe v. Round Valley Unified Sch. Dist., 2012 U.S. Dist. LEXIS 79436, at *29 (D. Ariz. June 7, 2012).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

status as a rape victim in the eyes of the law, the girl was forced to endure another form of abuse and derision made possible through public social media.

The Internet, and social media most prominently, has become a gathering place for individuals looking to revel in the degradation of victims, and women in particular. Facebook groups such as “Throwing Bricks at Sluts” and “Abducting, Raping and Violently Murdering Your Friend, as a Joke” are wildly popular and, on some level, considered acceptable and amusing groups in which to take part.¹⁰⁶ The latter group has amassed approximately 16,600 “likes” on Facebook—clearly a far-reaching theme for those who do not utterly fail to see the humor in such an assembly.¹⁰⁷ This trend extends to social media giant Twitter as well, as evidenced by some of the site’s “trending topics.”¹⁰⁸ These topics included such phrases as “[r]easons to beat your girlfriend” and “[w]orst names for a vagina.”¹⁰⁹ There is now a large and organized faction of individuals who use the Internet to both post and consume content geared toward sexual assault and exploitation.¹¹⁰ These people have been able to create a community and can utilize this community to quickly and easily circulate this exploitative content.¹¹¹

In many instances, social media platforms now expedite the revictimization that rape shield laws and victims’ rights statutes attempted to prevent. When assailants post photos, video, or comments about assaults on social networking sites that are accessible by the victim and the victim’s friends and family, that victim is forced against his or her will to relive the details of the

¹⁰⁶ Bidisha, *The rape shame of social media*, THE GUARDIAN (Sept. 22, 2011, 3:29 PM), <http://www.guardian.co.uk/lifeandstyle/2011/sep/22/rape-shame-social-media>.

¹⁰⁷ *Id.*

¹⁰⁸ Twitter features a list of “trending topics” on its homepage. The list consists of subjects that are, through the use of an algorithm, determined to be the most popular and most frequently mentioned subjects on the website at any given moment. (TWITTER HELP CENTER, <https://support.twitter.com/entries/166337-the-twitter-glossary> (last visited Sept. 29, 2012).)

¹⁰⁹ Bidisha.

¹¹⁰ O’Hear, *supra* note 1.

¹¹¹ *Id.*

attack.¹¹² The Internet operates effectively as a “digital echo chamber,” in which media can reverberate, surfacing and resurfacing at times and at a frequency completely outside the victim’s control.¹¹³ Revictimization via social media occurs in one fashion when the images circulate within the parameters of a victim’s friends and family, but it happens an additional time once those images go viral to strangers on the Internet.¹¹⁴

As discussed above, the purpose of rape shield laws and victims’ rights statutes is to prevent plaintiffs’ renewed victimization within the courts and in the media.¹¹⁵ These statutes are woefully unfit to prevent a person from being revictimized in the easy forum the Internet presents. It is possible, and indeed probable, that motions for plaintiff anonymity are becoming more common at trial, due in large part to the Internet’s ever-increasing pervasiveness.¹¹⁶ Rape shields and victims’ rights statutes are currently incapable of preventing the dissemination of information by defendants themselves through social media, rather than informational dissemination by defense attorneys or the traditional media for which the statutes were originally designed. As society changes, its laws must adapt as well.

In many instances, problems with victims and social media begin before charges are brought.¹¹⁷ There is, however, a second possible scenario: publication of photos or disclosure of information can be used as a threat by the assailant to prevent charges from being brought.¹¹⁸ If victims strongly believe they will be unable to maintain their anonymity, they may be even more unwilling than many already are to bring charges against their attackers.¹¹⁹ To combat this “chilling effect,” some courts have granted anonymity to plaintiffs at the expense of the

¹¹² Chandler, *supra* note 3.

¹¹³ Cohen, *supra* note 37.

¹¹⁴ *Id.*

¹¹⁵ Reidy, *supra* note 7, at 311.

¹¹⁶ Shertzer, *supra* note 4, at 2206-2207.

¹¹⁷ *Supra* note 12.

¹¹⁸ Shertzer, *supra* note 4, at 2210.

