

The college in 'Calvin' failed to report to the federal government alleged sexual offenses against one of its students. (DEPOSITPHOTOS.COM)

Lawyers: SJC ruling offers clarity on how Whistleblower Act meant to work

College allegedly failed to report sexual assault on student

Eric T. Berkman (https://masslawyersweekly.com/ct%20meant%20to%20work) (mailto:?subject=Lawyers: SJC ruling offers clarity on how Whistleblower Act meant to work&body=An employee at Roxbury Community College was engaged in protected activity under the Massachusetts Whistleblower Act when he objected to his employer's failure to report to the federal government alleged... You can read the content in details following link https%3A%2F%2Fmasslawyersweekly.com%2F2026%2F02%2F04%2Fsjc-whistleblower-clery-act-roxbury-community-college%2F)

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In brief

- SJC held employee engaged in protected activity under the Massachusetts Whistleblower Act (https://masslawyersweekly.com/tag/massachusetts-whistleblower-act/?taxo-tag-body)

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- Case involved failure to report alleged sexual assaults under the federal Clery Act (https://masslawyersweekly.com/tag/clery-act/?taxo-tag-body)
- Court rejected requirement that whistleblower prove subjective belief of illegality
- Jury verdict of $980,000 for retaliation was affirmed on appeal

An employee at Roxbury Community College was engaged in protected activity under the Massachusetts Whistleblower Act when he objected to his employer's failure to report to the federal government alleged sexual offenses against a student as required by law, the Supreme Judicial Court (https://masslawyersweekly.com/tag/supreme-judicial-court/?taxo-tag-body) has decided.

The plaintiff, who had been the school's director of facilities and public safety since 2007, allegedly received a report from a student in 2009 that she had been sexually assaulted by a professor six years earlier.

The student, who claimed other assaults occurred as well, had apparently reported the alleged assault to officials on two prior occasions.

At no point were the alleged assaults reported to the U.S. Department of Education as required by the federal Jeanne Clery Campus Safety Act, which requires colleges receiving federal funding to provide annual disclosures of crimes reported to campus security or law enforcement in the three most recent calendar years.

The plaintiff himself was an employee with reporting responsibilities under the Clery Act but did not report the allegations to the DOE in the school's disclosure after he learned about them, allegedly because DOE employees told him that claims which had not occurred within the past three calendar years could not be reported.

He did, however, raise his concerns about the school's failure to act on the claims with other school officials, the chair of the board of trustees, and state auditors.

After he was terminated for alleged "performance deficiencies" in 2012, the plaintiff brought a claim under the Massachusetts Whistleblower's Act, G.L.c. 149, §185, which protects public employees from retaliation for reporting illegal activities.

After the plaintiff obtained a jury verdict in his favor in Superior Court, the commonwealth appealed, arguing that the court erred by ruling prior to trial that the plaintiff was a whistleblower as a matter of law before allowing the jury to decide if he was fired in retaliation.

The SJC affirmed the jury's verdict.

"We conclude that the motion judge properly decided that [the plaintiff] engaged in protected activity as a matter of law, despite his own involvement in and responsibility for reporting the alleged sex offenses, as it was undisputed that he objected to Clery Act violations and that such violations had occurred," Justice Scott L. Kafker (https://masslawyersweekly.com/tag/justice-scott-l-kafker/?taxo-tag-body) wrote on behalf of the SJC. "We do so based on the express language of the MWA and its fundamental purpose, which is to encourage the reporting of unlawful activity."

The 25-page decision is ***Galvin v. Roxbury Community College***, Lawyers Weekly No. 10-009-25 (https://masslawyersweekly.com/2026/01/27/employment-whistleblower-4/).

'Exactly right'

Plaintiff's counsel Orestes G. Brown of Danvers said the SJC "got it exactly right."

The commonwealth was arguing that not only did the plaintiff need to be correct about the college's conduct being illegal, but he needed to show that he subjectively believed it to be illegal, Brown said.

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"The SJC pointed out that this doesn't make any sense," he said. "The college was fundamentally trying to narrow the really broad protections of the Whistleblower Act and to narrow its function, which is to encourage employees to come forward and report wrongdoing by their employer."

Brown's partner and co-counsel, Bailey Buchanan, added that the standard the commonwealth was arguing for had never been applied under the whistleblower law (**https://masslawyersweekly.com/tag/whistleblower-law/?taxo-tag-body**).

"If there was a subjective test, it would put a higher burden on whistleblowers," she said. "It would almost always force a trial on that issue to prove the whistleblower's state of mind."

Daniel G. Cromack of the Attorney General's Office argued for the state. The office did not respond to requests for comment.

However, Boston attorney Joseph A. Padolsky, who represents public employers, said the decision provides meaningful clarity to how the Whistleblower Act is intended to operate and applies settled principles in a way that will benefit both sides of the employment bar.



For a long time, defense attorneys have tried to put on this defense where, if something is part of your own duties, you can't be a whistleblower. That defense has been shot down by this case.

— Joseph L. Sulman, Waltham

At the same time, his colleague Douglas I. Louison described the SJC as taking a "very literal" interpretation of the whistleblower law in finding that, regardless of the plaintiff's own conduct, he was still acting in an objectively reasonable manner when objecting to an action of his employer that he believed to violate the law.

"It would seem in *Galvin* that the SJC seeks to encourage the intent of the act by protecting the activity of a whistleblower regardless of his own possible misconduct, placing a greater value on the protected activity of [the plaintiff] over his own wrongdoing," Louison said.

