



# New York Appeals Court Bars Woman From Suing West Point After Alleged Rape

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Recently, the Second Circuit denied a woman the right to sue West Point after she brought claims of sexual misconduct on campus.

In 2010, a woman identified as Jane Doe was allegedly raped by a fellow cadet on the West Point campus. Doe was one of 200 women among 1,300 cadets in her class. She came from a military family and feared the repercussions the assault would have on her military future. As a result, she filed an anonymous complaint and then dropped out of the academy.

In 2013, Doe sued West Point alleging the rape was the result of a sexually aggressive culture that put female cadets at risk of violence and discrimination. Specifically, Doe cited incidents where male cadets were encouraged to make sexually explicit chants, where there was tolerance of a pattern of sexually aggressive comments to women, and where sexual misconduct policies put the onus on women to resist and avoid sexual assaults.

The district court allowed Doe to bring her discrimination claim against the superintendent and commandant of West Point, both of whom have since stepped down from their positions. The government immediately appealed to the Second Circuit claiming the suit was an improper intrusion on the military since West Point is unique in that students receive military training in addition to academic education.

The Second Circuit held that it was up to Congress to address sexual harassment at service academies because allowing lawsuits would undercut military command. Further, the court reasoned that “civilian courts are ill-equipped to second-guess military decisions regarding basic choices about the discipline, supervision, and control of service members.”

However, in a dissenting opinion, Judge Denny Chin wrote the doctrine was being misapplied to a college campus. “When she was raped, she was not in military combat or acting as a soldier or performing military service. Rather, she was simply a student, and her injuries were incident only to her status as a student.” Further, Judge Chin cites a 2010 Defense Department survey showing that 51% of female cadets at West Point reported sexual harassment. The American Civil Liberties Union (“ACLU”) also filed a friend of the court brief for Doe, stating this was the first time the military deference doctrine was used to keep service academy students from asserting constitutional rights.

*If you have any questions or concerns regarding education or employment related issues, please contact Hayley B. Dryer at [HDryer@cullenanddykman.com](mailto:HDryer@cullenanddykman.com) or at 516-357-3745.*

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*\*Please note that this is a general description of the law and does not constitute legal advice.*