¹¹⁹ *Id.*

“openness at any price” advocated by those who believe in complete judicial transparency.¹²⁰

These courts have considered granting anonymity necessary to overcome the new challenges to privacy posed by social media.¹²¹

B. IN THE COURSE OF CONTEMPORARY RAPE PROSECUTIONS, ESPECIALLY JUVENILE PROCEEDINGS, GAG ORDERS ENTERED AGAINST A VICTIM IMPAIR THE VICTIM’S ABILITY TO HEAL THROUGH INVENTING A RECLAIMING NARRATIVE

Prohibiting a victim from telling his or her story, or even from discussing the details of a court case, is detrimental not only from a constitutional perspective but from a psychological one.¹²² The process of sharing the details of such a traumatic event and the legal proceedings surrounding it often helps victims to address the violence they have suffered and thus, help them to heal.¹²³ The mental and physical effects of rape, and the lingering after-effects of rape, often go much deeper than the act itself.¹²⁴ Rape, and the apprehension and memory thereof, manifests in the mind as frequent sense of dread, nagging, and anxiety, which instills in many women a necessary mindset of constant vigilance.¹²⁵ The stories that victims share with their loved ones, the media, or other victims can give these individuals the chance to define the event for themselves.¹²⁶ In a sense, it is a method of taking control over an event the victim actually had no control over.¹²⁷ This kind of self-definition is important for victims in general, but it is especially important for victims of rape and sexual assault, who have historically been shamed and silenced by the rest of society.¹²⁸

¹²⁰ Shertzer, *supra* note 4, at 2210-2211.

¹²¹ *Id.*

¹²² Goodmark, *supra* note 14, at 80.

¹²³ *Id.*

¹²⁴ Richard Klein, *An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness*, 41 Akron L. Rev. 981, 984 (2008).

¹²⁵ *Id.* at 984.

¹²⁶ Goodmark, *supra* note 14, at 118.

¹²⁷ *Id.*

¹²⁸ *Id.*

Allowing victims to have a voice and to use that voice is crucial to the positive progression of society.¹²⁹ It is essential to make legislators aware of victims' discontent with the laws governing this area so that they in their capacity as lawmakers may fully understand the suitability or unsuitability of their laws in a real-world context.¹³⁰ In fact, it is absolutely central to the legal system to recognize its shortcomings in order for there to be a possibility of propelling it forward.¹³¹ It is critical for both victims and legislators that victims tell their stories, and that their stories are heard by people in a position to provide assistance.¹³²

V. THE PROTECTION OF VICTIMS' RIGHTS MUST BE BALANCED AGAINST THE CONSTITUTIONAL RIGHTS OF DEFENDANTS

It is important to consider the rights of the defendants in sexual assault cases, as in any case. It is fundamentally unfair, and in fact entirely contrary to our notions of justice, that the accused be unwillingly forced into the public eye before being convicted of any crime.¹³³ Likely due to the stigma surrounding rape and the prosecution of rapists, defendants whose identities are made public may suffer the consequences of being labeled a sex offender by society even in cases in which they are found not guilty. The backlash against defendants can be just as severe, if not more so, as the backlash against plaintiffs.¹³⁴ Upon filing a motion for contempt against Dietrich for revealing the identities of her assailants, one of the defense attorneys commented that “[t]he horse is out of the barn. Nothing is bringing it back,” in reference to his client's lost anonymity.¹³⁵ It is true that society as a whole is less likely to perceive this as a severe injustice as to convicted defendants, but it can create unfortunate and debilitating consequences for defendants whose names are later cleared.

¹²⁹ Goodmark, *supra* note 14, at 81.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 114.

¹³³ Shertzer, *supra* note 4, at 2212.

¹³⁴ *Id.*

¹³⁵ Lash, *supra* note 17.

One major concern in respect to the rights of defendants is the limitations rape shield laws place on the cross-examinations of alleged victims.¹³⁶ Federal Rule of Evidence 412, the federal rape shield, places strict limits on admissible evidence in sexual assault cases.¹³⁷ It is frequently and perhaps not unfairly argued that the limitations placed upon cross-examinations violate the defendant's rights to "be confronted with the witnesses against him" assured by the Sixth Amendment.¹³⁹ The Supreme Court stated that "cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested."¹⁴⁰ Without the ability to challenge the reliability of a witness, a defendant's case can be severely crippled.

