

# County of Santa Clara

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## NEWS RELEASE

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### **FOLLOWING AN EXHAUSTIVE REVIEW, DISTRICT ATTORNEY EXPLAINS DECISION NOT TO FILE CRIMINAL CHARGES IN THE DE ANZA CASE**

What happened on March 3, 2007, at 349 South Buena Vista Avenue in San Jose, was reprehensible. It was inexcusable. However, the job of the District Attorney's Office is first and foremost to determine whether conduct is criminal and whether that criminal conduct can be proven to a jury beyond a reasonable doubt.

While sexual assault cases are very difficult to prove, sexual assaults involving highly-intoxicated people are extremely difficult to prove. By their very nature, these types of cases involve witnesses whose perceptions and memories are questionable because they were under the influence of drugs or alcohol. These cases are rarely successfully prosecuted without an eyewitness or some other compelling evidence. These cases are extremely difficult to prosecute not because the victim has done something wrong and not because what the suspects did was okay. The People must unanimously prove beyond a reasonable doubt what occurred to a jury of twelve people who were not present when the act occurred.

One of the jurors in the De Anza civil case that we interviewed stated, "Unless you had a bird's eye camera in the room it was impossible to determine what had gone on." The jury found the defendants not liable on the sexual assault charges by a vote of 12-0. Significantly, the plaintiff achieved two settlements and two judgments from other defendants in the case. The standard of proof in a civil trial is preponderance of the evidence. The standard of proof in a criminal case is beyond a reasonable doubt and the verdict for guilt must be unanimous.

The fact that a case is difficult to prove does not mean that the District Attorney's Office won't do everything in its power to determine what occurred. The victims in Santa Clara County deserve nothing less than our best efforts.

What happened to Jessica was not her fault. The suspects' behavior was not acceptable conduct in a civilized society. However, the District Attorney's Office cannot prove that a crime occurred on March 3, 2007 and therefore will not file criminal charges.

## Complete Review Of All The Evidence

The Santa Clara County District Attorney's Office has completed an exhaustive review of the De Anza case. The review was done by my Chief Trial Deputy Ray Mendoza, a prosecutor with over 20 years of experience. He is the most experienced sexual assault prosecutor in the office, having more than 10 years of experience handling sexual assault cases. His review lasted several months and included the following information and evidence:

- All police reports (300+ pages)
- All taped interviews (many interviews were reviewed multiple times by multiple people) (97 CDs-hundreds of hours)
- All of the crime scene photos
- Cell phone records (390 pages)
- Medical records & SART report (Sexual Assault Forensic Report) (20+ pages)
- The District Attorney investigation file (135 pages)
- The Attorney General's report
- The civil court file (41 volumes-1000+ pages)
- Depositions from the civil case (1000+ pages)
- Interviews of 3 of the civil jurors
- Conversations with 7 attorneys, both plaintiff and defense, involved in the civil case
- Crime Lab reports/notes (50+ pages)
- Testing was done on all items of evidence where it was determined that the results would be of evidentiary value. The following items were tested:
  - Jessica's blood
  - Jessica's SART kit (DNA)
  - Jessica's underwear
  - Kanzaki's SART kit
  - A mattress pad
  - A camera
  - All suspect buccal swabs (swabs taken from the suspects for DNA analysis)
  - Condom (tested by 3 different methods)
  - Vomit taken from the mattress

I also met personally with Jessica, her lawyer, the three women who took Jessica to the hospital, and the jury foreperson from the civil trial.

## **District Attorney Standard For Filing Criminal Charges**

The District Attorney's Office uses the following four-prong test when deciding whether to file criminal charges:

1. Was there a crime?
2. If there was a crime, do we know who did it?
3. Can we prove the case beyond a reasonable doubt at jury trial?
4. Is charging the right thing to do?

The answers to the above questions in the De Anza case are:

1. Was there a crime? We don't know.
2. If there was a crime, do we know who did it? We don't know.
3. Can we prove the case beyond a reasonable doubt at jury trial? No.
4. Is charging the right thing to do? Given the fact that we cannot determine if there was a crime, no.

### **Facts**

The facts at the civil trial were highly contested. The facts described below reflect the consensus of the civil jurors' findings. Our purpose in listing many of the facts below is to demonstrate why we cannot prove beyond a reasonable doubt that Jessica was too intoxicated to consent, not because we are trying to put Jessica's conduct at issue over and above the defendants' conduct.

Jessica and her friend arrived at the De Anza party at approximately 11:00 pm on March 3, 2007. While at the party, Jessica had multiple shots of alcohol (as many as 7 shots) throughout the evening. At about 11:30 pm, Jessica did not appear intoxicated. At about midnight, Jessica was able to perform various acts, was able to hold coherent conversations, and was able to go into the bedroom under her own power. Witnesses stated that Jessica's level of intoxication did not seem to impair her at the time she entered the bedroom.

Jessica left the bedroom between 12:10-12:20 am. She had coherent conversations with several people and appeared to be in control of her actions. At about this time, Jessica, under her own power, went back into the bedroom again. Present in the bedroom at various points in time with Jessica were suspects Skinner, Righetti, Rebagliati, Knopf, Maltbie, Kanzaki, Cardenas, Chadwick and Gutierrez. Most of the people in the bedroom were intoxicated to some degree. There is no evidence that anyone in the bedroom knew, or should have known, that Jessica was under 18 years old.

## **Jessica Doe**

She said that she had no memory of the evening from the time she drank her 3<sup>rd</sup> shot of alcohol, approximately ten to twenty minutes after arriving at the party, until she woke up in the hospital hours later.

While at first glance, Jessica's blood alcohol level taken at the hospital would seem to indicate that she was extremely intoxicated during the time she was in the bedroom, an alcohol expert who reviewed Jessica's drinking pattern explained that her blood alcohol level was rising while she was in the bedroom and that it didn't peak until later in the evening.

After hearing all of the evidence regarding Jessica's blood alcohol level, the civil jurors believed that it did not peak until 1:00 am or after. The jurors believed that she never lost consciousness and that she was capable of consenting while she was in the bedroom.

According to the jurors, Jessica, as well as the other witnesses needed for a successful prosecution, were impeached to varying degrees at the civil trial.

## **Defendants**

The facts demonstrated that several men were in a bedroom engaging in sexual activity with an intoxicated woman. Other men watched. Another man tried to keep others from entering the bedroom. None of them in the bedroom did anything to stop what was going on. Throughout the investigation and civil proceedings, the defendants consistently showed more concern for themselves and each other than they did for Jessica, her family, or our community. Their lack of concern for Jessica was driven, in part, by her *anonymity* to them. She was not their sister, their friend, nor even the girl who sits next to them in class. This saga hopefully serves as a marker for our community. A marker that the overriding duty we have to each other is to treat each other the way we wish to be treated and the way we wish for *all* women to be treated.

## **Conclusion**

The fact that we are not filing charges in this case should not be taken as indicative of anything beyond the facts of this particular case. This office has, and will continue, to aggressively prosecute sexual cases.

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