

# Legal experts: Ruling against school seeks to protect rights of accused in sexual assault case

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BY JULIE WATSON, Associated Press

SAN DIEGO (AP) — A ruling by a judge that a California university unfairly punished a student for sexual misconduct sends a strong warning that schools under federal pressure to better address rape should not forget to respect the rights of the accused, legal experts said.

San Diego County Superior Court Judge Joel M. Pressman ruled Friday that there was not enough evidence to back up the allegations against the student, identified only as John Doe, and that the University of California San Diego failed to give him a fair trial. Pressman ordered the school to lift his suspension of a year and a quarter.

UC San Diego officials declined to comment on the ruling. They said they were still evaluating whether to appeal.

Legal experts said the case sets a precedent as universities grapple with the best way to address sexual violence on their campuses and ensure justice is served for all in the wake of a national campaign by the Obama administration, which has criticized the institutions for not supporting victims.

Some say the cases should be handled by an independent agency or investigators not tied to the university and that this case drives home that point: No matter which side of the case one is on, universities are seen as having a conflict of interest in investigating and adjudicating such complaints since they can be penalized and lose federal funds for not taking action when a student has made such an allegation, said John F. Banzhaf III, a George Washington University's Law School professor.

"I think it's a very important and potentially a breakthrough case because the judge held that the student had a due process right and that right included being able to cross-examine the accuser," Banzhaf said.

Complaints of schools being overzealous in going after those accused of sexual assault have been surfacing in recent years. Harvard Law School faculty members last year lambasted their university's new policy on sexual assault, saying it did not ensure an investigation by an impartial party, nor did it provide for an opportunity for adequate representation for the accused.

"The pendulum has swung from universities doing nothing because of fear of hurting their reputation or not wanting to go after a star athlete, to universities being too overzealous in order to not risk losing federal support," Banzhaf said. "Now I think it's headed back somewhere toward the middle with courts stepping in to say to legislators and individual universities, 'you don't have a choice. It isn't what you think would be best but what the constitution requires.'"

John Doe's attorney in the UCSD case, Mark Hathaway, said the university can set an example.

"I think the university was trying to find the right balance and they got it wrong in this case," he said.

Doe met the woman at a party in February 2014, according to the complaint, and the two began a relationship, but the accuser said she was pressed into sexual activity three times. Doe denies the allegations.

A UC San Diego complaint officer found evidence to support one of the allegations, and the finding was affirmed by a university hearing panel, which recommended the suspension for a

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quarter, sexual harassment training and counseling. Dean Sherry L. Mallory later increased the suspension to a year after receiving a letter from Doe in response.

The judge ruled that UCSD did not hold a fair trial, saying only nine of 32 questions submitted by Doe were asked. Doe also was not given access to statements by his accuser or witnesses.

The judge also said the university should not have increased the suspension without an explanation.

Attorney Skye Daley, who has represented numerous college students who have filed sexual assault complaints, said victims welcome a fair process. Many victims, he added, still face an uphill battle in getting support.

"In the short term, we could well see civil action from schools' failure to meet the requisite burden, but I like to think this is just a bump in the road to a better system," he said.

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