As the movement for victims' rights has gained momentum and achieved some measure of results, there has been an inevitable backlash against it in favor of defendants' rights. In an article entitled "Perpetual Panic," Michael M. O'Hear calls the victims' rights movement a "sex crimes panic," and nothing more than an overreaction by the public at large to a crime that in reality, or so he claims, is much less pervasive than the media makes it appear.¹⁴¹ O'Hear also dismisses the history of rape victim mistreatment and marginalization as "perception."¹⁴² Based on these views, he insists that the current public attitude toward sex crimes, which is fervently negative, is merely transient sentiment, and that legislators should consider implementing "sunset provisions" upon any new sexual assault legislation.¹⁴³ A sunset provision places an expiration date of sorts upon new criminal penalties for sexual assault, typically about ten years after a penalty's enactment, after which time O'Hear believes the "panic" will have subsided and

¹³⁶ Klein, *supra* note 124, at 992.

¹³⁷ Fed. R. Evid. R. 412. (a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct: (1) evidence offered to prove that a victim engaged in other sexual behavior; or (2) evidence offered to prove a victim's sexual predisposition.

¹³⁹ Klein, *supra* note 124, at 992; *see also* U.S. CONST. amend. VI.

¹⁴⁰ *Id.* at FN 87 (citing *Davis v. Alaska*, 415 U.S. 308 (1974)).

¹⁴¹ O'Hear, *supra* note 1.

¹⁴² *Id.*

¹⁴³ *Id.*

the laws can return to their previous state.¹⁴⁴ The purpose of the sunset provision is to ease the minds of legislators who want to be sensitive to public whim to help ensure their reelection, but do not wish to implement statutes with long-lasting effects to satisfy that whim.¹⁴⁵

One way to take the defendant's rights into consideration is in proportion to the rights the defendant has effectively removed from the victim. For instance, one can consider to what extent society is concerned with or is benefitting from protecting the identity of an assailant who has decimated the identity of his victim.¹⁴⁶ That a victim posted the names of her convicted assailants to a social media site hardly seems comparable to an assailant posting pictures of the victim that were taken during the assault, and posting them before a trial and before any charges had been brought.¹⁴⁷

A proportional method seems reasonable if only because when victims' rights increase, defendants' rights decrease. A legislatively-struck balance would be beneficial for all parties involved.

IV. A PROPOSED SOLUTION

What can we do when laws are no longer capable of serving the purpose for which they were created? It is unquestionably important to protect individuals from sexual assault and abuse, and this is especially true in the case of minors.¹⁴⁸ Minors are generally more impressionable, and therefore more susceptible, to the varying mental, emotional, and physical harms that accompany sexual abuse.¹⁴⁹ Minors are also more likely to suffer these harms long-term, and often endure them long into adulthood.¹⁵⁰

¹⁴⁴ O'Hear, *supra* note 1.

¹⁴⁵ *Id.*

¹⁴⁶ Kennerly, *supra* note 25.

¹⁴⁷ *Id.*

¹⁴⁸ Shertzer, *supra* note 4, at 2201-2202.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

The current rape shield laws are limited in that they only function as evidentiary protections.¹⁵¹ They are laws that protect a victim within the walls of the courtroom, but leave them desperately vulnerable outside of those walls.¹⁵² Legislation—especially laws concerning a crime as sensitive as rape—can only be as strong as victims perceive them to be when they are considering seeking their protection.¹⁵³ If victims believe that a law is weak, and particularly if they do not trust the government to stand behind a law’s promise, then victims cannot reasonably be expected to rely upon it.¹⁵⁴ If victims perceive the law to be strong, however, rape shield advocates assert that this perception would result in a higher percentage of both reported and prosecuted crimes.¹⁵⁵ The current victims’ rights statutes and amendments fail to properly exclude from the media some types of harmful information about victims’ pasts, and definitely do not include strong enough penalties for those who violate the statutes.¹⁵⁶ As such, the current statutes leave massive gaps in the victim’s protection, which can easily be exploited by defense attorneys, the media, and assailants.¹⁵⁷

A number of courts have instituted balancing tests to determine whether or not it is appropriate to grant plaintiff anonymity in a particular case.¹⁵⁸ While the tests vary among different jurisdictions, they tend to center around many of the same factors.¹⁵⁹ These factors typically include: “(1) personal information of the ‘utmost intimacy;’ (2) admission by a plaintiff of violating state laws or government regulations or engaging in prohibited conduct; and (3)

¹⁵¹ Haddad, *supra* note 44, at 210.

¹⁵² *Id.*

¹⁵³ *Id.* at 221.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 189.

