College Kangaroo Courts

Why Students Wrongfully Accused by Schools of Rape Can and Should Use the Courts to Fight Back

In the last few years, college age men wrongfully accused of sexual misconduct have brought over 200 lawsuits to clear their names. These suits have shown that accused parties are being denied their right to due process by school panels afraid to lose Title IX funding.

When President Nixon signed Title IX into law in 1972, it stated:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX was originally intended to address discrimination against women in education and athletics. Schools that did not strictly comply would suffer the loss of federal financial assistance. Title IX ushered in a new era for higher education, irrevocably linking dollars to discrimination. But where there is an accusation of discrimination, the accused must also be permitted due process. Indeed, every woman and man in our society is entitled to due process under the law. The 14th amendment of our constitution promises it and our legal system depends on it.

Shockingly, sexual discrimination and sexual assault cases on college campuses have become the exception to due process, where accused parties can and are being denied their right to a fair hearing. Thankfully, students are fighting back—and winning. In the last several years, numerous lawsuits have successfully exposed schools railroading accused parties by denying their right to present a defense before an impartial decision maker. Considering the grave and potentially life-changing penalties for acts of sexual discrimination and sexual violence, denying accused parties their basic constitutional right to a fair guilt-determining process is dangerous and wrong.

In 2011, Title IX procedures being used by schools to prevent and combat sexual discrimination forever changed with one little letter. The now infamous "Dear Colleague" letter was addressed to all campus administrators ("colleagues") and came from the Office of Civil Rights (OCR). The letter focused solely on the victim (as opposed to the accused), addressing accusations, investigators, compliance officers, and regulated disciplinary proceedings. The rights of the accused, on the other hand, were addressed in two sentences, which merely advised schools to give the accused due process only when it does not interfere with Title IX funding.

From the "Dear Colleague" letter:

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

Although the letter called for "equitable grievance procedures," it did not require an actual hearing. Furthermore, it asserted that legal counsel for the accused could be denied and discouraged the accused's questioning and cross-examination of witnesses.

Equally distressing, these "equitable grievance procedures" need only adhere to a "preponderance of the evidence" standard of proof to determine guilt. The preponderance standard uses the law's lowest standard of certainty, a mere 50.01 percent certainty of guilt; accordingly, whoever decides the case only needs to be 50.1 sure the accused is guilty. Compare that to the "beyond a reasonable doubt" standard, used in a criminal case, in which the judge or jury must be virtually certain of guilt. The discrepancy between what schools and courts are using to determine guilt has drawn national attention. For example, the current Secretary of Education, Betsy DeVos, announced her dissatisfaction with the preponderance standard and her intent to install the more stringent "clear and convincing standard."

The OCR's letter acknowledged that criminal proceedings may occur in parallel with school disciplinary proceedings and neither can be determinative of the other, thereby creating an enormous dilemma for the accused. Now, anything said in the school proceeding can be used against him in a criminal case. Imagine your entire future on the line, would you sacrifice the 5th Amendment privilege you normally have in a criminal prosecution? Under ordinary circumstances, no defense attorney would allow his client to make a report to the prosecutor when charges have been initiated or are pending. Yet to remain silent in a school proceeding is virtually an admission of guilt. This particular issue is one that I wrestle with in every case, even when there is only minimal criminal exposure.

OCR's letter met with considerable criticism from educators, legal academics, and wrongfully accused students for replacing legal due process with a non-legal procedure patently stacked against accused students. Critics have called out the danger of denying due process at every step of the process, including failing to give notice of charges with specificity; failing to provide full disclosure of evidence (even and especially exculpatory evidence); allowing hearsay evidence; and generally ignoring all rules of evidence designed to protect the accused.

These kangaroo courts either partially block or completely exclude lawyers for the accused. Cross-examination of anyone is either limited or disallowed completely. Incredibly, witnesses are not placed under oath and face no penalties for lying.

With apparent disregard for fair proceedings, schools are allowed to appoint their own panel to oversee the hearing, which consists of Title IX coordinators and school administrators who do not want to lose funding. In many of these cases, the investigator is also the prosecutor (so much for avoiding conflict of interest). Decisions are usually given in the form of an order, without a transparent, detailed opinion.

