

# Lawsuit Casts Harsh Light on Due Process at Colgate

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By **Peter Berkowitz** - October 3, 2014

Under ordinary circumstances, the facts alleged by Abrar Faiaz in the legal complaint he filed last spring in U.S. District Court in New York against Colgate University would strain credulity. But because Faiaz's allegations are consistent with the organized offensive against due process perpetrated by universities in recent years, they should be considered with an open mind.

The lawsuit accuses Colgate and several members of the university's administration, faculty, and staff -- including President Jeffrey Herbst, Provost Douglas Hicks, and Dean of the College Suzy Nelson -- of multiple civil rights violations as well as false imprisonment, breach of contract, and failure to substantially observe the school's established procedures. The court is currently weighing Colgate's motion to dismiss the suit.

To cut the case short at this early stage, the court must conclude that even if the facts Faiaz alleges are true and all reasonable inferences are drawn in his favor, no violation of law has occurred. Such a conclusion would represent an abject failure of the federal courts to defend individual liberty.

A citizen of Bangladesh who matriculated at Colgate in the fall semester of 2010 as a scholarship student, Faiaz enjoyed success in his university studies, earning a 3.33 GPA as a double major in economics and computer science. He also thrived outside the classroom, participating as a resident adviser and community leader in his dorm, a member of the Colgate Debate Society, and co-president of the Muslim Students Association.

According to the facts alleged in his lawsuit, on Feb. 20, 2013, during the spring semester of Faiaz's junior year, classmate Rachel Valdivieso, who at the time was on leave from Colgate, emailed defendant Valerie Brogan, an investigator for the Campus Safety Department. Valdivieso, who had had a brief romantic relationship with Faiaz, asserted that a year before, he had pushed her against a wardrobe. She said she had not been hurt in the encounter and that Faiaz later apologized for it.

Valdivieso also reported an incident from two years earlier involving Faiaz and her former suitemate, Yuliya Karashel. She said that Faiaz had also pushed Karashel, with whom he was then romantically involved, causing her to fall and injure herself. Following the incident, Karashel obtained a no-contact order from the university. Subsequently, upon Karashel's request, Colgate lifted the order, and they became "extremely close." When university investigator Brogan emailed Rachel Valdivieso to ask whether she thought Yuliya Karashel would speak with Colgate officials, Valdivieso wrote that she doubted it.

The lawsuit goes on to state that a month later, Brogan met with Karashel. The student tried to explain to the investigator that she and Faiaz shared responsibility for their former problems and that they were now very close. But Brogan insisted that Karashel was afraid of Faiaz, and it seemed to Karashel that Brogan had already determined that he was guilty of something. Brogan went so far as to tell Karashel that Faiaz was violent toward women because of his cultural background and was incapable of setting aside 20 years of "cultural grooming."

Brogan also ordered Karashel to prepare a statement describing all her altercations with Faiaz. Brogan did not, however, tell Karashel that she was not obligated to produce such a report and that it would be used to prosecute Faiaz.

Two days later and without informing him of the charges against him, the lawsuit continues, Brogan interrogated Faiaz on and off for over six hours about the altercations with Karashel. As in her meeting with Karashel, instead of operating as a neutral finder of facts, Brogan told Faiaz that Colgate already knew of his transgressions and pressed him to confirm them, the lawsuit says. She accused him of wrongdoing, posed leading questions, and twisted his words. And Brogan, who has a working relationship with the local police department, did not explain to Faiaz that since he was facing the prospect of criminal charges, he had the right not to speak and the right to seek legal counsel or consult with a representative of his choice.

Consistent with the presumption of guilt animating Brogan's questioning of Karashel and Faiaz, Colgate prepared a no-contact order between them before Brogan's questioning of Faiaz had commenced and despite Karashel's neither seeking nor wanting it. Moreover, without waiting to hear a word from Faiaz, Marilyn Rugg, associate provost for equity and diversity and Title IX coordinator, and Kimberly Taylor, associate dean for conduct and university disciplinary officer -- both of whom are defendants in Faiaz's lawsuit -- decided to place Faiaz on interim suspension and subject him to a disciplinary hearing.