¹⁵⁶ Reidy, *supra* note 7, at 326.

¹⁵⁷ *Id.*

¹⁵⁸ Shertzer, *supra* note 4, at 2217; *see also S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707 (5th Cir. 1979).

¹⁵⁹ *Id.*

challenges to constitutional, statutory or regulatory validity of government activity.”¹⁶⁰ A plaintiff’s anonymity is granted based mainly on the apparent innocence of the plaintiff’s own activities at the time of the attack. It is unfortunate that courts weigh rape in the context of the plaintiff’s activities, since partaking in a simultaneous unsavory or even illegal activity does not make a victim of a sexual assault any less of a victim.

Some advocates believe that legislatures should enact victims’ rights statutes that are rape-specific.¹⁶¹ The ideal composition of these statutes would contain tight language barring the media from publishing any information at all about the victim before and during the course of the trial.¹⁶² An additional portion of the statutes would contain not only those changes that ensure a stricter ban on publishing information, but harsher and more clearly defined punishments for those who violate that ban.¹⁶³

Another issue of victims’ rights advocates concerns the rights a victim should have in terms of plea-bargaining.¹⁶⁴ The question that has been posed is: if deals are made that exclude the victim from having any input, approval, or in some cases even notice of the plea bargain in the first place, does this not undermine his or her rights in the trial process?¹⁶⁵ One potential remedy for such a problem is for the victim to be central to the plea-bargaining process.¹⁶⁶ The support for this type of involvement is much the same as the support for rape shield statutes; namely the idea that, as the witness has already been victimized once, it would be unjust for her to be again victimized by the court system by having a plea bargain made without her consent.¹⁶⁷

¹⁶⁰ Shertzer, *supra* note 4, at 2217; *see also S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707 (5th Cir. 1979).

¹⁶¹ Reidy, *supra* note 7, at 327.

¹⁶² *Id.*

¹⁶³ *Id.* at 329.

¹⁶⁴ Lash, *supra* note 17.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

This is especially true when the victim is one of the few who will go so far as to see through a prosecution.

Dietrich's assailants did in fact receive a lenient plea deal, part of which included a misdemeanor count of voyeurism for the online distribution of photos of the assault.¹⁶⁸ One penalty that could be created for such an action, in addition to the charge of voyeurism, is a separate charge for posting the self-created explicit content to the Internet, or to social media specifically. It is one thing to distribute sexually explicit content, but quite another to take such a permanent move as to post photos of an attack on a platform easily accessible to a victim's friends and family in a manner that ensures the victim can never know for certain that all copies of the photos have been destroyed.¹⁶⁹

In the case of the victim was raped by multiple men at a rave in British Columbia, the courts were creative and arguably flippant in their punishment.¹⁷⁰ One of the few individuals who actually could be charged in the case, a minor, pled guilty to a charge of making or publishing obscene matter.¹⁷¹ The judge ordered him to write an apology to the girl whose brutal rape he filmed and distributed; in addition, the boy was ordered to write an essay for the court on the positive and negative aspects of social media.¹⁷² Punishment of this kind might make a fine addition to another, harsher punishment, but alone it appears to be a mere slap on the wrist.

In terms of gag orders, one possible solution is to make the issue part of the adversarial process. A general gag order could be implemented over the trial proceedings initially, especially when minors are involved. Making the issuance of a gag order over the terms of a plea

¹⁶⁸ *Supra* note 12.

¹⁶⁹ Cohen, *supra* note 37.

¹⁷⁰ Although the procedural specifics of this decision are not binding on U.S. courts, this case is instructive because of both the strong element of social media involved as well as the creativity employed by the judge in determining the assailant's punishment. *See supra* note 11.

¹⁷¹ *Id.*

¹⁷² *Id.*

agreement or a sentencing a motion that can be argued by the parties, however, would give both sides the opportunity to present their reasoning for or against entering a gag order, just like any other motion. This could still potentially result in a gag order being issued over the victim, which poses a problem in terms of the victim's First Amendment rights.¹⁷³