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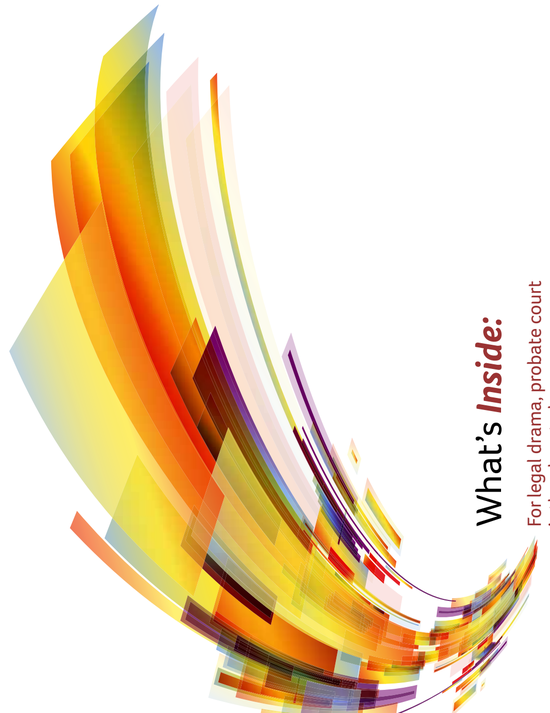

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The Legal Spin

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The Law Office of Spinella & Associates is located at historic One Lewis Street, on Bushnell Park in downtown Hartford.

What's *Inside:*

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For legal drama, *probate court is the place to be*

Most trial lawyers regard probate courts as humdrum backwaters. They assume serious litigation and gripping courtroom drama are the province of civil state and federal trial courts. Not so fast. Probate courts are specialized courts that deal with life-changing issues, such as elder abuse, competency to handle one's affairs and the imposition of involuntary conservatorships (often controlled by greedy fiduciaries), undue influence, forgery, fraud, testamentary capacity in will and trust contests, and profound end-of-life decisions. Most cases usually trace back to greed, following a long and winding road replete with sophisticated predators, distraught clients, and cutthroat legal warriors. There is a lot on the line in probate contests and one thing is certain — they are anything but dull.

Probate trials, particularly in contested will and conservatorship matters, fall into a predictable pattern of filial blood fights for physical assets and control of future income. Take the highly publicized Brooke Astor case. Her enormous wealth and coveted status among Manhattan's elite could not protect her from her son and conservator, who looted millions upon millions from his own mother as she faded into frailty and dementia. The Astor case morphed into a criminal prosecution and a conviction, which is not unusual in elder abuse probate cases. Eventually, her son was charged with inducing his Alzheimer-afflicted mother to amend her will to leave the proceeds to him rather than her chosen charities.

From Madison Avenue elites to common farmers, end-of-life family theft repeats itself with depressing consistency at every economic strata. Our probate courts are teeming with civil will contests and conservatorship cases. Common probate court cases include claims against fiduciaries who manipulated vulnerable parents into changing their will, who stole from family charities, and who disinherited relatives in fiduciary schemes.

Jarmoc v. Jarmoc

The case of *Jarmoc v. Jarmoc,* decided by the Enfield probate court, is one of my many experiences with this phenomenon. This case centered on Edwin Jarmoc, a Trinity College engineering professor, self-made tobacco farmer, and legend among central Connecticut's river valley tobacco-growers. In the last years of his life, Edwin developed Alzheimer's. As the disease progressed, so did the sway of his son, Stephen Jarmoc, an ambitious MBA-educated farmer and state representative who had champagne tastes with a beer budget.

A few years before his death, Edwin's daughter Laura, a farmgirl-cum-physician, became concerned about her brother's control over their father's finances. Sadly, her suspicions were confirmed after Edwin died, with his estate drowning in millions of dollars in debt. To the Enfield farming community who respected Edwin's reputation for frugality, this was incomprehensible.

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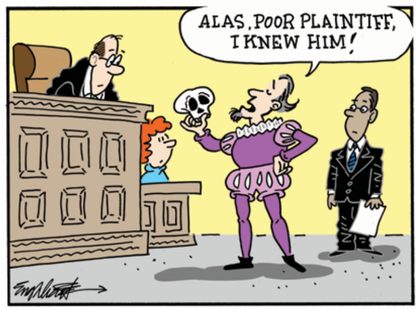
For legal drama, probate court is the place to be

Over the next two years, my law firm spent hundreds of hours unraveling Stephen's elaborate schemes. We subpoenaed thousands of financial and legal documents, collected testimony from bank witnesses, and exposed shell corporations and deceptive banking transactions. The picture we pieced together was not pretty, revealing how Stephen strategically kept information from his declining father in order to gradually convert assets to himself. In one pernicious deal, Stephen used Edwin's equity as collateral to purchase hundreds of acres of tobacco land but failed to disclose that Edwin got only the debt and no title to the land. At the property closing, Stephen and the bank officials made sure to have a team of experienced attorneys. Edwin had none.

