



Second Circuit Rules in Favor of Fraternity Brothers in “Jackie” Rape Dispute

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In late September, the United States Court of Appeals for the Second Circuit found that the U.S. District Court for the Southern District of New York erred in dismissing a lawsuit brought by former members of the fraternity at the center of the *Rolling Stone* article, “A Rape on Campus.”

In November 2014, *Rolling Stone* reporter Sabrina Rubin Erdely published an article detailing purported sexual misconduct that occurred in September 2012 at the University of Virginia (“UVA”). The article recounted “Jackie’s” sexual assault at Phi Kappa Psi fraternity, where she was allegedly violently gang-raped by seven fraternity brothers. The article further suggested that gang-rapes were common practice at the University. The shocking report generated extensive media attention, causing UVA to suspend the fraternity. However, as “A Rape on Campus” gained more attention, serious discrepancies in “Jackie’s” story began to emerge.

In April 2015, *Rolling Stone* retracted the article and made a public apology. Erdely offered her “deepest apologies” to readers, colleagues, the campus community and victims of sexual assault. “Reporting on rape has unique challenges, but the journalist still has the responsibility to get it right,” she wrote. “I hope that my mistakes in reporting this story do not silence the voices of victims that need to be heard.”

Phi Kappa Psi brothers filed suit against *Rolling Stone* in the Southern District of New York. However, the U.S. District Court dismissed the suit and stated that “the article’s details about the attackers are too vague and remote from the plaintiff’s circumstances to be ‘of and concerning’ them.”

The United States Court of Appeals for the Second Circuit reversed the District Court’s ruling, finding that the pleadings provided enough evidence to go forward on the statements “of or concerning” two of the plaintiffs. The first plaintiff, George Elias, lived in a bedroom that matched “Jackie’s” description of where the acts took place. The second, Ross Fowler, was the Rush Chair for the fraternity, and the incident had allegedly been a part of the fraternity’s initiation process.

It has been almost three years since *Rolling Stone* published “A Rape on Campus” and “Jackie’s” story continues to be at the center of our national debate on campus sexual assault. However, as demonstrated by this article, the stakes are high all around. An improper, impartial or inadequate investigation of a claim of sexual misconduct has serious consequences for the complainant, the respondent, and the institution. For example, an improper investigation serves to discourage alleged victims from coming forward. Moreover, at an increasing rate, students who have been accused of sexual misconduct are suing their institutions alleging that their institutions

grossly violated their respective due process rights. A number of these complaints also state that the employment of a “rush to judgment” attitude by institutions has resulted in egregious miscarriages of justice for accused students.

If you have any questions or concerns regarding education or employment related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

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