

# Is 'perp walk' unfair to the accused?

By EDWARD WASSERMAN

The arrest of a leading French statesman and politician, Dominique Strauss-Kahn, on charges of sexually assaulting a New York hotel chambermaid became a transatlantic media spectacle when he was photographed - manacled and miserable - being led from a Manhattan lockup. Publishing such pictures is illegal in France, and some commentators there were incensed by the photos of what U.S. reporters call the "perp walk." That's when an accused person, if newsworthy, is deliberately marched to arraignment past the cameras.

Now, Strauss-Kahn was no typical suspect. He was a European political star of the first magnitude, president of the International Monetary Fund, married to a well-known broadcaster, deeply rich, widely known and frequently profiled, until now a possible successor to Nicolas Sarkozy as president of France. His arrest couldn't fail to draw enormous coverage, overriding any qualms journalists might have about giving spectacular play to unproven charges.

Nevertheless, the outrage over the Strauss-Kahn photos raises important, and I think, long overdue questions about the routine ways in which U.S. media cover ordinary criminal suspects. The fact is, the media's normal practices aren't fair, aren't right, harm innocent people needlessly, do little to hold the courts accountable - the professed goal - and may make it harder for the justice system to do what it's supposed to do.

I just read an excellent scholarly article that contrasts the media's approach to naming criminal suspects in two European countries with the practice in the United States.

The unpublished article, by Maggie Jones Patterson of Duquesne University and Romaine Smith Fullerton of the University of Western Ontario, looked at why Swedish and Dutch media typically avoid identifying accused people, even when convicted.

To be sure, media there do make exceptions, notably in high-profile crimes, as when Sweden's foreign minister Ana Lindh was stabbed to death in a Stockholm department store in 2003. But even then, they do so carefully, thoughtfully and reluctantly.

That diffidence has nothing to do with law; publishing suspects' names is perfectly legal in both countries. Indeed, Sweden's public-records laws are much more sweeping than their U.S. equivalents, so the information is fully available to the media. Journalists simply view their duty differently.

Why? Several reasons arise from the study.

-First, a due-process concern: Even though jury trials are less common in Europe, juries may still be used, and publicity can pollute the jury pool.

-Second, a larger fairness issue: For a prolonged period the suspect will be widely, perhaps indelibly, presumed to have done something wrong, regardless of the court's eventual finding.

-Third, gratuitous harm to the suspect: Publicity itself constitutes an extralegal intensification of punishment, toughening it well beyond what the law intends.

-Fourth, injuring innocents: Not only might the suspect be guiltless, but family members will be shamed and humiliated by allegations they did nothing to provoke.

-Finally, destroying the wrongdoer's future: Publicity may impede reintegration into society, the ultimate goal of the justice system. It violates what one Dutch journalist called "the right to start again."

By contrast, in my experience U.S. media practices are almost unimaginably prejudicial to defendants: Suspects are uniformly named upon arrest, with nearly all details coming from arresting officers. Rarely is the eventual disposition of minor cases reported, even when charges are dismissed.

Journalists depend, for the bulk of their information, on cops and prosecutors, who have a vested interest in convictions. Media decide whether criminal allegations annihilate privacy rights and, if the case is deemed worthwhile, reporters will present intimate details about suspects, friends, victims and families - in the service of "the public's right to know."

Most reporters would regard the idea that publicity might cause a convict something called reputational harm as laughable.

Ironically, U.S. practices are rooted in an adversarial principle - that the criminal-justice system, like any governmental function, needs to be watched carefully and held accountable publicly by a skeptical watchdog press.

Yet with criminal suspects, the media routinely operate not as a check on the prosecutorial state but as its servant, and unwittingly mete out punishments that are less deliberate, less proportionate, less deserved, and far less accountable than those pronounced by judges.

Nonetheless, this U.S. style of media justice may be coming to Europe. The more benign traditions of Sweden and Holland, Patterson and Fullerton suggests, face pressure to get tough. That's a result of immigration, which has made the locals less charitable about criminality they blame on newcomers, and the Internet, which offers the embargoed information online.

The next U.S. export to join Starbucks and iPads in the Old World may yet be the perp walk.

#### ABOUT THE WRITER

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