Joseph L. Sulman of Waltham, who represents public employees, pointed out that many public workers, whether police officers, teachers or agency employees, may have duties that require them to watch other employees, make reports, and, in some cases, report on compliance with laws.

"For a long time, defense attorneys have tried to put on this defense where, if something is part of your own duties, you can't be a whistleblower," he said. "That defense has been shot down by this case."

Royston H. Delaney of Newton said the SJC's rejection of the subjective test for being a whistleblower was the correct one.

"When a whistleblower makes a report of what they think is unlawful activity, the standard is an objective one: The belief has to be reasonable," he said. "It's not a question of whether or not the person believes what they're saying, but whether a reasonable person would believe what they're saying. That may sound like splitting hairs to most laypeople, but as a practical matter, you get to do discovery into the illegal activity to show not just that you believe it's unreasonable but that any reasonable person knowing the facts also knows it's unreasonable."

Whistleblower claim

As director of facilities and public safety at Roxbury Community College, the plaintiff was chief compliance officer for the Clery Act.

On Aug. 26, 2010, RCC's HR director at the time, Preston Paul Alexander, received two complaints from the student in question alleging she had been sexually assaulted by two college professors.

She claimed one of the assaults occurred in 2003 or 2004 and was committed by a professor who had been fired in 2006. The other allegedly occurred on an unspecified date by an unnamed professor.

When Alexander met with the student several weeks later, she informed him that that she reported one of the assaults to the director of financial aid in 2006 and 2008; to then-Vice President of Administration of Finance Alene Shanks, to whom the plaintiff reported, in 2008; and to the plaintiff in 2009.

On Sept. 1, 2010, the plaintiff emailed Alexander asking whether his office had information about campus crimes that needed to be included in the 2010 Clery Act report.

Alexander replied that there were no reported crimes on record over the past year.

On Nov. 30, 2010, the plaintiff received copies of the student's complaints and emailed Shanks as to whether the allegations had previously been reported as required by the Clery Act.

Shanks apparently told him there was nothing to report. She claims, however, that she told him to report the allegations if he believed they should be reported.

The same day that the plaintiff emailed Shanks, RCC Comptroller Chuks Okili allegedly arranged to provide the student with a presidential scholarship that brought her remaining balance for that semester to zero.

Galvin v. Roxbury Community College (https://masslawyersweekly.com/2026/01/27/employment-whistleblower-4/)

THE ISSUE: Did an employee at Roxbury Community College engage in protected activity under the Massachusetts Whistleblower Act when he objected to his employer's failure to report alleged sexual offenses against a student to the federal government as required by federal statute?

DECISION: Yes (Supreme Judicial Court)

LAWYERS: Orestes G. Brown and Bailey Buchanan, of Metaxas, Brown, Pidgeon, Danvers (plaintiff)

Daniel G. Cromack of the Attorney General's Office, Boston (defense)

In early 2011, the plaintiff met with DOE employees, showed them the student's complaints, and asked if he should report them under the Clery Act.

The DOE employees allegedly told him they would get back to him.

On July 13, 2011, the plaintiff met with staff from the state Auditor's Office and told them of the student's allegations and of the scholarship she had been given.

After the meeting, he was told that the state auditors would notify the chair of RCC's board of trustees about the allegations.

Around that time, Shanks left RCC and was replaced by Okili.

On Sept. 8, 2011, Courton Brown requested that the plaintiff provide information about concerns he expressed to the state auditors.

He responded that the college failed to report a campus crime that was required to be reported under the Clery Act and told of the scholarship.

The trustees subsequently notified him that RCC's private audit firm would investigate.

On Oct. 1, 2011, the plaintiff submitted RCC's 2011 Clery Report without the student's claims, allegedly having been told by the DOE that they could not be included because the alleged incidents had not happened during the three most recent calendar years.

In July 2012, Okili gave the plaintiff a negative performance review based on his noncompliance with public safety and higher education regulatory requirements.

That August, he received a termination letter citing performance deficiencies.

After the plaintiff filed his retaliation suit under the Whistleblower Act, Superior

Court Judge Maynard M. Kirpalani ruled on summary judgment that he was a whistleblower as a matter of law because he reasonably believed the college's failure to report the student's claims violated the Clery Act.

Following a trial on whether the plaintiff was terminated because of his performance or his whistleblower status, a jury found in his favor and awarded him $980,000 in damages.

The college appealed.

Undisputedly unlawful activity

The SJC found that summary judgment was properly awarded on the question of whether the plaintiff was a whistleblower.

"[He] objected to undisputedly unlawful activity, that is, the college's failure to disclose reports of sexual offenses to the DOE, as required by the Clery Act," Kafker wrote. "The allowance of partial summary judgment properly distinguished the undisputed facts and legal requirements necessary to decide this element of a whistleblower claim from the disputed facts and legal issues relevant to the second element of a whistleblower claim, that is, whether [the plaintiff's] whistleblowing, or his own misconduct, including his own failures to ensure compliance with the Clery Act, was the cause of his termination."

Because the jury decided in the plaintiff's favor on the second element — that he was fired for being a whistleblower — "we see no reason to disturb that verdict," Kafker wrote.

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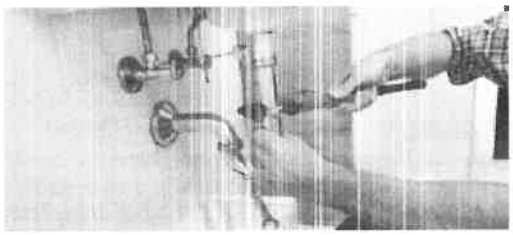

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