



# Federal Judge Dismisses Defamation Suit Against Rolling Stone After Discredited University of Virginia Profile

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A New York federal judge recently granted a motion to dismiss a defamation lawsuit against Rolling Stone magazine, its publisher Wenner Media, and journalist Sabrina Rubin Erdely. Three former University of Virginia (“UVA”) fraternity members, George Elias, IV, Stephen Hadford, and Ross Fowler brought the [lawsuit](#) alleging that Rolling Stone’s publication of an article titled “A Rape on Campus” was reckless, subjected them to humiliation and harassment, and has resulted in disassociation with their fraternity. The case is *Elias et al v. Rolling Stone LLC et al*, U.S. District Court, Southern District of New York, 15-cv-5953 (PKC). Judge Kevin Castel of the Southern District of New York dismissed the case on the grounds that any reference to the three men in a widely-published article was “too vague and remote” to satisfy a defamation cause of action.

The lawsuit was filed in response to Erdely’s article published in Rolling Stone in November 2014 entitled “A Rape on Campus.” The article, which saw broad circulation across the globe, vividly told the story of a young woman at UVA who alleged that three members of the University’s Phi Kappa Psi fraternity gang-raped her as an “initiation” ritual. The article described events that happened in September 2012, using “disturbing, graphic details about the rape,” but made no direct mention of the three plaintiffs. The article used pseudonyms to refer to the alleged perpetrators, indicating only that they were members of the Phi Kappa Psi house and that they were juniors at the time.

The article quickly gained national attention in an attempt to raise awareness of rape on college campuses. A month later, however, Rolling Stone issued an apology for “discrepancies” in the article after other publications, including the Washington Post, drew attention to inconsistencies and “questionable facts” therein. The Charlottesville Police Department also conducted an investigation and found “no substantive basis” to support the allegations. Moreover, the physical description of alleged attackers matched no member of the Phi Kappa Psi fraternity and no event was found to have taken place on the night when the attack allegedly occurred. In April 2015, Rolling Stone retracted the article in its entirety, apologizing to its readers and those affected by its publication.

The complaint filed by Elias, Hadford, and Fowler alleged that they were “easily identified and established as the alleged rapists,” even after the accusations had been discredited. Additionally, the plaintiffs alleged that they have been “confronted by family, friends, and colleagues or felt public embarrassment due to their association with Phi Kappa Psi.”

The crux of Judge Castel's [opinion](#) came down to whether the article was "of and concerning" each plaintiff—a necessary element in a defamation lawsuit. Specifically,

A plaintiff also must plausibly allege that '[t]he reading public acquainted with the parties [sic] and the subject' would have understood the allegedly defamatory statement to be 'of and concerning' the plaintiff. 'It is not necessary that the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant.' A reader must be able to discern that the statement refers to the plaintiff, even when the statement does not identify the plaintiff by name. (internal citations omitted)

Here, Elias claimed the bedroom in the article must have been a description of his, citing certain features of the room, its size, and its entrance. Second, Fowler claimed that as the fraternity's rush chair, he was implicated through some of the statements alleged to have been made during the supposed rape. Additionally, Fowler pointed to a line in the article that stated that the alleged victim and one of the perpetrators "work[ed] lifeguard shifts together at the university pool," noting that he was a frequent swimmer. Finally, Hadford relied on a reference in the article to an attacker who frequently rode his bike around campus, noting that he used his bike as a primary mode of transportation.

Judge Castel rejected each plaintiff's claims, in turn, stating that none was sufficient to sustain a defamation cause of action. He pointed out that while the allegations placed the fraternity in a negative light, it did not raise enough of inference to deduce that the three plaintiffs had been involved.

Judge Castel's decision to dismiss the defamation case against Rolling Stone does not change the fact that campus sexual assault remains a critically important issue affecting colleges and universities across the nation. However, as demonstrated by the article, the stakes are high all around. An improper, impartial or inadequate investigation of a claim of sexual misconduct by a magazine has serious consequences for the complainant, the respondent, and the institution. The same holds true when the institution is the investigator. 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.

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