We used a "constructive trust" argument on behalf of Laura Jarmoc to successfully return the estate's stolen monies and claim her rightful inheritance. This somewhat obscure legal theory has roots in old English law and permits a judge to act as an equitable arbiter and take control of property that belongs to a wrongfully deprived estate.



Stephen Jarmoc's legal team strenuously opposed our constructive trust claim in a trial that became the longest proceeding in that court's modern history. We called numerous witnesses to establish her brother's fraud. A forensic accountant testified to Stephen Jarmoc's elaborate financial machinations. And a neuropsychologist confirmed Edwin's diminished mental and physical capacity during critical financial deals with his son, including at the time he signed his new will with a formal diagnosis shortly after.

The court's decision references a local agricultural bank, which teamed up with Jarmoc to defraud Edwin. A central villain in the saga, the bank funded Stephen and Karen Jarmoc's lavish lifestyle and personal loans for years. Working side-by-side, they used Edwin's collateral to buy millions of dollars of farmland in Stephen's name. In exchange, Edwin carried the mortgages, but received no land title. Edwin was duped into thinking "his" farmland was held by a protective holding company, in which he actually had no ownership. In this scheme, Stephen became more and more indebted to the bank, and the bank took more and more of Edwin's assets as collateral. All the while, Edwin devolved into full-blown Alzheimer's. After the court ordered Stephen to disclose Edwin's medical records, we learned that Edwin was diagnosed with dementia during these crucial transactions.

In the dozens of financial dealings that we uncovered, we also learned that Stephen and his bank met with Edwin only once for less than half an hour. Though Edwin never had an attorney present, his signature was on hundreds of documents that he could not understand.

Every trial lawyer knows the success of a plaintiff's case rises and falls on two factors: testimony from a fully believable and sympathetic plaintiff, and a cross examination of the defendant that inflicts a mortal wound. As pointed out by the great trial lawyer Gerry Spence, the jury requires and tolerates the destruction of only one central witness. Laura Jarmoc was a plaintiff from central casting. A self-made professional woman, dedicated mother, and prominent physician, she spoke movingly of her beloved father, an idyllic childhood, and her horror as she learned of how her brother gradually deprived their father of his property and dignity. Our cross-examination of Stephen extended over a day, shining a light on a belligerent, evasive witness who gave testimony inconsistent with his own prior statements of as well as other fact and expert witnesses. Astonishingly, he willingly admitted prior financial transactions previously unknown to us, including tobacco transactions in the Dominican Republic. At the conclusion of his testimony, the case was essentially won.

The court found in favor of Laura Jarmoc on all counts. In a scorching opinion, the Judge found Stephen Jarmoc guilty of massive fraud against his father. He tricked Edwin into believing that he owned the land he purchased with his own monies instead of the truth: he drained his life savings and owned nothing. The Court authorized the new executor of the estate to seize Stephen's businesses, personal assets, and invalidate all mortgages issued since Edwin's death.

Jarmoc is a classic case of elder fraud and predatory lending. There are many lessons here. But the essential one is to watch out for the most vulnerable among us— the elderly. As we learn from Astor and Jarmoc, money cannot shield the vulnerable from predators, even and perhaps especially when they are family members driven by unchecked greed.

A. Paul Spinella is a trial lawyer practicing in all state probate courts

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College Kangaroo Courts

Simply put, these life-altering decisions are made by an amateur panel using the preponderance standard, where finding a guilty "verdict" on rape charges is as nonchalant as a coin toss.

For young people with their lives in front of them, suspension or expulsion can be devastating—in fact, they may never recover. With the stigma of expulsion, it is unlikely another school will accept them. Job prospects become similarly bleak.

Since OCR sent their controversial letter, the court system has heard a rising crescendo of civil rights and breach of contract lawsuits brought by wrongfully accused students. According to at least one database, 1 out of 3 innocent students have been found guilty. Given the lack of due process, the actual amount of wrongful decisions is likely higher. One Maryland based group that exposes "rape hoax," found that between 1993-2015, approximately 70 percent of lawsuits brought against colleges by wrongfully accused young men were decided in their favor by verdicts or outright settlements.