At the end of Brogan's interrogation, Dean Taylor told Faiaz that Colgate would hold him in a college building until the hearing, which would take place at the earliest in 10 days, but that he could avoid detention by agreeing to immediately return to Bangladesh at the university's expense and participate in the hearing via Skype or by telephone.

Faiaz rejected the option of leaving during the semester and attempting to prepare a defense while traveling halfway around the globe. Campus security officers then escorted him to a cramped and dirty basement room without Wi-Fi or cellular access and stood guard over the entrance. The next day defendant Christina Khan, assistant dean and director of International Student Services, visited him in the basement to bring him a phone and repeat Colgate's offer to release him from confinement provided that he agree to fly home to Bangladesh.

After Faiaz had endured 36 hours of imprisonment, Professor Melissa Kagle, Faiaz's "host" parent at the university, managed, despite Colgate's efforts to obstruct and dissuade her, to secure Faiaz's release and put him up at her house.

During the approximately eight days between his release and Colgate's hastily called disciplinary hearing, the lawsuit further asserts, Colgate officials harassed Faiaz while he was reviewing evidence; Dean Taylor, on the grounds that Faiaz refused to return to Bangladesh, rejected his request to postpone the hearing so that he could properly prepare a defense, including arranging for witnesses; investigator Brogan pressured Karashel, the alleged victim, to provide a written statement; Karashel met with Dean Taylor to express her concerns about bias in the disciplinary process; and on April 1, the day before the hearing, Dean Khan and Dean Nelson, without informing Faiaz, called his parents via Skype to say that since their son faced criminal charges, they should persuade him to return to Bangladesh before the disciplinary hearing.

No complainant testified at the hearing, the procedures of which were adopted in response to instructions set forth in an April 4, 2011 letter on sexual harassment, including sexual violence, to universities from the Department of Education's Office of Civil Rights. Investigator Brogan presented the case against Faiaz based on her incomplete and biased report, and Dean Taylor made several false statements. The three-member Equity Grievance Panel -- two Colgate staff members and one professor -- voted the same day to expel Faiaz.

Dean of the Faculty Douglas Hicks summarily rejected Faiaz's appeal despite an impassioned 10-page single-spaced statement submitted by Yuliya Karashel that Colgate's prosecution and punishment of Faiaz reflected "premeditated bias and misrepresentation of the facts," and a statement submitted by Professor Kagle that Faiaz, because of his nationality, had been treated more severely by Colgate than other students in similar and in more serious cases.

Those are some essential facts presented in Faiaz's lawsuit. By letting the case go forward and giving him the chance to present his allegations to a jury, the court would reaffirm the obligation of universities under federal and New York state law to honor the presumption of innocence, the right of equal treatment, and universities' own promises to provide accused students fair and impartial disciplinary hearings.

Faiaz's case is not anomalous. Since 2010, more than 30 men have filed lawsuits alleging that universities have violated their rights in sexual misconduct cases; 16 such lawsuits were filed in 2014 alone.

Laudably, in recent years pressure has been brought to bear on many powerful institutions once insulated from political demands and outside oversight -- institutions ranging from the U.S. military and the National Football League to public and private universities -- to protect against and punish sexual and physical assault.

But what allegedly happened at Colgate, and is happening at universities around the country, is driven in significant measure by Obama administration directives to weaken due process on campus and reflects fashionable ideas in the academy about the pervasiveness of the oppression of women. The result is something profoundly illiberal.

Indeed the indifference to and sometimes outright disdain for due process among our faculty and administrators is transforming our universities into bastions of authoritarianism.

The withering of the instinct for, and the understanding of, due process on campus attests to the crisis of liberal education. In the past, our colleges and universities taught students that due process protects individuals from abuse of power, and that since power and the tendency to abuse it go hand in hand, the rights of the accused in this country underpin the freedom of all. Through their denigration of due process, our institutions of higher education are still imparting that lesson, though not in the way they intend.

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