

Ranting Rapaport No Match for Barstool Sports' "El Presidente" Dave Portnoy

By: Kellie Kulka on April 6, 2021 on graydon.law

In a 64-page decision ([click here to see](#)), the Hon. Judge Naomi Reice Buchwald laid into former Barstool Sports video "rant" host, Michael Rapaport, finding not a single one of the approximately *eighty* (yes, 8-0) allegedly defamatory statements made about him by Barstool and its President are actionable.

As Judge Buchwald points out, the statements fall into four main categories of insults, accusing Rapaport of: (1) being racist; (2) being a fraud, a hack, and a wannabe; (3) having herpes; and (4) stalking and abusing his ex-girlfriend.

The Court categorically rejects a number of statements as "readily understood as inherently subjective assessments that are incapable of being proven objectively false," and therefore not actionable. And those "verifiable" statements - *i.e.*, Rapaport as the herpes-afflicted girlfriend-beater were not offered to be "understood by a reasonable [audience] as assertions of fact proffered for their accuracy." Let's not forget, Barstool Sports is home to the pizza review guy (Portnoy), and his cast of irreverent blogger/podcasters, who make their living on fart-jokes and crude humor. Not exactly hard-hitting news.

But then Judge Buchwald really gets going. She dismantles the "Fire Rap" video, a 6-minute "diss track" of insults about Rapaport produced by the Barstool Defendants. She starts with the obvious insults - Rapaport as the "perp with the herp" and other herpes-themed epithets. She then analyzes the more creative lyrics, which refer to Rapaport as a "f***ing 10 gallon drum of curdled milk," a "snake-oil salesman with nothing to sell," a "puddle of pudding," and, one of the more astute insults, "Larry Bird's mom's sister." Classic.

After addressing a series of memes, including an especially vulgar one created by Rapaport himself, depicting Barstool Sports' Dave Portnoy in a particularly compromising position (with Rapaport at the helm), she moves onto a series of cartoons created about Rapaport. The Court particularly hones in on one clever cartoon depicting a bandaged Rapaport, and a doctor apparently diagnosing Rapaport with "Ding Dongs for Brains," which is, according to the cartoon, a fatal condition. RIP, Rapaport. But alas, she concludes that this "crude" work of fiction is not actionable because "no reasonable viewer would interpret the cartoon as asserting for a fact that Rapaport died as a result of having 'Ding Dongs for Brains.'" You

don't say.

Finally, the t-shirt that set Rapaport off: an artist's rendering of Rapaport, with a big red lesion on his face, and a red clown nose. But this, too, the Court concludes, is not actionable, as it does not assert as a fact that Rapaport has herpes.

Did Judge Buchwald need to rattle off the bulk of those potty-mouthed insults? Maybe not. But thank you, Judge Buchwald, for the much needed reminder that if you're going to dish it out, prepare to take it back, because under the law, "a certain amount of vulgar name-calling is tolerated."