For young men filling lawsuits, it's a chance to clear their name, get reinstatement at school, and collect monetary damages.

Although courts have been clear they are not interested in retrying these cases, they have also been clear that due process is not up for debate, and that unfair proceedings will not be tolerated. Rather than employing hard and fast rules, the courts have evaluated these claims case-by-case, scrutinizing whether the school used due process or rushed to judgment. As stated by counsel for the National Center for Higher Education Risk Management, "Now judges are digging deeper. They are losing trust in the good faith that colleges had when addressing these situations. And that's a very dangerous position for colleges."

Reversing Wrongful Judgments

A recent case against the University of California at San Diego illustrates the common problems with these hearings. In that case, a trial court judge reversed the suspension of a male student who allegedly assaulted a female student. The student accused the University of violating his due process rights by not allowing him to present witnesses and evidence, and by denying him the right to confront witnesses. During the hearing the tribunal placed the accuser behind a barrier where her cross-examination was limited to 9 of 32 questions submitted by the acccused. No follow up questions were allowed.

Moreover, the school panel took away his right to review and refute essential evidence including access to 14 witness statements and two statements from the accuser. The panel relied on an investigator's report incorporating these statements yet gave the accused no opportunity to review the report and/or question the investigator at the hearing. The court used the higher standard of "substantial evidence" to reverse the school's decision. It also found that the hearing was "unfair and that the evidence did not support the findings." In its' decision, the court criticized the school panel for refusing to consider exculpatory evidence in which the accuser "admitted that she voluntarily continued consensual [relations] later that same day." From the decision: "this did not show non-consensual behavior, but could show regret of her behavior." The court also made a pointed comment about due process, writing: "Due process requires that a hearing ... be a real one, not a sham or a pretense."

In T*he Campus Rape Frenzy: The Attack on Due Process of American's Universities*, authors Johnson and Taylor illustrate the secretive ways schools operate to avoid adverse publicity, including sealing sexual misconduct disciplinary hearing transcripts and investigative files so the public will never see them.

Another recent case against Amherst College shows just how flagrantly schools are operating above the law when it comes to due process. The lawsuit arose from a sexual assault complaint filed by an Amherst student 18 months after the date of the alleged assault. The college conducted a disciplinary hearing before three administrators and expelled the student. Since the school hearing failed to consider or disclose key exculpatory evidence, the expelled student sued Amherst in federal court. The case focused on a series of texts sent by the accuser admitting that she initiated the sexual contact with the accused (who just happened to be her roommate's boyfriend), and now needed a "good lie" to cover up her mistake. During the school hearing, she actually admitted that she sent the texts. Incredibly, the panel did not find this important enough to mention to the accused party. When the accused did eventually uncover the texts on his own, the school panel said it was too late and upheld his expulsion. In his federal suit, he claimed that Amherst violated his Title IX rights. The presiding judge denied a Motion to Dismiss and expressed deep skepticism about Amherst's conduct. The case was settled thereafter.

Amherst's procedures typify how colleges and universities are handling student sexual misconduct cases. Using the preponderance standard and in a rush to convict, Amherst denied the accused and his lawyer the right to cross-examine the accuser while failing to furnish the necessary and available evidence to do so. The investigation and hearing were conducted so quickly that the exculpatory text messages came out after the case was decided. Operating in its' above-the-law bubble, Amherst shifted the burden of proof to the accused (instead of the accuser) and forced him to prove his innocence without according him due process. He never had a fighting chance.

The trend among colleges to avoid losing Title IX funding by denying accused students their basic right to due process is untenable, undemocratic, and unconstitutional. Students merely accused of misconduct are trapped in a hostile environment where scales are openly tilted in favor of accusers. But where colleges are unwilling or unable to respect the rights of all parties, the courts are ready and able to provide justice. Wrongfully accused students can and must exercise the right to seek remedy in our court system. We have the best judicial system in the world. Take advantage of it.

A. Paul Spinella is a Hartford-based trial lawyer.

Former Legislator Owes Estate $2M

Hartford Courant Article

February 16, 2017

A probate judge has ruled that a former state legislator "unjustly enriched" himself at the expense of his family's Enfield tobacco farm and that he owes his father's estate more than $2 million.

