

Case 4: The Storm of Public Opinion

You have been appointed as the Hearing Officer. The facts are simple. AA, a female student at the University has accused SH of sexually assaulting her on the night of June 26th. There was no alcohol or drugs involved. AA and SH had been in a dating relationship. SH claims the encounter was consensual. AA claims she clearly made her refusal known to SH, but that he proceeded against her will. A rape kit was inconclusive, sexual relations had occurred, but there were no evidence or indication of force or unwanted physical contact. The dorms were mostly empty because most of the students were away. There are no witnesses to the encounter.

As part of his defense, SH wants to submit the following facts:

1. SH and AA have been regular lovers for several months. Like he said to the investigator, “Friday night is the night I like. We have been getting together every Friday night since the Winter Formal in February. June 26th was no different. I bring her flowers, we go to dinner, and back to my place where I put on Celine Dion. It’s her jam.”

2. The investigator who conducted the investigation spoke to AA’s sorority sisters about the incident. The sorority President sister reported that the sisters had taken the pledge to abstain from sexual activities “until the men on campus start giving women the respect they deserve.” They reportedly got the idea from a women’s strike in Iceland, in which women refused all work and conjugal relations, until the laws in their country were changed to grant women equality. The investigator concluded her report saying “there is no way that AA would have agreed to SH’s advances on June 26th.” SH objects to this information. He also alleges that the investigator is an alumna of the sorority.

3. The investigator is also a member of the University’s Gender Equity Task Force, and she has written a number of academic papers in which she stated that the

intern at the paper, have fomented an anti-male atmosphere on campus. The articles accuse the University of failing to implement best practices in training investigators, hearing officers, and decision makers in sexual assault allegations cases. The articles call for a no tolerance policy and for “the maximum sentence – expulsion, for any allegation of sexual misconduct.” The University president has made public statement supporting a zero-tolerance policy. The University President has called on the University community to become the shining example of no tolerance that will be an example to the other universities in the state, “including that ethically challenged university up north.” University leaders, including Deans, Provosts, and faculty leaders, have been conducting a sexual assault awareness campaign on campus, putting intolerable pressure on hearing officers. University leaders have been quoted as saying that any university member not supporting this campaign should be fired. SH claims that you, the hearing officer, is subject to these bias inducing pressures, and that you may not properly decide this case.

5. SH has demanded, as part of his defense, to be given access to all emails generated between AA and the investigator, between AA and her sorority sisters, and between the investigator and the sorority sisters regarding the accusation and the investigation. SH has also demanded that the investigator make available her notes of the investigation, and all recording of interviews between the investigator, AA, and the sorority sisters. He argues he should have access to these records because they may contain exculpatory evidence.