

RAISING PAT KANE AND LAWYERS SELLING OUT CLIENTS

If you haven't seen the reportage, there is a bit of a fascinating case going on up in Erie County of New York. That would be the Buffalo area, give or take. The matter involves the star of the Chicago Blackhawks, the current Stanley Cup Champions, Patrick Kane. And it involves extremely serious rape allegations.

Several people, both on and offline, have asked me about this case. I have made a few observations on Twitter (namely that the cops have a LOT to answer for, and that this case is nuts), which I stand by, but have been unwilling, without more, and better, facts to really express much of an ultimate opinion.

I am still not willing to go to Kane's ultimate guilt or innocence, and neither should anybody else at this point. In fact, it is revolting to the extent that many in the press, especially digital media, have putatively done so. I have long loved Dave Zirin, of The Nation, but he got out ahead of himself and criminal (frankly even civil) law here:

In the entire horrific history of male sports stars and accusations of sexual violence, there may have never been a story as nauseating as this one.

Yeah, what?? That was while he was explaining that there *may* actually be a heinous problem with the critical evidence of guilt. So let's frame it in terms of the victim, right?

Okay, but which victim? Is the "victim" the one Zirin, and honestly most of us, assume, i.e. the "accuser"?

It may well be!

But, is it necessarily? No, the "victim" could

well be Kane too. Usually the cops and prosecutors are putting their weight behind a civilian victim and lying against the accused. At least that is my experience. Sometimes the "State" case is only lightly shaded by the cops and prosecutors, sometimes (and this is way more than you think), it is in an unreasonably leveraged, and borderline unconscionable, manner. And this is the problem with a victim culture in criminal matters, victims get presumed and the presumption of innocence gets lost.

So, what about here where the DA is standing up and saying everybody needs to slow down on Kane? Is the DA protecting justice, or preventing it?

We don't know. I don't know. Dave Zirin doesn't know. And neither do you. The public's emotions and feelings are not the judgment of the civil, much less criminal, justice system. Time may tell, or this case may be so fundamentally bugged up by yet unknown actors that it is never really known what happened.

But there is one way in which the accuser is absolutely a clear cut victim. She has been screwed by her, now former, lawyer, Tom Eoannou:

The lawyer for a woman accusing Chicago Blackhawks star Patrick Kane of sexual assault abruptly quit the case Thursday night, saying he's no longer comfortable representing the woman because of how her mother reported finding an evidence bag they believed once held the woman's rape kit.

Thomas Eoannou told reporters he believes there were, what he called, "fabrications" in the story of how the bag was found. He added that he's no longer sure if the bag ever contained evidence from the investigation.

"I can only say that I don't know what's true and what's not true," Eoannou said during a hastily called news conference at his downtown Buffalo law office. "I

received the storyline from the mother.
And it's my position that I'm not
comfortable with that version of the
events."

Say what??

I don't know where this story will ultimately go, but suffice it to say that it is some major league ethically dubious lawyering for Eoannou, to be publicly holding a press conference to say he doesn't "have confidence" in his client's story. Especially when he is abandoning his client in the process. On what any moron would know would be, nearly instantly, national television.

I guess Eoannou stopped a little short of calling his own client, and her mother, lying frauds, but, seriously, he did everything but that and certainly implied it. This is just flat out scummy, and arguably patently unethical lawyering, in my opinion. And it hurts lawyers, of all stripes, everywhere and taints the entire judicial system.

You don't get to say such things as a lawyer. You CAN'T say such things as a lawyer. Not while both the active criminal investigation, and potential civil case, hang in the lurch for your client. And not while walking away like a coward from your client. Because that is selling your client, and everything you, as a lawyer, are supposed to stand for down the river. On a barge the width of the Mississippi.

Nothing good ever comes from a lawyer running his mouth to the press on a case before he really knows the facts. Far too many attorneys are tempted to self aggrandize and publicize themselves on their "big case" before they know what they are really dealing with. Thomas Eoannou should not have been yakking to the press to start with, much less have held a press availability to explain how he was shitting on his client and her case.

This is unconscionable, and unprofessional,

media whoring at its worst. It brings to mind the case of David Aylor, the former lawyer for the cop charged with executing Walter Scott in South Carolina. As my friend Scott Greenfield said in that matter:

No one forces you to rush out to the spotlight and make a statement before you have a clue what evidence exists against your client, and no one forces you to rush out to the spotlight a second time when you're exposed as the fool who shot off his mouth.

At first, the spotlight seems warm and alluring to the lawyer, a chance to get his brand out in public and make a name for himself as the kind of lawyer who can handle the big time. But stand in the spotlight long enough and it starts to burn.

Exactly. You just cannot do that, whether you represent the accused or the putative victim. You cannot bias and/or destroy your client's case, your duty is to zealously protect the client. Here, Eoannou has prejudiced *both* the accuser's case as a potential crime victim *and* any potential civil case she might have against Kane. That is simply impermissible irrespective of where the ultimate truth lies in the rape accusation against Patrick Kane.

UPDATE: Scribe has some good information in this comment regarding the the violations of the New York ethics code Thomas Eoannou arguably ran afoul of.

This is exacerbated by what might be the lawyer's pretty blatant violation of the ethical rules. New York's version of the Rules of Professional Conduct are interpreted more broadly than in other states, when it comes to disclosure of client confidences. Disclosure of anything that might embarrass the client or prejudice his rights is prohibited.

The classic example is how the high-profile divorce lawyer is not allowed to acknowledge that the prominent movie star with a family values image has been to his office. This even if the star is not a client but only a prospective client.

NY RPC 1.6 states, in pertinent part:

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b).

"Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) ...

...

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

- (2) to prevent the client from committing a crime;
- (3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;
- (4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;
- (5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or
(ii) to establish or collect a fee; or
- (6) when permitted or required under these Rules or to comply with other law or court order.

NY RPC 1.18 makes 1.6 apply to prospective clients.

This attorney might argue his second "I quit" press release was correct under 1.6(b)(3) above. But the problem is that his first run-to-TV moment was the one he should not have undertaken. It appears he did little to no investigation before running to the press. If he had, chances are he would have had a good chance of finding whatever falsity he thinks he found between TV appearances that justified his dumping out on his client. Now, not only has he cast his client as a liar, her mother – who might have been a corroborating witness – as another liar

– all prejudicial to the state’s case,
if any existed, for an assault against
her – but he also bolluxed any civil
case she might have brought in the
future.

I hope his malpractice insurance is paid
up.