The harshly worded nine-page ruling by Judge O. James Purnell, issued Thursday, ends a contentious seven-year probate battle between Stephen Jarmoc and his sister Laura. She filed a claim that her brother improperly used the farm as collateral to take out millions of dollars in loans to buy a Rhode Island vacation house and pay his children's private school tuition, among other personal expenses.

Purnell ruled that Stephen Jarmoc owes the estate at least $2.08 million and he ordered any mortgages, property transfers or loans made after Edwin Jarmoc's death in June 2009 to be voided.

The decision notes that 2002 and 2003 tax returns for the farm reveal that "without explanation or written agreement or vote" Stephen Jarmoc's percentage of profit from the farm increased in steps from 50 percent to 75 percent to 90 percent.

Stephen Jarmoc used the tobacco farm, which sells about $2 million annually in shade leaf tobacco to cigar companies all over the world, to take out a series of large loans, the judge said, that went to fund personal items for Stephen Jarmoc and his wife, Karen.

"Much of the money borrowed went to support the lavish lifestyle of Steven and Karen Jarmoc, their home, vacations, pension, tuition and a vacation home, none of which were income producing," Purnell wrote.

Stephen Jarmoc served in the 59th House District from 1992 to 2006 and was succeeded by his wife, who served until 2010 and is now president of the Connecticut Coalition Against Domestic Violence.

Stephen Jarmoc issued a statement through his attorney, Edward J. Heath of Robinson & Cole.

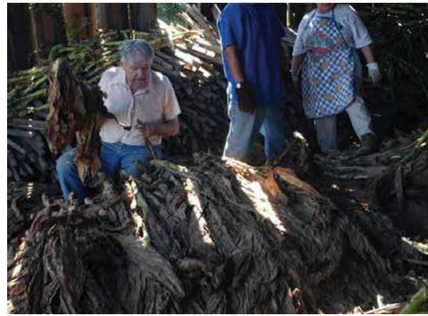
"I respectfully disagree with the decision. I am evaluating my options. My father and I ran the farm, my sister was not remotely involved from her home in New Hampshire. Her interpretation of what she is owed is inaccurate. It is unfortunate that I have had to work out this family matter in court," he said.

Laura Jarmoc is a doctor who lives in New Hampshire.

In court papers, Stephen Jarmoc argued that his sister did not object to the admission of Edwin Jarmoc's 2004 will until 15 months after it was submitted to the court.

Stephen Jarmoc was named executor of his father's will, but he was removed by Purnell as the case unfolded. Purnell appointed attorney Paul Ridgeway of East Granby as the new executor of the estate.

Hartford attorney A. Paul Spinella, who represents Laura Jarmoc, said it has been a long fight for her.



EDWIN JARMOC, owner of Jarmoc Tobacco in Enfield, works side by side with a group of farmworkers.

"We think at long last justice has been done," Spinella said. "The fact remains that this case was a massive theft by a son of his father's estate."

Records show that at the time Edwin Jarmoc signed his will in 2004, he had $5 million in assets and $100 in debt. The current inventory of his estate shows assets of $2.8 million and debts to one bank — Farm Credit East — in excess of $7 million.

Purnell raised questions about some of the loans that Farm Credit gave to Stephen Jarmoc, particularly after Edwin Jarmoc died, indicating that the IRS, other relevant federal agencies and state officials may want to take a look at them.

"It is instructive that after Edwin's death, Farm Credit walked Steven through a process to set up a new LLC in order to get additional funds from the federal government that were not available to the business while the estate was being settled," Purnell wrote. "There is serious question as to whether this was appropriate or even legal since it was nothing more than a shell corporation to funnel federal money to Jarmoc Tobacco."

Jarmoc Farm has been a staple in the Enfield area for nearly 100 years.

Edwin Jarmoc, who had advanced degrees in engineering and was a professor of engineering at Trinity College, ran the farm for years. Stephen and Laura Jarmoc grew up on the farm. While Edwin Jarmoc ran the operation, his wife, Eleanor, handled the books. When she died in 1998, Stephen Jarmoc and attorney Robert Berger took over the financial duties, records show.

Laura Jarmoc accused her brother of denying for years that their father suffered from dementia until the court ordered him to disclose their father's medical records. Those records showed that Edwin Jarmoc was diagnosed with dementia in November 2004, about four months after his new will was signed.