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WHAT IS THE POTENTIAL IMPACT OF ROLLING STONE'S FAULTY, HIGH PROFILE REPORTING OF CAMPUS SEXUAL ASSAULT ALLEGATIONS?



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Posted by: Margaret Christensen and Brian W. Welch on Wednesday, April 22, 2015 at 10:00:00 am

It's hard to overstate the damage done by *Rolling Stone's* failure to pass almost every test of journalistic competence in publishing its article "A Rape on Campus" about the alleged rape of a female student at the University of Virginia.



As revealed by the subsequent review by the Columbia University Graduate School of Journalism, *Rolling Stone* failed to follow the most basic principles of investigative reporting—"the magazine set aside or rationalized as unnecessary essential practices of reporting . . .," and in so doing, further complicated an already complicated environment to the great detriment of victims, perpetrators and universities trying to deal with sexual violence on their campuses.

The article, which was rescinded by *Rolling Stone* earlier this month, also exacerbates existing challenges faced by universities with Title IX obligations to maintain safe and secure campuses for all students. In our experience advising universities as they investigate sexual assault allegations and defending them in litigation related to such investigations, we have seen significant delay on the part of alleged victims in coming forward.

This delay is unavoidable from the universities' standpoint, and is acknowledged by federal guidance on the issue of campus sexual assault. The report entitled *Not Alone: the first report of the White House Task Force to Protect Students from Sexual Assault* states that some sexual assault victims are not immediately sure they want to make a formal complaint, and that the victim's decision should be honored to encourage reporting by maintaining confidentiality. Nonetheless, the delay makes both investigation and counseling more challenging. We have also seen responses from alleged perpetrators ranging from "it didn't happen" to "it was consensual" to "my bad, but she didn't say no," and we now suspect in the future will see some variation of that coupled with, "it's just like 'Jackie.'"

Some of the fallout from the *Rolling Stone* article will likely be that already reluctant victims will be even more reluctant to report, fearing the "Jackie" effect; some perpetrators may be even more emboldened, citing "Jackie" in response to university inquiry. As another UVA student and rape survivor sourced in the article concluded, "It's going to be more difficult now to engage some people . . . because they have a preconceived notion that women lie about sexual assault."

The expectations of all parties in this difficult environment will be further skewed by the *Rolling Stone* article. The Department of Education Office for Civil Rights expects resolution of sexual assault allegations within 60 days of reporting, a time frame that the traditional legal system can't hope to duplicate. Yet, the parties, particularly accused students, expect decision-making rivaling the most experienced court and investigations that would put CSI to shame. Colleges and universities will be required to perform in this environment and to now sort through the "Jackie" defense as well. A very bad day for all concerned.

Brian Welch and Meg Christensen, partners focusing on litigation in BGD's Indianapolis office, regularly advise educational institutions as to their obligations and rights with respect to Title IX and other federal law and regulation impacting such institutions.

To learn more about Margaret Christensen and her practice, please visit her profile.

To learn more about Brian W. Welch and his practice, please visit his profile.

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