The primary public outrage in Dietrich's case resulted from the fact that she was being silenced in respect to the terms of the plea agreement, rather than the fact that she was being prohibited from revealing the identities of her assailants.¹⁷⁴ It is settled practice to protect the identity of minors that are party to court proceedings, even when they are the defendants.¹⁷⁵ A reasonable and practicable alternative would be to allow gag orders to extend only to the identities of the minor parties involved, rather than cloaking in secrecy the details of plea agreements and sentencing. Forbidding a sexual assault victim from discussing the terms of a case, especially when she would be expressing discontent with the proceedings, is a violation of her free speech rights under the First Amendment.¹⁷⁶ Preventing a victim from sharing her story or discussing her feelings about the event can also severely inhibit her ability to heal from the incident, as discussed above.¹⁷⁷

But what about vigilante justice? Should victims be allowed to protect themselves if and when the current laws cannot? Dietrich posted her assailants names to Twitter in defiance of the court's gag order, which revealed her as a victim not only to her friends and family but ultimately made her a national headline.¹⁷⁸ Victims in the past resorted to vigilante justice much more often than in the present-day.¹⁷⁹ State criminal laws and prosecution, however, are

¹⁷³ Katz, *supra* note 74.

¹⁷⁴ *Supra* note 12.

¹⁷⁵ *Id.*

¹⁷⁶ Kennerly, *supra* note 25.

¹⁷⁷ Goodmark, *supra* note 14, at 80.

¹⁷⁸ Lash, *supra* note 17.

¹⁷⁹ Erin Ann O'Hara, *Victims and Prison Release: A Modest Proposal*, 19 Fed. Sent. R. 130 at n. 2 (2006).

established enough in the modern courts that vigilante justice should, ideally, not be necessary.¹⁸⁰

A reaction like Dietrich's—that is, taking to the Internet to achieve some brand of social justice—is only going to become more prevalent as individuals place increasingly more of themselves, their feelings, and their problems online. If some of the suggested amendments were implemented, the occasions in which a victim would feel driven to resort to this kind of desperate gesture would decrease. A victim should never have to resort to a resource outside the courts to secure justice.

V. CONCLUSION

The current rape shield laws and victims' rights statutes were put in place in an attempt to protect the privacy of victims in two ways: rape shields are meant to keep defense attorneys from assassinating the character of a victim by confronting them with their personal sexual history or predisposition during the course of a cross-examination, while victims' rights statutes prohibit the media from publishing the names of victims. These, along with the gag orders routinely placed over sexual assault proceedings, are meant to guard a victim's privacy in the hopes that the victim will be able to return to a relatively normal life after the trial is over. Additionally, it is a widely held belief among victims' rights advocates that victims will be more likely to come forward and press charges against their assailants if they believe they can do so under relative anonymity.

Regrettably, however, the Internet and social media now make it possible to completely circumvent these statutes. Assailants can use social media platforms to strip their victim of privacy and revictimize them by harassing them via private message or posting pictures and text that reminds the victim of the attack. Assailants can also use the threat of revealing a victim's

¹⁸⁰ O'Hara, *supra* note 179, at n. 2.

identity on a public forum to convince the victim not to press charges, which is completely contrary to the privacy statutes discussed above.

For these reasons, the current statutes need to be reevaluated to take online activity, and specifically social media activity, into account. Additional penalties should be imposed on those who reveal a victim's identity online or post pictures of an attack online, especially in a forum as personal as social media. Privacy should also be considered proportionally; for instance, if an assailant destroys a victim's chance at privacy, he should have no right to privacy himself.

Gag orders, and the manner in which they are implemented, must also be reevaluated. Rather than allowing judges to issue gag orders in lieu of a motion, the process of issuing gag orders in sexual assault cases should be solely a part of the adversarial process to allow for unusual situations such as Savannah Dietrich's, in which a victim who had already lost her anonymity was banned from revealing the identities of her assailants. To that end, if a gag order is implemented, it should only extend to the identities of the minor parties involved, and not to the proceedings. To bind a victim from sharing his or her dissatisfaction with the outcome of a trial is a clear violation of her First Amendment rights. Furthermore, prohibiting a victim from telling any part of his or her story, including her dissatisfaction, is detrimental to the victim's healing process and detrimental to the progression of the laws in our country. Victims must be able to express their discontent with the current laws in order for legislators to be aware of the flaws in the system. Otherwise, the failings of the law will never be rectified.

As society progresses, so too must the law if it is to remain relevant. The Internet and social media have become fixtures in our culture, and the laws must be updated to include them. Otherwise, there can be no hope that the legal system will encourage victims to seek its

protection, see their cases through to trial or, most importantly, protect victims of sexual assault from suffering further harm.